Mayor – Sandy Sanders

Acting City Administrator – Jeff Dingman

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith Lau
Ward 2 – Andre' Good
Ward 3 – Mike Lorenz
Ward 4 – George Catsavis
At Large Position 5 – Tracy Pennartz
At Large Position 6 – Kevin Settle
At Large Position 7 – Don Hutchings

AGENDA

Fort Smith Board of Directors
REGULAR MEETING
January 5, 2016 ~ 6:00 p.m.
Fort Smith Public Schools Service Center
3205 Jenny Lind Road

THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT ACCESS CHANNEL 214 AND ONLINE AT http://www.ustream.tv/channel/city-of-fort-smith-board-of-directors-meetings

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING
(Section 2-37 of Ordinance No. 24-10)

APPROVE MINUTES OF THE DECEMBER 15, 2015 REGULAR MEETING

ITEMS OF BUSINESS:

1. Ordinance declaring an exceptional situation requiring the waiving of competitive bidding and authorizing execution of a contract between the Sebastian County Humane Society and the City of Fort Smith, Arkansas

2. Items regarding an appeal of the Planning Commission's denial of a conditional use permit *(appeal of Alvin L. Prieur, agent for Mahmoud "Mike" Yasin)*
~ Tabled for sixty (60) days at the November 3, 2015 regular meeting ~

   A. Resolution approving an appeal of Conditional Use No. 19-10-15 for an auto and vehicle dealer sales located at 500 Towson Avenue

B. Resolution affirming the action of the Planning Commission denying Conditional Use No. 19-10-15 for an auto and vehicle dealer sales located at 500 Towson Avenue

3. Ordinance rezoning identified property and amending the zoning map *(from Not Zoned (NZ) to Commercial Moderate (C-3) by extension located at 9300 Chad Colley Boulevard)*

4. Ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith *(auto and vehicle dealer (indoors))* ♦

5. Consent Agenda

A. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas, and the 188th Wing of the Arkansas Air National Guard

B. Ordinance authorizing the appropriation of funds for the Water & Sewer Refunding and Construction Revenue Bonds, Series 2015

C. Resolution accepting bids for the purchase of aggregates, sand, concrete, and asphalt concrete products for 2016 *(Annual bid / Various Departments / Budgeted - Various Departments)*

D. Resolution accepting bids for the purchase of fleet trucks *($183,802.00 / Utility Department / Budgeted – 2015 Water and Sewer Revenue Bonds)*

E. Resolution authorizing the Mayor to execute an agreement with Shannon & Wilson, Inc. for providing engineering services associated with Year 2016 post construction monitoring and inspection of the Lake Fort Smith Dam and Reservoir *($86,388.00 / Utility Department / Budgeted – Water Treatment Operations Budget)*

OFFICIALS FORUM ~ presentation of information requiring no official action

(Section 2-36 of Ordinance No. 24-10)

- Mayor
- Directors
- City Administrator

ADJOURN

1

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EXCEPTIONAL SITUATION REQUIRING THE WAIVING OF COMPETITIVE BIDDING AND AUTHORIZING EXECUTION OF A CONTRACT BETWEEN THE SEBASTIAN COUNTY HUMANE SOCIETY AND THE CITY OF FORT SMITH, ARKANSAS

WHEREAS, citizens residing in the City of Fort Smith rely upon responsive animal control management, including impoundment and housing services; and

WHEREAS, the Sebastian County Humane Society is the only organization in the area with the resources, facilities, and staff to perform impoundment and housing services required by the City;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

Section 1: An exceptional situation is declared to exist requiring the waiving of competitive bidding with reference to a contract for animal impoundment and housing services for the City of Fort Smith.

Section 2: The Mayor, his signature being attested by the City Clerk, is authorized to execute a contract with Sebastian County Humane Society for impoundment and housing services for a period of three years, i.e., January 1, 2016 through December 31, 2018,with the provisions identified in the attached contract.

PASSED AND APPROVED THIS _____ day of January, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form

_____
No Publication Required

CONTRACT

THIS AGREEMENT MADE AND ENTERED INTO this _____ day of _____, 2016, by and with the City of Fort Smith, hereinafter referred to as "City" and the Sebastian County Humane Society, hereinafter referred to as "SCHS".

In exchange of the mutual considerations set forth herein, the parties agree as follows:

1. Pursuant to the terms set forth in the Agreement, Sebastian County Humane Society (SCHS) agrees to provide an impoundment facility for animals for the benefit of the City of Fort Smith and, as described herein, the City agrees to provide payment to SCHS for the providing of such impoundment facility. The City acknowledges that the SCHS provides similar services to other cities and government offices.

2. Term. Subject to the termination rights provided in this paragraph, the term of this agreement shall commence on January 1, 2016 and shall continue through December 31, 2018. Either party, in its sole discretion and after providing thirty days written notification to the other party, may terminate this Agreement with or without cause.

3. Payment by City. The City will pay for the services of SCHS on a per day per animal basisas well as other considerations listed in this section. At the end of each monthly period in the contract term, SCHS will submit a billing to the City in accordance with the terms of the contract, to be paid by the City within thirty days of receipt of billing.

   The fee payment schedule shall be paid as follows:
   January 1, 2016 – December 31, 2016 - $18.00 per day per animal
   January 1, 2017 – December 31, 2017 - $18.50 per day per animal
   January 1, 2018 – December 31, 2018 - $19.00 per day per animal

   Additionally, effective January 1, 2016, the City shall pay the SCHS the amount of $516.66 per month for use of office space located on the SCHS campus, which will be added to the monthly billing. The total amount paid shall not exceed $6,200 annually.

   Effective January 1, 2016, the City shall also pay the SCHS the amount of $1,160.00 per year for cat hold boxes.

4. Services. The City of Fort Smith shall only be financially responsible for animals housed by the SCHS for the City's benefit in accordance with the following maximum day limits:

   Animals housed by the SCHS which are billed to the City will be restricted to the following daily limits: canines (5 days; 10 days if the owner is in the custody of law enforcement), felines (domestic: 3 days, feral: 1 day), livestock (5 days), and wildlife (5

days) except for skunks in accordance with Section 6(D) of this contract. Skunks will be transported and released by Animal Control Officers at a pre-determined location.

All animals classified as wildlife will be held in accordance with Arkansas Game and Wildlife regulations and the conditions set forth above.

5. Inspections. At least once each quarter of each calendar year, the animal control supervisor for the City of Fort Smith will conduct an unannounced inspection of the SCHS kennel area to assure cleanliness, maintenance and animal care issues are in acceptable standards. The animal control supervisor will immediately notify SCHS of any deficiencies and will document his/her findings in a file to be kept at the Fort Smith Police Department.

6. Duties and Services of SCHS:

   A. SCHS will furnish all facilities, employees, administration, maintenance, utilities, food, veterinarian and other services for impound animals and be responsible for any and all other expenses, except as otherwise in this agreement, necessary to operate the impound facility. The impoundment facilities shall consist of the admissions building and the housing of animal control officers located at 3800 Kelley Highway in Fort Smith. The facilities shall be properly maintained at all times during the term of this Agreement and, although the facilities may be enlarged by the addition of presently non-described facilities, at no time shall the facilities be reduced to less than those currently existing.

   B. Portions of the facilities shall be provided to the Animal Control Officers of the City for their use on a daily, twenty-four hour basis, during the term of this Agreement. At all times, the Animal Control Officers of the City shall have reasonable access to the areas of the facilities currently utilized by the Animal Control Officers.

   C. SCHS recognizes that the facilities shall be considered a City impoundment facility for the purposes of the Fort Smith Code of Ordinances. SCHS shall comply with the care of animals provisions set forth in the Fort Smith Code of Ordinances, which may be amended from time to time.

   D. SCHS will receive and impound all animals delivered to it by the Animal Control Officers of the City and others as authorized by the Fort Smith Code of Ordinances, and shall maintain said animals according to the provisions of the Fort Smith City Code of Ordinances, which may be amended from time to time. Injured and diseased animals will be examined by the Shelter manager as to the extent of the injury or disease. Injured or diseased animals capable of being held in reasonable comfort will be held the complete holding period. Severely injured or diseased animals may be subject to euthanasia prior to the completion of the holding period when necessary to prevent animal suffering. Vicious animals will be subject to euthanasia as outlined in the Fort Smith Municipal Code of Ordinances, which may be amended from time to time, unless being quarantined for rabies observation. The City shall pay the

applicable per day fee for an animal belonging to an owner under custody of law enforcement or the court system for criminal charges. SCHS will document the holding period and basis for euthanasia for all animals. Persons administering euthanasia shall secure and maintain certification through the Arkansas State Animal Control Association or other similar organization. SCHS will include costs for holding animals held for cruelty cases, property owner surrenders, and quarantines in their monthly billing to the City.

E. SCHS agrees to the release of impounded animals pursuant to the provisions of the Fort Smith City Code of Ordinances, which may be amended from time to time. Capture and impoundment fees shall be collected pursuant to the provisions of the Fort Smith Code of Ordinances. A ten dollar ($10.00) impounding fee and a per day boarding fee for each animal boarded will be collected from all animal owners prior to release of their animal(s) by the facility.

F. SCHS will maintain an inventory of live cat traps for use by City residents only. SCHS will secure a deposit of $25.00 from the resident for each trap, which is refundable upon return of the trap(s). SCHS will provide the traps within twenty-four (24) hours of the time traps are requested by City residents. SCHS shall have the right to dispose of all cats in accordance with the provisions of the City's animal control regulations. The City agrees to provide or to reimburse SCHS for the purchase of up to forty (40) traps annually to replace those that may be lost, damaged or destroyed. The amount of money paid by the City for these cat traps shall not exceed One-thousand One-Hundred dollars ($1,100.00) per calendar year. SCHS shall maintain accurate records of all cat traps.

G. SCHS will maintain a "lost and found" log for animals in the Fort Smith and surrounding areas to facilitate the return of animals to animal owners. SCHS will make reasonable attempts to contact animal owners who have registered for the "lost and found" log of SCHS. The "lost and found" log will be checked: each time a stray animal is admitted into the shelter; each morning against lost and found reports in the Times Record; and each time a lost and found report is received by SCHS. Upon identification of a lost animal the animal owner will be contacted for verification. Where reunions of animals and owners are confirmed, SCHS may remove names from the "lost and found" log. All animal listings may be purged after one month unless owner/finder specifically requests otherwise. Lost and found reports shall be updated weekly.

H. SCHS will provide a monthly report concerning animals accepted from City residents and Animal Control Officers by category for Dogs, Cats, and Others and containing the following information:

- Number of strays admitted by Animal Control Officers;
- Number of strays admitted by citizens;
- Number of quarantine admissions by SCHS personnel;

- Number of animals cleared from quarantine by a licensed veterinarian;
- Number of animals held for cruelty cases and/or property owner surrenders;
- Number of animals reclaimed by owners;
- Number of adoptions through SCHS;
- Number of animals euthanized and specific reasons therefor;
- Current number of animals in the shelter.

I. SCHS shall comply with the sterilization provisions of A.C.A. § 20-19-103.

J. The City will be responsible for all animals seized by Animal Control Officers from the time such animals are taken up until delivery to the impoundment facility at which time SCHS will assume all responsibility for the impoundment animals.

K. When animal control picks up severely injured animals after regular SCHS hours of operation, the Animal Control Officer responsible for picking up the animal will contact the shelter manager or the Executive Director of SCHS to receive a determination with regard to the necessity for immediate veterinary attention at a local emergency care facility selected by the SCHS. When it is decided the animal should be seen by an emergency care facility, it is agreed between the City of Fort Smith and the SCHS that the City will bear the cost incurred as a result of the medical attention provided by the emergency care facility. The Animal Control Officer will clearly indicate on the impound receipt where the animal was taken and what action was required.

L. Severely injured or diseased animals that appear, in the sole discretion of certified staff of SCHS, to be stray or beyond medical assistance will be humanely euthanized by said staff. Any costs incurred for euthanization shall be considered a part of the daily rate paid by the City as set forth in Section 3 above. Any euthanization outside of the daily limits identified in Section 4 above shall be the sole financial responsibility of SCHS.

M. Animal Control Officers shall maintain a list of all animals having been immediately euthanized due to injuries or disease and all stray companion animals picked up already deceased. Said list shall give a description of the animal, where it was picked up, when it was picked up and the disposition of the animal.

N. Any animal(s) impounded for cruelty violations must be seen by a veterinarian as soon as possible after the impoundment. A written record of the evaluation and all activities relating to the event will be kept for any legal proceedings which may be sought. The City agrees to incur payment liability for veterinary examinations for canines, felines, livestock, and wildlife that are picked up by Animal Control for cruelty violations.

O. Animal Control Officers will keep SCHS personnel informed of the status of any legal proceedings relating to animals impounded at the facility. To expedite animals

being returned to their owner, Animal Control Officers will carefully check each animal picked up for evidence of identification that might lead to an owner being contacted. Any relevant information will be clearly documented on the Animal Control Officer's impound slip submitted to SCHS personnel. SCHS personnel will contact the owner to pick up the animal.

P. Where feasible, SCHS shall comply with applicable guidelines of the Humane Society of the United States for the care of animals impounded at SCHS facilities, including the following standards:

- All animals shall be humanely treated;
- Animals shall be provided with sufficient water and food daily;
- Animals shall not be confined to one (1) area in such number that access to food, water and appropriate bedding is not readily accessible; and,
- Any animal kept in an enclosure must be able to stand, turn or stretch to its full length. Walking or running exercise will be offered on a regular basis.

Q. The City agrees that the officers of the Fort Smith Police Department, according to schedule and dispatching decisions made in the sole discretion of the City, shall be made available to City Animal Control Officers and employees of SCHS for the purpose of enforcing and administering the animal control ordinances of the City. In accordance with sterilization provisions of A.C.A. § 20-19-103 (Repl. 2005), the City of Fort Smith will release all impounded dogs only (a) to the owner of the dog prior to delivery to SCHS or (b) to SCHS.

7. Default and Enforcement. If either party to this Agreement makes a determination that the other party is in default of any of that party's duties and obligations under the Agreement, the first party shall issue a written notification describing the alleged default and shall cause same to be delivered to the defaulting party. Any party receiving such a notice shall have the period of ten days in which to cure, remedy the described default or to respond in writing to the first party. Unless resolved by the written response, the representatives of the parties shall meet to discuss a resolution of the dispute within thirty (30) days of the original notice. Both parties to this Agreement reserve all legal rights and remedy with reference to enforcement of this Agreement.

8. Because the SCHS will be receiving monies from The City under this Agreement, the SCHS understands that its records and meetings relating to monies received and services provided under this Agreement may become subject to the provisions of the Arkansas Freedom of Information Act.

THIS AGREEMENT EXECUTED PURSUANT TO ORDINANCE NO. _____ OF THE GOVERNING BODY OF THE CITY OF FORT SMITH AND PURSUANT TO

THE AUTHORIZATION OF THE GOVERNING BODY OF SCHS ADOPTED ON _____, 2016.

CITY OF FORT SMITH

_____
MAYOR

ATTEST:

_____
CITY CLERK

SEBASTIAN COUNTY HUMANE SOCIETY

_____
EXECUTIVE DIRECTOR

ATTEST:

_____
SECRETARY

1

Fort Smith Police Department
Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: **Jeff Dingman, Acting City Administrator**

From: **Kevin Lindsey, Chief of Police**

Subject: **Sebastian County Humane Society Contract and Waiver of Competitive Bidding**

Date: **December 8, 2015**

A new contract has been negotiated between the City and the Sebastian County Humane Society to replace the current contract. In general, the proposed contract encompasses a three year contract period beginning January 1, 2016 and ending December 31, 2018; incremental increases in daily per animal fees; payment for use of office space on the Humane Society's campus for Animal Control Officers; and payment for extended investigations of animal abuse.

Waiver of Competitive Bidding
In December, 2012, the Board enacted Ordinance 93-12, which delineates purchasing authority for the City Administrator. Since the new contract may exceed the established amount requiring both competitive bidding and Board of Director's approval, staff has requested consideration to waive the competitive bidding requirement. This waiver request is supported by the lack of other organizations whose animal impoundment and housing facilities were large enough to accommodate the City's needs.

The Fort Smith Police Department's Animal Control Unit is responsible for animal control activities which are inherent to the health and well-being of City residents and the welfare of animals. The capacity to house a large number of dogs, cats, and other animals at any given time requires a facility with enough space to comfortably accommodate animals surrendered to the Humane Society and be sufficiently staffed to ensure the health and welfare of the animals housed in the facility. The largest facility of that kind found in or around the City of Fort Smith is the Sebastian County Humane Society.

Past experience with the Sebastian County Humane Society and its staff has demonstrated it is capable of maintaining the health and welfare of animals surrendered on behalf of the City of Fort Smith. It would be cost prohibitive to expand outside the city limits to find or construct a facility to accommodate our needs.

The City of Fort Smith is obligated to provide proper care for those animals lawfully seized. The Sebastian County Humane Society is capable of providing for animal's basic needs. For that reason, a waiver of the competitive bidding requirement is requested.

Animal Services Advisory Board Input

The Animal Services Advisory Board (ASAB) was given an opportunity to comment on the proposed Contract. One response from an ASAB member questioned the increase in the amount expended on cat traps and cat hold boxes. Although the amounts allotted for these two items have changed, the total spent on both items remains the same. No other comments or recommendations were received from ASAB members through the date of preparation of this memorandum.

Cost Comparison

Under the current contract, the City pays $17.25 per day per animal for impoundment and housing fees and up to $1,804 per year for maintaining a supply of live cat traps and cat boxes. In 2015, the average monthly cost to the City was $19,552 (January through October) and the total amount paid to the SCHS was $195,519 through the end of October, 2015. Total expenditures for the 2015 fiscal year are expected to be approximately $235,000, based upon the per month average cited previously.

The new contract, valid for three (3) years, specifies an incremental per day per animal fee of $18.00 the first year, which is a $.75 increase from the 2015 per day per animal rate; $18.50 the second year, a $.50 increase; and $19.00 the third year, a $.50 increase. In addition, the City will pay $6,200 per year for use of office space for each of the three years of the Contract. Each year, the City will also pay $1,160 for cat hold boxes and up to $1,100 for live cat traps. The total amount proposed for these two items does not change from the current Contract, only the distribution of the amounts has changed. Based upon current data, yearly estimates for the total contract are expected to be $286,074 for the first year, $293,765 for the second year, and $301,456 for the third year. The Department budgeted $290,000 for FY 2016, with the understanding that contract negotiations were still in progress.

Police Department staff and representatives from the Sebastian County Humane Society staff and members of their Board of Directors met once in October and again in November to negotiate the proposed Contract. Acting City Administrator has reviewed the proposed Contract, and is in agreement with presenting the Contract to the Fort Smith Board of Directors.

Please contact me if you have questions or need additional information. Staff recommends approval of the proposed contract.

2A.

RESOLUTION NO._____

A RESOLUTION APPROVING AN APPEAL OF CONDITIONAL USE #19-10-15 FOR AN AUTO AND VEHICLE DEALER SALES LOCATED AT 500 TOWSON AVENUE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

The Board of Directors hereby approves the appeal of Conditional Use #19-10-15 for an Auto and Vehicle Dealer Sales located at 500 Towson Avenue including the conditions of the approval established in Attachment "A" hereto attached.

THIS RESOLUTION ADOPTED THIS_____DAY OF_____, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form:

_____
No Publication Required

ATTACHMENT A

1. Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

2. If a trash receptacle is proposed, it shall be completely screened in accordance with the UDO.

3. All exterior building or site lighting shall comply with the UDO Commercial and Outdoor Lighting requirements.

4. Perimeter landscaping shall be installed as shown on the submitted landscaping plan. A final landscape plan shall be submitted to the planning department for review and verification of the proposed plant species and the number of shrubs in each island.

5. All new signage requires a separate application and sign permit and shall comply with the UDO and CBID Design Guidelines. Should any digital face sign be installed, the digital face shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter. Documentation shall be provided to the City at time of permit issuance certifying the digital sign has been set to be incapable of exceeding .3 foot candles above ambient light. Each display on a digital face must have a light sensing device that will adjust the brightness as ambient light conditions change.

6. Any exterior changes to the building or site shall comply with the UDO and the CBID Design Guidelines.

7. Bumper blocks or other barrier shall be installed on parking spaces adjacent to the sidewalk.

8. The AHTD will permit curb and gutter to delineate the proposed driveways should the Planning Commission want to add this condition.

9. The site shall be used as an Auto and Vehicle Dealer business only. No portion of the property within the C-6 zoning district shall be used as a body shop, salvage yard, parking for wrecked vehicles, or other uses prohibited in the C-6 zoning district.

2B.

RESOLUTION NO._____

A RESOLUTION AFFIRMING THE ACTION OF THE PLANNING COMMISSION DENYING CONDITIONAL USE #19-10-15 FOR AN AUTO AND VEHICLE DEALER SALES LOCATED AT 500 TOWSON AVENUE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

The Board of Directors hereby affirms the action of the Planning Commission which denied the conditional use request for an Auto and Vehicle Dealer Sales located at 500 Towson Avenue.

THIS RESOLUTION ADOPTED THIS_____DAY OF_____, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form:

_____
No Publication Required

Memorandum

To: Jeff Dingman, Acting City Administrator
From: Wally Bailey, Director of Development Services
Date: December 30, 2015
Subject: 500 Towson Avenue
Appeal of Planning Commission Denial of a Conditional Use Application

The subject appeal was originally scheduled for the November 3, 2015 Board of Directors agenda. At the request of Mr. Al Prier, agent for Mahmoud "Mike" Yasin, the Board of Directors approved a request to table the appeal for sixty (60) days. The sixty (60) days has expired so the item is on the January 5, 2015 Board of Directors agenda.

The sale of the property has not closed, therefore, Mr. Al Prieur has submitted a letter (*see attached*) requesting the appeal be tabled for another sixty (60) days.

Please contact me if you have any questions.

ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@cox.net

December 28, 2015

City of Fort Smith
Planning Department
P O Box 1908
Fort Smith, Arkansas 72902

Attn: Mr. Wally Bailey

Re: Conditional Use
500 Towson Avenue
Fort Smith, Arkansas

Dear Wally:

It is my understanding that the appeal of the denial of the Conditional Use Request will come up again at the January 5, 2016 meeting (end of the 60 day tabled period). We are not sure how to proceed at this point. The closing of the sale of this property to Mr. Rodney Gahn is scheduled toward the end of January. If this goes as expected the property will be out of Mr. Yasin hands at this point.

I would ask for Mr. Yasin that this item be tabled again for 60 days to be sure that the ownership of the property is transferred. I was hoping that everything would have happened in the original 60 days.

If you have any questions, please contact me.

Respectfully submitted,

Alvin L. Prieur, Jr., PE – Consulting Engineer

STATE OF ARKANSAS
REGISTERED PROFESSIONAL ENGINEER
No. 4333
ALVIN L. PRIEUR, JR.
12-28-15

Director Pennartz requested clarification that approval of Item 3A would allow outside display and sales of goods during business hours whereby Mr. Baily responded affirmatively.

If the misunderstanding had not occurred, Director Settle inquired if such would most likely have been approved by the Planning Commission.

Mr. Baily advised from his interaction with the Planning Commission prior to resolving the misunderstanding, it was his conclusion that approval of Item 3A is supported by the Planning Commission.

Pennartz, seconded by Catsavis, moved adoption of Item No. 3A. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Hutchings, seconded by Pennartz, moved adoption of Section 3 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No.72-15.

Items No 4. was an appeal of the Planning Commission's denial of a conditional use permit *(appeal of Alvin L. Prieur, agent for Mahmoud "Mike" Yasin)*

A. Resolution approving an appeal of Conditional Use No. 19-10-15 for an auto and vehicle dealer sales located at 500 Towson Avenue

B. Resolution affirming the action of the Planning Commission denying Conditional Use No. 19-10-15 for an auto and vehicle dealer sales located at 500 Towson Avenue

Mayor Sander's advised that the petitioner Al Prieur has requested the submitted appeal be tabled for sixty (60) days.

Settle, seconded by Pennartz moved to table the item for 60 days the members all voting affirmatively, the Mayor declared the motion carried and the item is tabled for 60 days.

Item No. 5 was an ordinance rezoning identified property and amending the zoning map (*Not Zoned to Residential Single Family Medium/High Density (RS-3) by classification located at 8009 Steep Hill Road).*

Mr. Bailey briefed the Board on the item advising such is per the request of Arkansas Valley Electric. The purpose of the rezoning request is to facilitate the development of a new utility substation. The subject property is on the east side of Steep Hill Road. The tract contains five (5) acres with approximately four hundred eighty five (485) feet of street frontage along Steep Hill Road. The property currently has no zoning. The Chaffee Crossing Redevelopment Plan currently classifies the site as Single Family Residential. The classification provides for standard residential lots or zero lot-line lots in attractive, interconnected neighborhoods. Approval of the zone change will not conflict with the goals and objectives of the Chaffee Crossing Redevelopment Plan. A neighborhood meeting was held on October 5, 2015 with no neighboring property owners in attendance to speak in opposition. The Planning Commission held a public hearing on October 13, 2015. Mr. Fred Phillips was present to speak on behalf of Arkansas Valley Electric; however, no one present to speak in opposition. The Planning Commission amended the conditional use request to make approval of subject to the following:

MEMORANDUM

TO: Jeff Dingman, Acting City Administrator

From: Wally Bailey, Director of Development Services

Date: October 29, 2015

Subject: 500 Towson Avenue
Appeal of Planning Commission Denial of a Conditional Use Application

At the October 13, 2015, Planning Commission meeting, the Planning Commission reviewed a conditional use application that would allow an Auto and Vehicle Dealer Sales at 500 Towson Avenue. The Planning Commission denied the application by a vote of 3 in favor and 6 opposed.

I have enclosed the summary of the meeting, a copy of information regarding the appeal and information from the planning commission packet.

This appeal will be on the Board of Directors November 3, 2015, regular meeting agenda. We will present two (2) Resolutions to the Board for their consideration.

Approval of Resolution A will overturn the Planning Commission's decision and approve the conditional use application which will allow the Auto and Vehicle Dealer Sales lot to locate at 500 Towson Avenue. Additionally, Resolution A includes an Attachment A that enumerates nine (9) conditions the staff recommended for the conditional use approval. The staff felt these conditions would help mitigate any appearance concerns related to the auto sales lot. The applicant had indicated they had no problem complying with these items.

Approval of Resolution B will affirm the Planning Commission's decision which denied the conditional use application.

On September 1, 2015, the Board of Directors adopted Ordinance #60-15 approving a UDO Text Amendment request by Rodney Ghan, General Partner of Ghan Properties, LLP. Mr. Ghan's text amendment requested that Auto and Vehicle Dealer Sales as well as eight other uses in the Commercial Downtown (C-6) zoning district be changed from permitted land uses to conditional uses.

The UDO defines conditional uses as follows: "Certain uses are defined as conditional uses because of the potential harmful effects the use can cause to nearby properties and because the requirements to eliminate harmful effects vary from site to site. In considering conditional uses, the Planning Commission will review the overall compatibility of the planned use with the surrounding property as well as specific items such as screening, parking, and landscaping to make sure that no harmful effects occur to nearby properties."

There have been questions about the historical use of the property. Based on resources available to staff, below is an approximate summary of the land uses that have occurred on the property in the last 30 years.

1999 – 2013 Midwest Pool and Spa

1991 – 1998 Fort Smith Glass

? – 1986 Car Dealership

Mr. Al Prieur spoke on behalf of Mr. Mike Yasin. Mr. Prieur indicated they could comply with the staff recommendations. Also, this property had been used as an auto sales lot in the past.

During the Planning Commission meeting Mr. Rodney Ghan, Mr. Richard Griffin, and Jeremy Drinkwitz, COO of Sparks Health System, spoke against the conditional use. The comments were about the vision and future appearance of Towson Avenue / CBID and that it would be better if this property were developed with offices, medical clinic and some residential. Mr. Ghan submitted photographs and a concept plan for development of the property. A copy of this information is enclosed.

Please contact me if you have any questions.

Enc.

Summary of Planning Commission Item #7 – Conditional Use #19-10-15; A request by Al Prieur, agent for Mike Yasin, for a conditional use for an auto and vehicle dealer located at 500 Towson Avenue.

Ms. Brenda Andrews read the staff report indicating that the purpose of this conditional use request is to allow for the use of the existing building and site as an auto and vehicle dealer.

Mr. Al Prieur, agent for the owner Mr. Mike Yasin, was present to speak on behalf of this request. Mr. Prieur stated that his client does own this building and if he had purchased this property a little earlier prior to Mr. Ghan requesting the UDO amendment which would require conditional use approval for a car lot they would not be before the Planning Commission.

Mr. Prieur also noted that this location use to be a car lot and the owner wants to utilize this building once again for a car lot. Mr. Prieur stated that is an existing building that needs to be used.

Mr. Rodney Ghan spoke in opposition to this request. Mr. Ghan stated that about a month ago he submitted a request for a UDO text amendment in a C-6/CBID district in an attempt to eliminate some of the car lots in this area. Mr. Ghan stated that as a citizen he considers this as a challenge to clean up the downtown area and increase property values in the downtown area and car lots along Towson avenue will not do that.

Mr. Ghan submitted an example to the Planning Commission of a potential prospect he was trying to develop at one time which included a clinic and a second story apartment with parking underneath.

Commissioner asked Mr. Ghan if he had tried to purchase this property and he noted that he had tried to purchase the property with his offer going in at the same time as the current property owners. Mr. Ghan also stated that when he found out it was going to be bought and used as a car lot, he actually contacted Mr. Jimmie Taylor, the agent who represented the seller, and offered him $350,000.00 which was more than he had paid for the property in an attempt to at some point try to develop this property.

Mr. Richard Griffin, representing the CBID Commission as well as being a property owner in the downtown area, was present to speak in opposition to this request. Mr. Griffin noted that his family is currently renovating a building on the same side of the street as his office on Towson Avenue and right up the street from this location for Sparks Hospital to be utilized as a physical therapy clinic. He asked the Commission to deny this request in an attempt to help clean up the downtown area and increase property values by not allowing more undesirable uses in this area.

Mr. Jeremy Drinkwitz, COO of Sparks Health System, also spoke in opposition to this request. He noted that Sparks Hospital is one of the largest employers in the area. He stated that they are currently renting and renovating a building from Mr. Griffin for a physical therapy clinic. He also noted that they are somewhat landlocked in their ability to expand and need this ability in order to attract doctors to

this area and serve a underserved area along Towson Avenue. He stated that they need good space for clinics to be located near their facility and this would be a good potential site to put a nice clinic.

Following a discussion by the Commission, Chairman Sharpe then called for the vote on the conditional use request. The vote was 3 in favor (Howe, Howard, Redd) and 6 opposed.

A & R Auto Sales
221 Towson Ave

Midway Auto Sales
323 Towson Ave

& H Auto Sales
501 Towson Ave

asin's Used Cars
300 Towson Ave
YASIN'S
Used Cars
494-0250

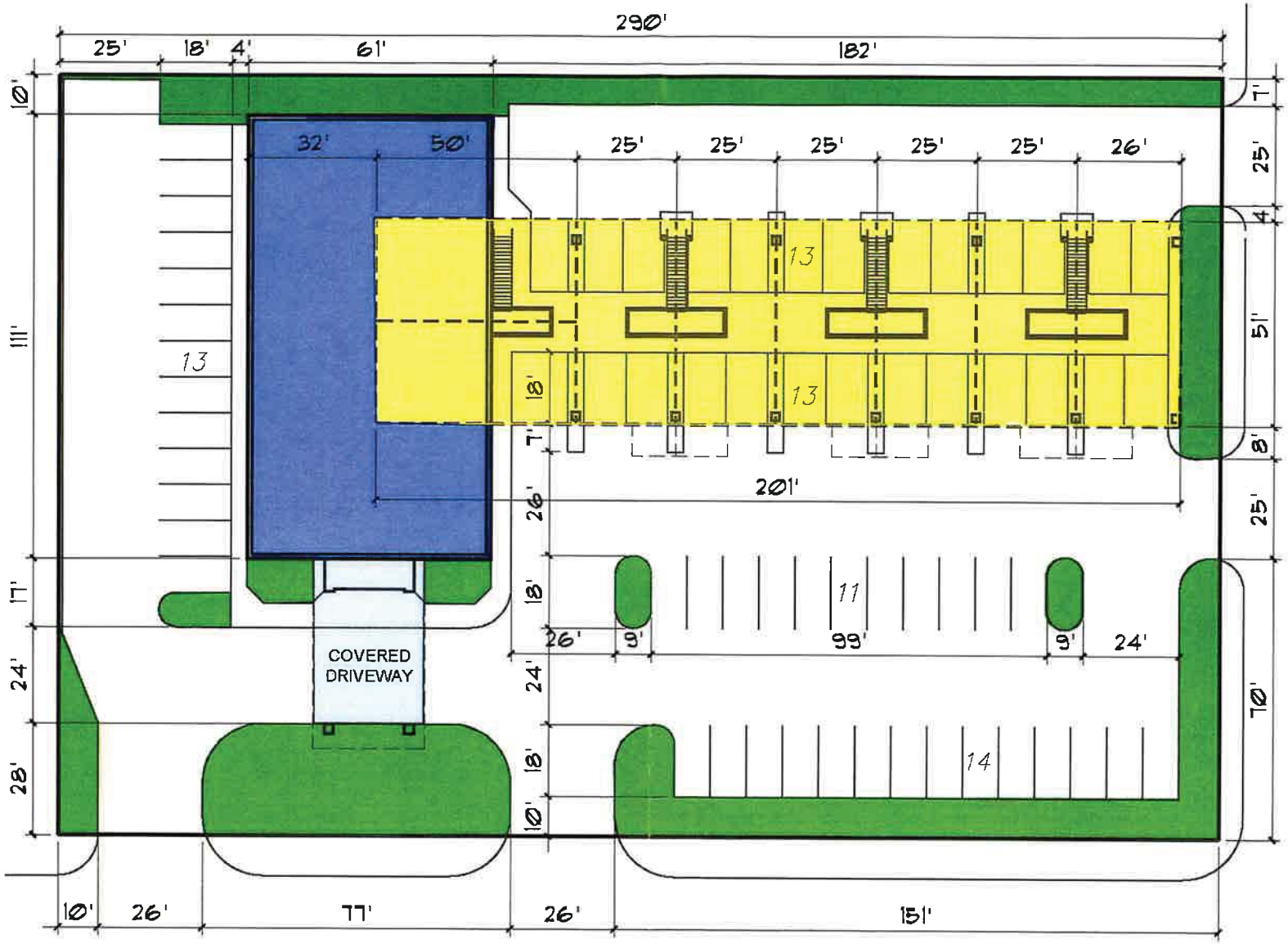
Wilson's Used Cars
900 Towson Ave
35

Brand Name Auto Sales
1410 Towson Ave
NAME BRAND
AUTO SALES
785-0341

All red boxes are existing used auto sales

The blue box is the proposed site

North


290'
25'
18'
4'
61'
182'
10'
7'
32'
50'
25'
25'
25'
25'
25'
26'
25'
4'
13
13
13
111'
18'
51'
7'
8'
201'
26'
25'
18'
11
17'
26'
9'
99'
9'
24'
COVERED
DRIVEWAY
24'
24'
70'
18'
14
28'
10'
10'
26'
77'
26'
151'

ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@cox.net

City Clerk
FILED 10/22/15
S. Gard

October 22, 2015

City of Fort Smith
Administration
P O Box 1908
Fort Smith, Arkansas 72902

Attn: Ms. Sherri Gard, CMC
City Clerk

Re: Appeal

Dear Ms. Gard:

As the representative of Mr. Mahmoud "Mike" Yasin the property owner that requested the Conditional Use for his auto sales lot, I am requesting that our appeal be heard by the City of Fort Smith Board of Directors. We are appealing the denial of a conditional use request for an auto vehicle dealer sales lot be located at 500 Towson Avenue. This is the site original used for auto sales. The Conditional Use number is 19-10-15. It is my understanding that the hearing will be November 3, 2015 at 6:00 pm in Building "B" at the Fort Smith School Service Center at 3205 Jenny Lind Road. The fee of $75.00 is included.

If you have any questions, please call me.

Respectfully submitted,

Alvin L. Prieur, Jr., PE
Consulting Engineer

ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@cox.net

October 30, 2015

City of Fort Smith Board of Directors

I have filed an appeal of the Planning Commission denial of the Conditional Use request for the property at 500 Towson Avenue. The property own of the property is Mr. Mahmoud "Mike" Yasin. Mr. Yasin wanted to turn the property back into an auto sales lot. Mr. Yasin currently owns a auto sales lot at 1818 Towson Avenue that would be relocated to this location.

Mr. Ysain made an offer on the property in July 2015. The use of the property was discussed with the Fort Smith Planning Department and the double zoning was confirmed to be C-6 and I-1. At this time, the C-6 had this use as permitted. It is my understanding that another offer had been made on this property after Mr. Yasin offer had been accepted.

In July 2015 a request was made by Ghan Properties to do a text amendment to the Unified Development Ordinance on the C-6 zoning uses and change some from Permitted to Conditional. This change was presented and approved by the Planning Commission in August, 2015. The Board of Directors approved this in September 2015.

This approval happen a few days before the sale of the property was finalized. As a result I began the preparation of a Conditional Use application. This was presented to the CBID for review in September as was rejected because there were to many auto sales lots in the area. In October this went before the Planning Commission, at the study session there were very few questions. At the voting session, Mr. Gahn presented his objections to the request. It showed pictures of other lots and his ideas of how the

ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@cox.net

property should be developed. He had others with him that objected to the request.

This property was for sale for sale many months before Mr. Yasin purchased the property. I have been told that he wanted the property but at a reduced price. In the Conditional Request forms the purpose is listed as help keep potential harmful effects that some uses can cause to nearby property. This is understandable but this property was a auto sales lot originally. My thought on the Zoning use change was to reduce the development of small lots in to sales areas for 5 to 10 cars which I see could be a problem for the CBID but this is a large lot and will have nice cars.

I do feel that the objections to this request had some personal feeling over and above the actual request and the hope the owner would have to sell the property because he could not use it.

Respectfully submitted,

Alvin L. Prieur, Jr., PE

Consulting Engineer

The City of Fort Smith ARKANSAS

October 14, 2015

Mr. Al Prieur
P. O. Box 1689
Van Buren, AR 72957

Dear Al:

The Planning Commission denied the conditional use request for an auto and vehicle dealer business located at 500 Towson Avenue at their October 13, 2015, meeting, based on the testimony provided by Mr. Rodney Ghan and Mr. Richard Griffin, members of the Central Business Improvement District (CBID), and also Mr. Jeremy Drinkwitz, representing Sparks Hospital.

The Planning Commission's action on this conditional use request can be appealed to the City Board of Directors. Any appeal must be filed in writing with the City Clerk's Office by 5:00 p.m. on Friday, October 23, 2015. The fee for filing an appeal is $75.00. If appealed, this request will be scheduled to be heard by the City Board of Directors at their November 3, 2015, meeting at 6:00 p.m. in Building "B" of the Fort Smith School Service Center located at 3205 Jenny Lind Road.

If you have any questions concerning this matter, you may contact the Planning Department at 784-2216.

Sincerely,

Wally Bailey
Director of Development
Services

lp

623 GARRISON AVENUE
P.O. BOX 1908
FORT SMITH, ARKANSAS 72902
(479) 784-2216
FAX (479) 784-2462

Printed on 100% Recycled Paper

October 29, 2015

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: Conditional Use #19-10-15; A request by Al Prieur, agent for Mike Yasin, for a conditional use for an auto and vehicle dealer business located at 500 Towson Avenue.

Ms. Brenda Andrews read the staff report indicating that the purpose of this conditional use is to allow for the use of the existing building and site as an auto and vehicle dealer.

Mr. Al Prieur and Mr. Mike Yasin were present to speak on behalf of this reqauest.

Mr. Rodney Ghan, Mr. Richard Griffin, members of the Central Business Improvement District (CBID) and also Jeremy Drinkwitz, representing Sparks Hospital, were present to speak in opposition to this request.

Following a discussion by the Commission, Chairman Sharpe then called for the vote on the conditional use request.

The vote was 3 in favor (Commissioner Howe, Howard and Redd) and 6 opposed.

Respectfully Submitted,

CITY PLANNING COMMISSION

Marshall Sharpe, Chairman

MS/lp

cc: File
City Administrator

623 GARRISON AVENUE
P.O. BOX 1908
FORT SMITH, ARKANSAS 72902
(479) 784-2216
FAX (479) 784-2462

Printed on 100% Recycled Paper

Conditional Use

Memo

To: City Planning Commission

From: Planning Staff

Date: September 30, 2015

Re: Conditional Use #19-10-15 - A request by Al Prieur, agent for Mike Yasin, for Planning Commission consideration of a Conditional Use request to establish an Auto & Vehicle Dealer business at 500 Towson Avenue

PROPOSED CONDITIONAL USE

The approval of this Conditional Use would allow for the use of the existing building and site as an Auto and Vehicle Dealer.

LOT LOCATION AND SIZE

The subject property is on the southwest corner of the intersection of Towson Avenue and South D Street. The tract contains an area of 1.2 acres with approximately 193 feet of street frontage along Towson Avenue and approximately 291 feet of street frontage along South D Street.

PROPOSED ZONING

The proposed zoning on this tract is Commercial Downtown (C-6). Characteristics of this zone are as follows:

Purpose:

To provide for the orderly development of the original downtown area of Fort Smith and the areas immediately adjacent to it. The Commercial Downtown (C-6) zoning district establishes guidelines and controls that allow for retail and residential development which is compatible with existing and expanding governmental, financial, professional, cultural, historic, and entertainment facilities. Commercial, governmental, and professional uses that serve the metropolitan area are allowed in this zone.

Permitted Uses:

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-6 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

7A

Conditional Uses:

Orphanage, dormitory, sorority, fraternity, homeless shelter, medical laboratory, bus station, parks, educational facilities, detention facility, police station, community health and welfare clinic, daycare center, senior citizen center and churches are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

Maximum Lot Size – N/A

Maximum Height – N/A
Maximum Lot Coverage - 100%

Minimum Parcel/Lot Size for Rezoning – Existing District (By Extension) – 42,000 square feet
Minimum Lot Width – N/A
Front Yard Setback – N/A
Side Yard on Street Side of Corner Lot – N/A
Side Yard Setback – N/A
Rear Yard Setback – N/A

SURROUNDING ZONING AND LAND USE

The area to the north is zoned Commercial Downtown (C-6) and is developed with commercial property currently vacant.

The area to the east is zoned Commercial Downtown (C-6) and is developed with commercial properties, including motorcycle sales, painting contractor office, and photography studio. The remaining commercial properties to the north are vacant.

The area to the south is zoned Commercial Downtown (C-6) and is developed as a pawn shop.

The area to the west is zoned Industrial Light (I-1) and developed as an office.

PURPOSE OF CONDITIONAL USE

Certain uses are defined as conditional uses because of the potential harmful effects the use can cause to nearby properties and because the requirements to eliminate harmful effects vary from site to site. In considering conditional uses, the Planning Commission will review the overall compatibility of the planned use with the surrounding property as well as specific items such as screening, parking, and landscaping to make sure that no harmful effects occur to nearby properties.

CONDITIONS FOR A CONDITIONAL USE

All requirements for a Conditional Use must be met before any part of the use may be utilized. If any specific condition is not met, the Conditional Use authorization may be revoked by the City of Fort Smith pursuant to Section 27-314.

Requirements for a Conditional Use must begin to be met within one (1) year of the authorization unless a special time limit has been imposed by the Planning Commission. An extension of time beyond one (1) year or that imposed by the Planning Commission may be granted by the Director one (1) time for up to ninety (90) days.

7B

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies Towson Avenue as a Major Arterial and South D as a Local Road.

MASTER LAND USE PLAN COMPLIANCE

The proposed Master Land Use Plan classifies the site as Mixed Use Employment. This classification provides for a dense, compatible mix of retail, residential, employment and production activities designed for all modes of transportation.

SITE DESIGN FEATURES

Ingress/egress/traffic circulation – Ingress and egress to the site will be provided by two driveways on Towson Avenue. The driveways will be delineated with perimeter landscape islands.

Landscaping – The submitted landscape plan shows one interior landscape island and four perimeter landscape islands adjacent to Towson Avenue. The islands vary in size, ranging from 162 s.f. to 360 s.f. Each island is shown planted with one tree and several shrubs. Perimeter landscaping adjacent to South D Street is not possible because the building is built up to the property line.

Screening – No trash enclosure is shown on the plans. If a trash receptacle is proposed, it shall be completely screened from adjoining property owners and the public right-of-way.

Parking – The C-6 zoning district has no minimum parking requirements. However, the existing parking spaces comply with the UDO's minimum parking spaces for automobile sales.

Signage – No signage is shown on the plans. All signage shall require submittal of a sign permit application for staff review and compliance with the UDO and CBID Design Guidelines. Should any digital face sign be installed, the digital face shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter. Documentation shall be provided to the City at time of permit issuance certifying the digital sign has been set to be incapable of exceeding .3 foot candles above ambient light. Each display on a digital face must have a light sensing device that will adjust the brightness as ambient light conditions change.

Lighting – No lighting is shown on the plans. If any exterior building and site lighting is proposed, it shall comply with the UDO Outdoor Commercial and Outdoor Lighting requirements.

STAFF COMMENTS AND RECOMMENDATIONS

The conditional use application was presented to the Central Business Improvement District board on September 15, 2015, for its input. The CBID was not in favor of the proposed use because it would add an additional car lot to the area and be detrimental to the CBID. The CBID recommended that the planning commission deny the conditional use request. Enclosed are the CBID draft minutes relating to the conditional use request.

A neighborhood meeting was held September 29, 2015, 10 a.m., on site. One neighboring property attended the meeting and had no objections to the proposed conditional use application. A copy of the attendance record and meeting summary are enclosed.

Should the planning commission consider approval of the request, staff recommends the following conditions:

1. Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

2. If a trash receptacle is proposed, it shall be completely screened in accordance with the UDO.

3. All exterior building or site lighting shall comply with the UDO Commercial and Outdoor Lighting requirements.

4. Perimeter landscaping shall be installed as shown on the submitted landscaping plan. A final landscape plan shall be submitted to the planning department for review and verification of the proposed plant species and the number of shrubs in each island.

5. All new signage requires a separate application and sign permit and shall comply with the UDO and CBID Design Guidelines. Should any digital face sign be installed, the digital face shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter. Documentation shall be provided to the City at time of permit issuance certifying the digital sign has been set to be incapable of exceeding .3 foot candles above ambient light. Each display on a digital face must have a light sensing device that will adjust the brightness as ambient light conditions change.

6. Any exterior changes to the building or site shall comply with the UDO and the CBID Design Guidelines.

7. Bumper blocks or other barrier shall be installed on parking spaces adjacent to the sidewalk.

8. The AHTD will permit curb and gutter to delineate the proposed driveways should the Planning Commission want to add this condition.

9. The site shall be used as an Auto and Vehicle Dealer business only. No portion of the property within the C-6 zoning district shall be used as a body shop, salvage yard, parking for wrecked vehicles, or other uses prohibited in the C-6 zoning district.

10

Conditional Use # 19-10-15

APPLICATION FOR CONDITIONAL USE

Name of Property Owner: Mahmoud "Mike" Yasin dba MJM Used Cars #2 (1813 Towson)

Name of Authorized Agent (if applicable) Alvin L. Prieur, Jr. P.E.

Legal Description of property included in the conditional use request:

See legal description attached.

Street Address of Property:

500 Towson Avenue Fort Smith AR

Existing Zoning Classification:

Commercial-6 (C-6) and Industrial-1 (I-1)

Proposed Zoning Classification (if applicable):

No change.

Describe Proposed Conditional Use Request, including the development of any construction proposed of the property:

See #1 attached.

What amenities are proposed such as landscaping and screening?

See #2 attached.

Alvin L. Prieur, Jr P.E.
~~Owner or~~ Agent Name (please print)

Signed:

P.O. Box 1689, Van Buren, AR 72957
~~Owner or~~ Agent Mailing Address

~~Owner~~

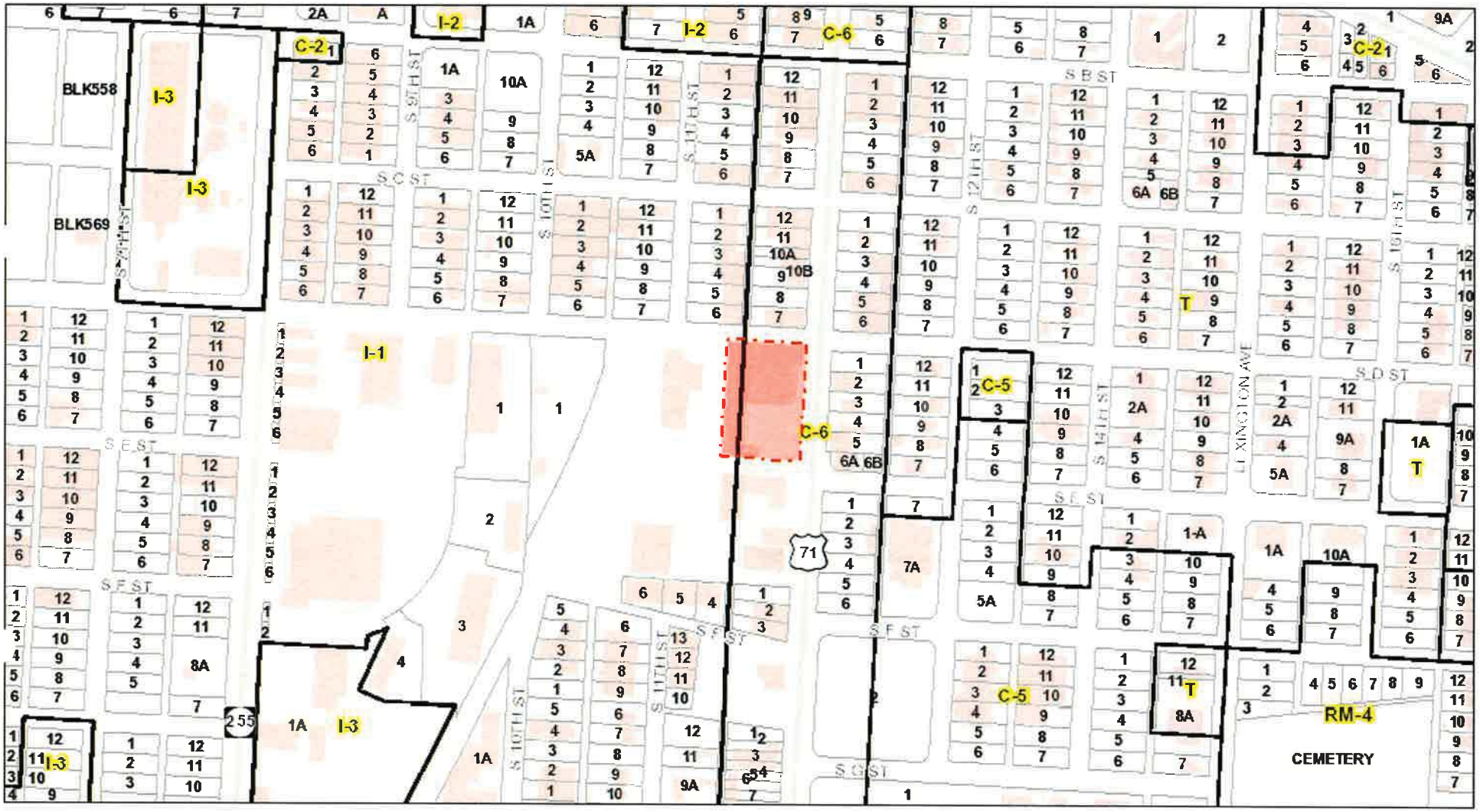
479-651-7920
~~Owner or~~ Agent Phone Number

Or

Agent

1E

Conditional Use #19-10-15: Auto and Vehicle Dealer
500 Towson Avenue



September 21, 2015

Fort Smith City Limts

Zoning

Subdivisions

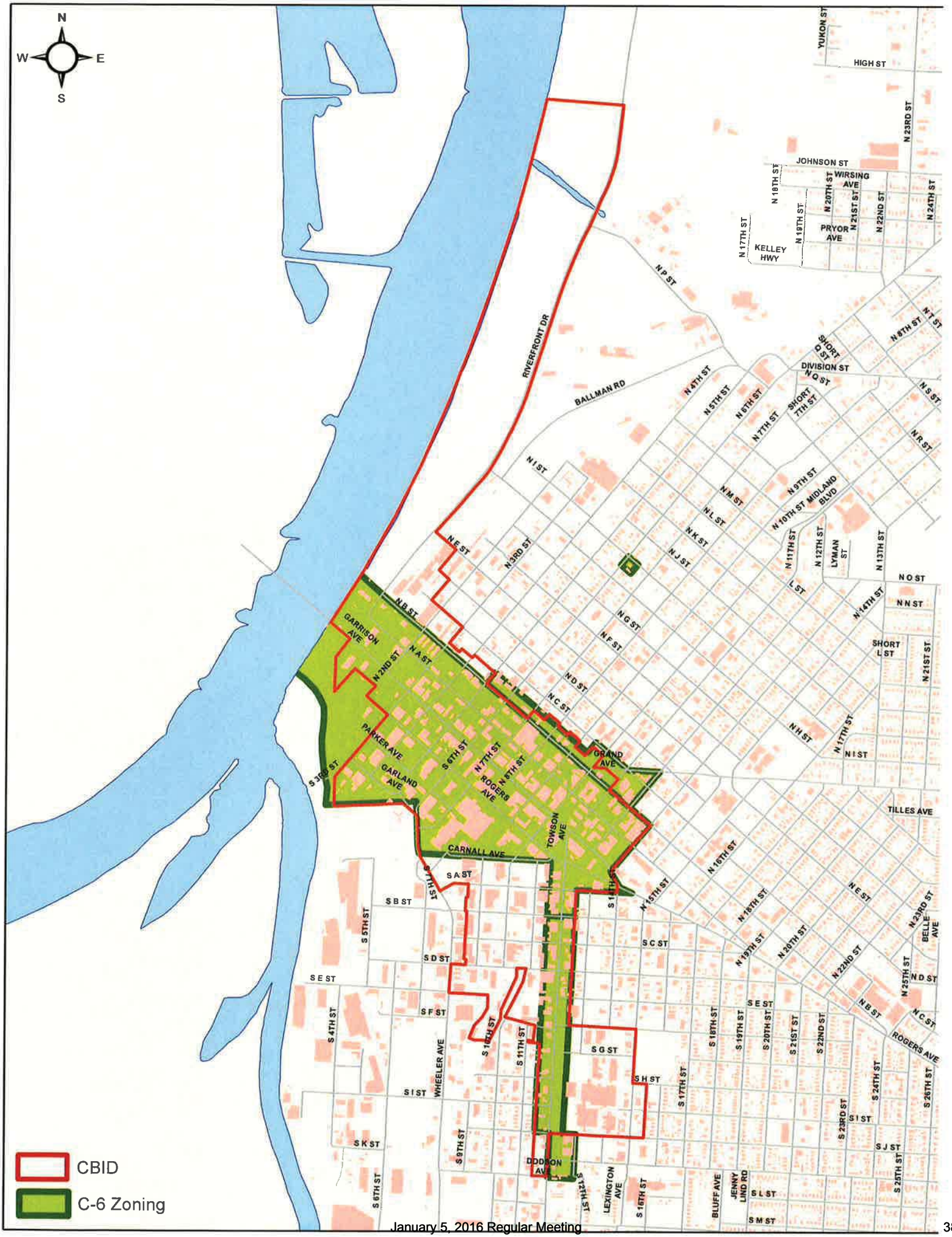
Building Footprints

1:4,023

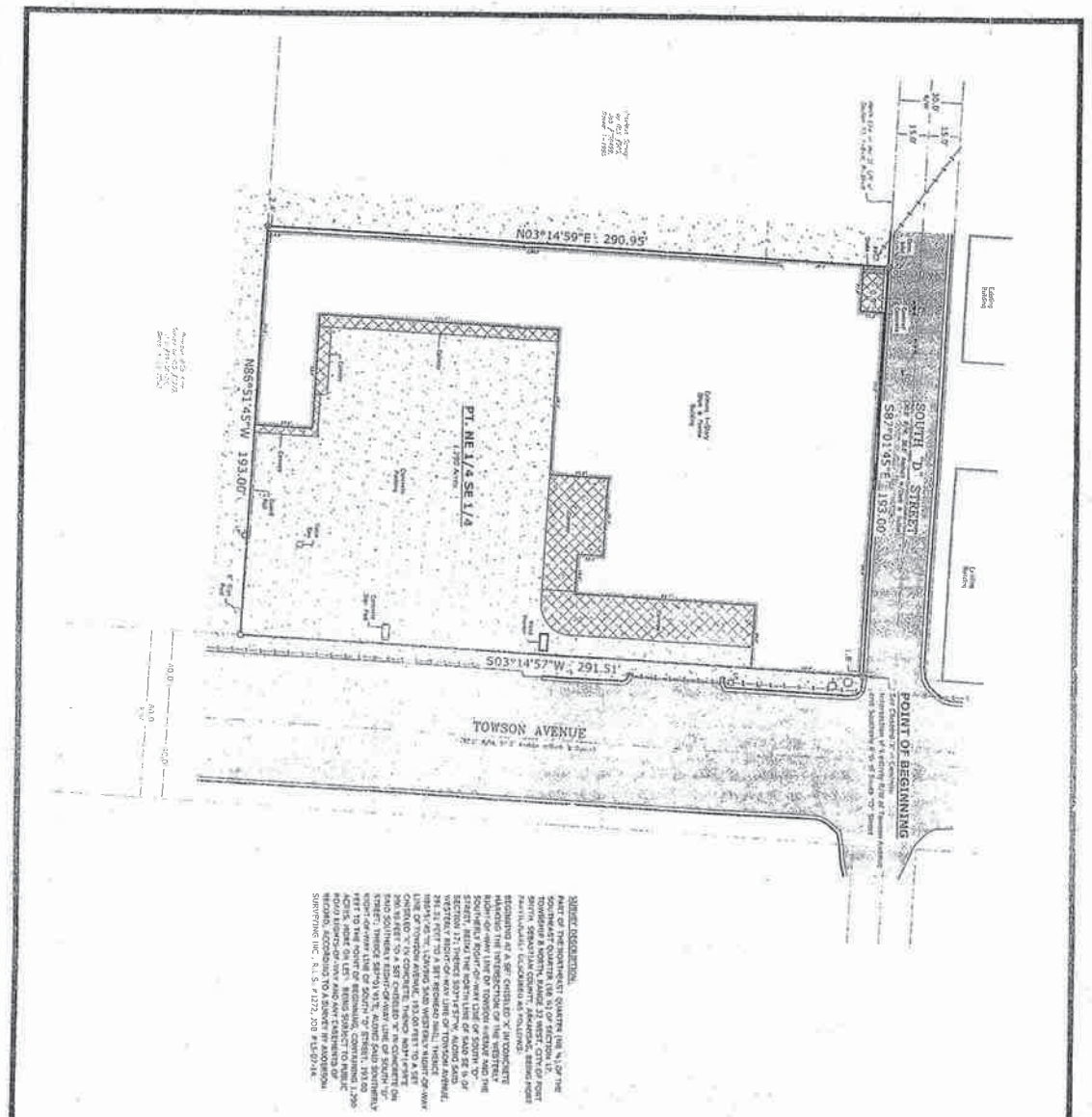
0 0.035 0.07 0.14 ft

0 0.05 0.1 0.2 m

City of Fort Smith GIS
Copyright 2013, City of Fort Smith


N
W
E
S
CBID
C-6 Zoning
RIVERFRONT DR
BALLMAN RD
GARRISON AVE
PARKER AVE
GARLAND AVE
ROGERS AVE
TOWSON AVE
GRAND AVE
CARNALL AVE
DODSON AVE
WHEELER AVE
LEXINGTON AVE
BLUFF AVE
JENNY LIND RD
MIDLAND BLVD
LYMAN ST
TILLES AVE
BELLE AVE
WIRSING AVE
PRYOR AVE
KELLEY HWY
JOHNSON ST
HIGH ST
YUKON ST
DIVISION ST
SHORT D ST
SHORT 7TH ST
SHORT L ST
N 1ST ST
N 2ND ST
N 3RD ST
N 4TH ST
N 5TH ST
N 6TH ST
N 7TH ST
N 8TH ST
N 9TH ST
N 10TH ST
N 11TH ST
N 12TH ST
N 13TH ST
N 14TH ST
N 15TH ST
N 16TH ST
N 17TH ST
N 18TH ST
N 19TH ST
N 20TH ST
N 21ST ST
N 22ND ST
N 23RD ST
N 24TH ST
N 25TH ST
S 1ST ST
S 2ND ST
S 3RD ST
S 4TH ST
S 5TH ST
S 6TH ST
S 7TH ST
S 9TH ST
S 11TH ST
S 12TH ST
S 16TH ST
S 17TH ST
S 18TH ST
S 19TH ST
S 20TH ST
S 21ST ST
S 22ND ST
S 23RD ST
S 24TH ST
S 25TH ST
S 26TH ST
N P ST
N T ST
N S ST
N R ST
N Q ST
N O ST
N N ST
N M ST
N L ST
N K ST
N J ST
N I ST
N H ST
N G ST
N F ST
N E ST
N D ST
N C ST
N B ST
N A ST
L ST
S A ST
S B ST
S C ST
S D ST
S E ST
S F ST
S G ST
S H ST
S I ST
S J ST
S K ST
S L ST
S M ST

C:\Project\15-07-14\15-07-14dwg, 7/13/2015 3:49:13 PM, ZJW,



SURVEY DESCRIPTION:

PART OF THE NORTHEAST QUARTER (NE ¼) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 17, TOWNSHIP 8 NORTH, RANGE 32 WEST, CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CONCRETE RIGHT-OF-WAY LINE OF TOWSON AVENUE AND THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH "D" STREET; THENCE SOUTH 291.51 FEET ALONG THE SAID SE ¼ OF SECTION 17 TO THE NORTH RIGHT-OF-WAY LINE OF TOWSON AVENUE; THENCE SOUTH 86°51'45" WEST 193.00 FEET TO A SET CHISELED "X" IN CONCRETE; THENCE NORTH 03°14'59" EAST 290.95 FEET TO A SET CHISELED "X" IN CONCRETE ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH "D" STREET; THENCE SOUTH 87°01'45" EAST 193.00 FEET TO THE POINT OF BEGINNING, CONTAINING 1.290 ACRES, MORE OR LESS, AND BEING SUBJECT TO PUBLIC ROAD RIGHTS-OF-WAY AND ANY EASEMENTS OF RECORD, ACCORDING TO A SURVEY BY ANDERSON SURVEYING INC., R.L.S. #1272, JOB #15-07-14.

REVISIONS	DATE

30 0 30
Scale in Feet

FOR USE BY:
Richmond Tuan
PROPERTY ADDRESS:
300 Towson Avenue
Fort Smith, AR

Land Commissioner
File Code Number
500-08N-32W-0-17-210-05-1272

SURVEYORS CERTIFICATION

I HEREBY CERTIFY THAT THE HEREON PLATTED AND DESCRIBED SURVEY WAS COMPLETED UNDER MY SUPERVISION ON THE 13th DAY OF July, 20 15
TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PERSONS NAMED ON THIS PLAT AND ALSO THOSE WHO MORTGAGE OR GUARANTEE THE TITLE THERETO, WITHIN ONE YEAR FROM DATE HEREOF, AND AS TO THEM I WARRANT THE ACCURACY OF SAID SURVEY.

ANTHONY P. ANDERSON AR. PLS. 1272

FORT SMITH, SEBASTIAN COUNTY, ARKANSAS
SURVEY OF
PART OF THE NE 1/4 SE 1/4 OF
SECTION 17, T-8-N, R-32-W

DATE: 7-13-2015
JOB NO: 15-07-14
SCALE: 1"=30'

BASIS OF BEARING:
Arkansas State Plane NORTH
based on GPS observation

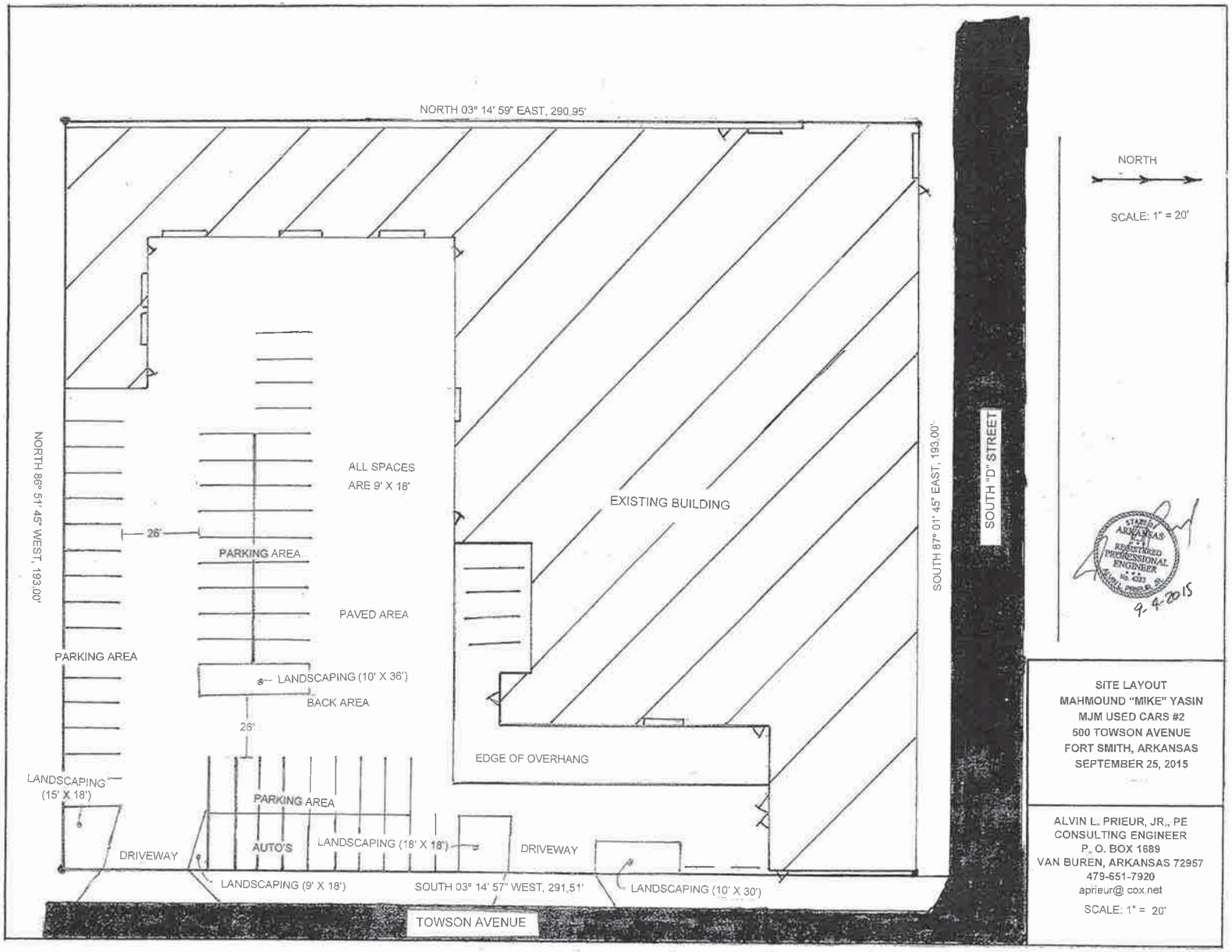
ANDERSON SURVEYING INC.
Arkansas -- Oklahoma
P.O. Box 129
Van Buren, AR 72957
(479)-474-4247
Fax (479)-410-5333
e-mail: andersonsurveying@cox.net

REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF ARKANSAS
No. 1272

CERTIFICATE OF AUTHORIZATION
ANDERSON SURVEYING INC.
No. 1001
ARKANSAS

Legend
- Set 1/2" Rebar
- Existing Iron Pin/Pipe
- Set Nail
- Existing Nail
- Set Chiseled "X" in Conc.
- Power Pole
- Existing Fence
- Tele/Elec. Pedestal
- Water Meter
- Gas Meter
- Traffic Signal Box
- Light Pole
- Sign Pole
- Water Valve
- Man Hole

NH

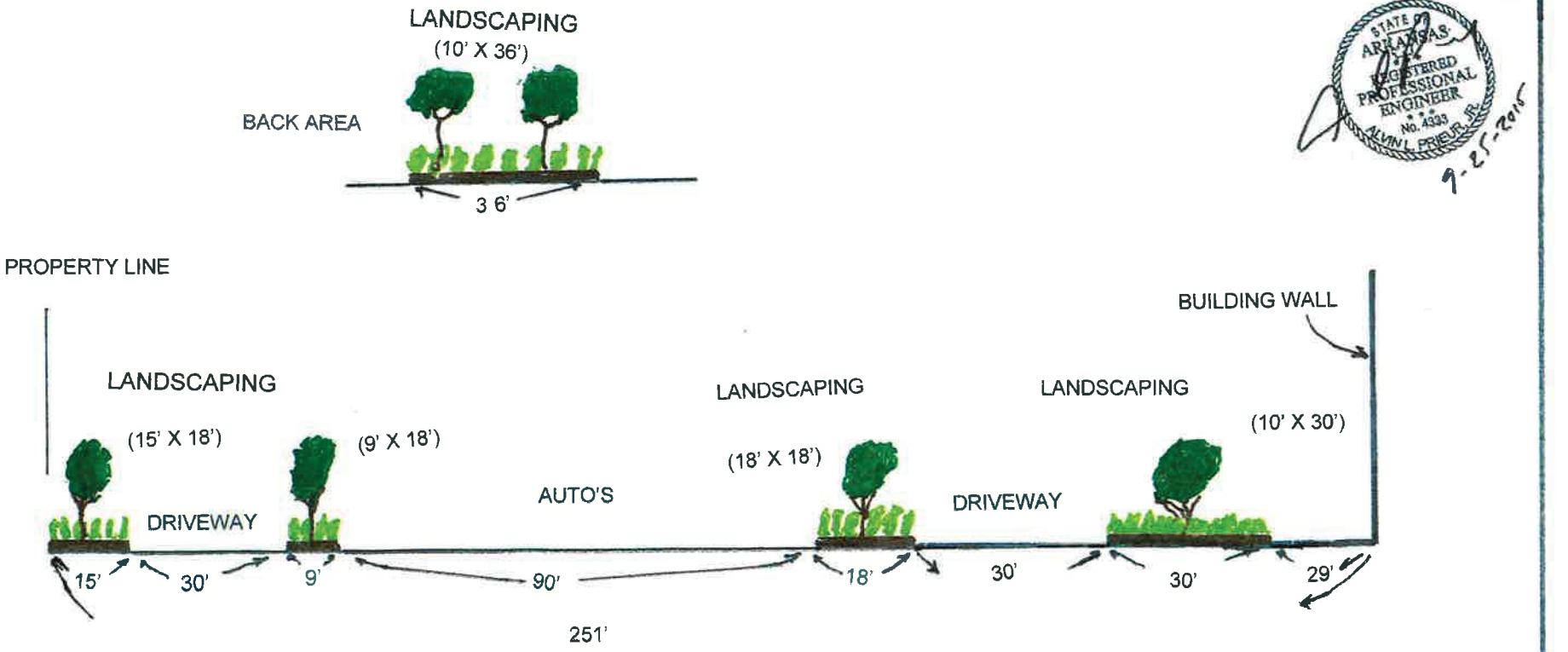

NORTH 03° 14' 59" EAST, 290.95'
NORTH 86° 51' 45" WEST, 193.00'
SOUTH 87° 01' 45" EAST, 193.00'
SOUTH 03° 14' 57" WEST, 291.51'
SOUTH "D" STREET
TOWSON AVENUE
ALL SPACES
ARE 9' X 18'
EXISTING BUILDING
26'
PARKING AREA
PAVED AREA
PARKING AREA
LANDSCAPING (10' X 36')
BACK AREA
26'
EDGE OF OVERHANG
LANDSCAPING
(15' X 18')
PARKING AREA
AUTO'S
LANDSCAPING (18' X 18')
DRIVEWAY
DRIVEWAY
LANDSCAPING (9' X 18')
LANDSCAPING (10' X 30')
NORTH
SCALE: 1" = 20'
STATE OF ARKANSAS
REGISTERED PROFESSIONAL ENGINEER
9-4-2015
SITE LAYOUT
MAHMOUND "MIKE" YASIN
MJM USED CARS #2
500 TOWSON AVENUE
FORT SMITH, ARKANSAS
SEPTEMBER 25, 2015
ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@ cox.net
SCALE: 1" = 20'

LANDSCAPING
MAHMOUD "MIKE" YASIN
MJM USED CARS #2
500 TOWSON AVENUE
FORT SMITH, ARKANSAS
SEPTEMBER 25, 2015

ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@cox.net

SCALE: 1" = 20'

STATE OF ARKANSAS REGISTERED PROFESSIONAL ENGINEER No. 4393 ALVIN L. PRIEUR, JR.
9-25-2015



ALVIN L. PRIEUR, JR., PE
CONSULTING ENGINEER
P. O. BOX 1689
VAN BUREN, ARKANSAS 72957
479-651-7920
aprieur@cox.net

October 2, 2015

City of Fort Smith
Planning Department
P O Box 1908
Fort Smith, Arkansas 72902

Attn: Tom Monaco

Re: Conditional Use
500 Towson Avenue
Fort Smith, Arkansas

Dear Tom:

The neighborhood meeting for the above referenced conditional use request was held on September 30, 2015 at 10:00 a.m. Attached is the list of the attendance at that meeting.
One property owner from the area was at the meeting. Mr. Tim Brown owner of two buildings across Towson Avenue from the building in question was present. He said he had no objection to the request and in fact he was glad to see the building being used. In the question about it being a car lot, he said that the site was built for car sales and he felt that this would be the best use. There was no one else at the meeting. There were no phone calls about the meeting.
If you have any questions, please contact me.

Respectfully submitted,

Alvin L. Prieur, Jr., PE - Consulting Engineer

STATE OF ARKANSAS
REGISTERED PROFESSIONAL ENGINEER
No. 4333
ALVIN L. PRIEUR, JR.

10-2-2015

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location On-site 500 Towson Avenue

Meeting Time & Date September 30, 2015 @ 10:00 a.m.

Meeting Purpose To discuss request

	NAME	ADDRESS	PHONE #
1.	Al Prieur	P.O. Box 1685 VB 72957	479-651-7920
2.	Mahmoud Yasin	1818 Towson Ave Ft. Smith	479 883-8668
3.	Jim Brown	P.O. Box 1735	479-883-9515
4.	Tom Monaco	City	784-2218
5.			
6.			
7.			
8.			
9.			
10.			
11.			

CENTRAL BUSINESS IMPROVEMENT DISTRICT
FORT SMITH, ARKANSAS

Tuesday, September 15, 2015
Area Agency on Aging, 524 Garrison Avenue
Fort Smith, Arkansas
7th Floor Board Room

Meeting Minutes

The Fort Smith Central Business Improvement District Commission's regular meeting was scheduled for 9:30 a.m. on Tuesday, September 15, 2015 in the 7th floor board room of the Area Agency on Aging building, 524 Garrison Avenue, Fort Smith, Arkansas

The meeting was called to order by Mr. Richard Griffin, Chairperson, at approximately 9:33 a.m. and a quorum was noted present. Also in attendance were commissioners Phil White, Jeff Pryor, Bill Hanna, Sam Sicard, Steve Clark, and Rodney Ghan. Commissioner Lee Ann Vick was absent. Others in attendance included Jeff Dingman and Doug Reinert of the City of Fort Smith.

Mr. Hanna moved approval of the minutes of the August 18, 2015 regular meeting. Mr. Vick seconded and the motion carried by unanimous vote.

Mr. Sicard delivered the Treasurer's reports for the month of August, 2015, such documents being previously provided for the commissioners' review. As of August 31, 2015 the Total Cash-on-Hand for the CBID amounted to $172,353.66. Restricted funds comprise $6,000 of that total, so the total cash net of restricted funds amounted to $166,353.66. Mr. Pryor moved approval of the Treasurer's Report. Mr. Hanna seconded and the motion carried by unanimous vote.

Mr. White asked for the City Report. Mr. Dingman noted that five CBID commissioners (Griffin, White, Ghan, Sicard, and L. Vick) were appointed to six-year terms by the City's Board of Directors at their September 1 meeting. Also that the September 1 meeting, the city's Board approved the proposed amendments to the conditional uses permitted in the C-6 Zoning District, as was previously discussed and recommended by the CBID. Mr. Reinert updated the Commission on the status of the Greg Smith Riverwalk, currently under construction, noting that the spring weather caused significant delays in construction, so the original mid-September completion date will be pushed back an estimated 35-40 days. The addition of a kitchen and storage area to the River Park Pavilion is complete and the final walkthrough and payment will be completed soon.

The discussion turned to a potential shade structure at the newly opened splash pad at Compass Park. Mr. Griffin distributed architectural renderings showing one concept for a shade structure and seating area located in the center of the Compass Park compass rose. Mr. Ghan and Mr. Griffin collaborated with the architect to create the rendering. The concept of the renderings was well received, but the discussion turned to the appropriate placement of such structures in order to provide suitable shade closer to the splash pad. It was also noted that the proposed rendering, which included three coordinating structures, would likely cost about $18,000 to complete. Aside from the location of shade closer to the splash pad, some commissioners indicated they liked the idea of reserving the center of that patio area for public art instead of filling it with seating and shade structures. Mr. Ghan said that he would coordinate with the architect to consider shade closer to the splash pad, on both the east and west side, as well has have a more formal budget estimate within the next 30 days.

Mr. Griffin made note of The Unexpected mural project that occurred in Fort Smith the week of September 4 through September 13 through the initiative of CBID commissioner Steve Clark and Downtown 64.6. Mr. Clark provided a recap of the week, indicating that the several internationally renowned muralists that were in town for the event left with a very positive image of Fort Smith based on how they were treated and how the community was accepting of their work. Mr. Clark noted that there was lots of positive energy

created downtown for the event, which is the type of thing that is needed to show that Fort Smith is a progressive and livable city. The artists that participated travel the world, and will speak well of Fort Smith over the next year, so that there should be an opportunity to do a similar project again next year. Mr. John McIntosh, who helped promote and organize the event, indicated that it was an emotional experience, and a very good community event that Fort Smith did for itself. Mr. Clark added that citizens are "hungry" for this type of artistic experience, as well as appreciative of an event that uniquely belongs to Fort Smith. As for lessons learned, there was discussion of perhaps adding viewing stations where people could sit and watch the artists at work, as well as better efforts to coordinate with food truck vendors to help create the walkable atmosphere at the event. At the end of the discussion, Mr. Hanna moved that the CBID appropriate $5,000 for the continued support of The Unexpected project in preparation for the event in 2016. Mr. White seconded, and the motion carried by unanimous vote.

Mr. Clark added that efforts to be more aggressive with vacant buildings and absentee owners in the downtown district will help create a better atmosphere for this type of event, and for the downtown in general. Mr. Clark said that the CBID needs to use its influence as appropriate to be protective of what happens in the district, specifically on Garrison Avenue.

Mr. Sicard noted that the master plan initiative was ongoing, and recapped the presentation of Stephen Luoni from the University of Arkansas Community Design Center. Mr. Sicard is still in the fact finding mode, exploring options that would provide for a suitable downtown master plan at minimal cost, noting that the cost would likely have to come from private or other sources as the city does not have funding to put toward this project.

Mr. Griffin introduced the first item of business for considering a recommendation regarding a conditional use application to allow an auto and vehicle dealer business at 500 Towson Avenue. Mr. Al Prieur spoke on behalf of his client, who recently purchased the property with the intent of relocating a used car dealership from another location (outside of the CBID) to this location. The client intends to use the building as is, with some minor upgrade work inside, and provide landscape islands along the Towson Avenue right-of-way. Mr. Ghan spoke in opposition to the project as being detrimental to the CBID by adding an additional car lot to the area. Mr. White agreed, and Mr. White moved that the CBID recommend that the Planning Commission deny the request for this conditional use. Mr. Ghan seconded, and the motion carried by unanimous vote.

Mr. Griffin introduced the second item of business, to discuss a proposed text amendment to the Unified Development Ordinance that would allow Motorcycle and ATV Sales and Service in the C-6 Zoning District as a Conditional Use. The UDO already allows for motor vehicle sales and service by conditional use, but does not specify that motorcycles or ATV sales and service is allowed. The proponent of the text amendment, Mr. Jeremy Jones, operates River City Cycles on Grand Avenue and has outgrown their space. They have located and propose to lease property at 201 Towson Avenue, within the CBID, that would allow for interior storage and showing of their products, which included motor scooters, ATV's and power sports equipment. Mr. White asked for clarification that all activity would be conducted inside, and that there would be no outside storage or display. Mr. Jones indicated that was correct. Mr. Dingman clarified that the CBID was not considering Mr. Jones' application for conditional use at this time, merely a text amendment that would allow Mr. Jones to subsequently apply for such conditional use. Mr. Ghan moved that the CBID recommend approval of such text amendment, provided that it require no outside storage or display as part of the text amendment. Mr. White seconded, and the motion carried by unanimous vote.

Mr. Griffin asked for other comments from the commissioners. Mr. White noted that the nearly-complete project by Griffin on the 400 block of Garrison Avenue is very nice and a positive contribution to the Avenue and downtown in general. The inclusion of the US Marshal photograph is well done. Mr. Griffin thanked him for the comments, and noted that a family meeting in the breezeway at the property recently was often interrupted by loud truck noise, which is a downtown issue still seeking resolution.

Mr. White indicated that Michael LeJong of MAHG Architects has been in contact with him recently about the potential project to add accent lighting to the Garrison Avenue bridge. This project has been discussed

before, but had fallen off in recent months. Mr. LeJong intends to meet with representatives of Philips Lighting to continue discussion on possibilities for this effort. Mr. White added that this type of project could be folded into the discussion regarding the downtown master plan.

Mr. Hanna reported that he recently received confirmation of a private contribution to build trails projects in the city in the amount of $300,000. The donor wasn't made public yet, but a public announcement would be forthcoming.

Mr. Pryor reported that he should be ready to provide a report on his project to examine operations of the Farmers Market on behalf of the CBID at the October meeting.

Mr. Hanna noted that the "Hell on the Border" Arkansas State Criterion Championship bicycle race was held in downtown on Sunday, September 13. The event coordinated well with the final day of mural festival, and a lot of people came downtown that weekend. The race was a great success, with over 180 racers, a 50% increase from the previous year when the State Criterion Championship was held in Little Rock. There were a lot of positive comments from the racers, their families, and spectators about the energy and excitement downtown.

There being no additional business before the Commission, the meeting adjourned at approximately 11:15 a.m. The next regular meeting will be tentatively set for October 20, 2015.

Respectfully submitted,

Jeff Dingman

Jeff Dingman
Acting City Administrator

3.

ORDINANCE NO._____

AN ORDINANCE REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 21-12-15 to rezone certain properties hereinafter described, and, having considered said request, recommended on December 8, 2015, that said change be made;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 1: That the following properties to-wit:

Part of the Southeast Quarter of the Southeast Quarter, part of the Southwest Quarter of the Southeast Quarter of Section 7, and part of the Northeast Quarter of the Northeast Quarter of Section 18, all in Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:
Commencing at the Southeast Corner of said Section 7; Thence along the south line of said Section 7, N87°12’44”W, 1047.25 feet to the westerly right-of-way line of Chad Colley Boulevard; Thence S40°15’28”W, 115.21 feet to a set 1/2" rebar with cap stamped MWC 1369 on said westerly right-of-way line, said point being the Point of Beginning; Thence N56°35’53”W, 550.00 feet to a set 1/2" rebar with cap stamped MWC 1369; Thence N41°02’07”E, 399.64 feet to a set 1/2" rebar with cap stamped MWC 1369; Thence S56°35’53”E, 552.62 feet to an existing 1/2" rebar with cap stamped MWC 1369 on said westerly right-of-way line; Thence along said westerly right-of-way line the following courses: S42°01’23”W, 201.42 feet to a set 1/2" rebar with cap stamped MWC 1369; 198.61 feet along the arc of a curve to the left, said curve having a radius of 4580.00 feet and being subtended by a chord having a bearing of S40°46’58”W and a distance of 198.60 feet to the Point of Beginning. Containing 5.00 acres, more or less.

more commonly known as 9300 Chad Colley Boulevard, should be, and is hereby rezoned from

Not Zoned to Commercial Moderate (C-3) by Extension, subject to the Planning Commission approved development plan.

PASSED AND APPROVED THIS_____DAY OF_____, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form:

_____
Publish One Time

December 29, 2015

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: A request by Michael Riley, agent for Fort Chaffee Redevelopment Authority and Beau Sparkman, for Planning Commission consideration of a zone change from Not Zoned to Commercial Moderate (C-3) by Extension located at 9300 Chad Colley Boulevard.

On December 8, 2015, the City Planning Commission held a public hearing to consider the above request.

Ms. Maggie Rice read the staff report indicating that the purpose of the rezoning request is to facilitate the development of a 5,960 square foot dental office with tenant space, 25 parking spaces, landscaping and architectural features with 100 percent use of high quality materials.

Mr. Michael Riley was present to speak on behalf of this request.

No one was present to speak in opposition to this request.

Motion was made by Commissioner Howard, seconded by Commissioner Carson and carried unanimously to amend this request to make approval subject to the following:

- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

Vice-Chairman Keesee then called for the vote on the rezoning request as amended. The vote was 6 in favor and 1 abstention (Keesee).

The Planning Commission also approved a development plan by a vote of 6 in favor and 1 abstention (Keesee).

Respectfully Submitted,

CITY PLANNING COMMISSION

Don Keesee, Vice-Chairman

DK/lp

cc: File
City Administrator

623 GARRISON AVENUE
P.O. BOX 1908
FORT SMITH, ARKANSAS 72902
(479) 784-2216
FAX (479) 784-2462

Printed on 100% Recycled Paper

Rezoning

Memo

To: City Planning Commission

From: Planning Staff

Date: November 19, 2015

Re: Rezoning #21-12-15 - A request by Michael Riley, agent for Fort Chaffee Redevelopment Authority and developer Beau Sparkman, for Planning Commission consideration of a zone change from Not Zoned (NZ) to Commercial Moderate (C-3) located at 9300 Chad Colley Blvd (Companion to item #1)

PROPOSED ZONING

The proposed zone will facilitate the development of a 5,960 s.f. dental office with tenant space with 25 parking spaces, landscaping, and architectural features with 100 percent of high quality materials.

LOT LOCATION AND SIZE

The subject property is on the west side of Chad Colley Blvd. between Massard Road and Gatehouse Way. The tract contains an area of 5 acres with approximately 400 feet of street frontage along Chad Colley Blvd.

REQUESTED ZONING

The tract is currently not zoned.

The proposed zoning on this tract is Commercial Moderate (C-3).
Characteristics of this zone are as follows:

Purpose:

To provide for general commercial activities, offices, and services for the community. The C-3 zoning district promotes a broad range of commercial activities, operations, and services that are dispersed throughout the City and designed at a smaller scale than a regional center. The C-3 zoning district is appropriate in the General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

1A

Permitted Uses:

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-3 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

Conditional Uses:

Orphanage, dormitory, sorority, fraternity, bicycle sales and service, beer, wine and liquor store, convenience store, restaurants with outdoor dining, pet cemetery, parking garage, utility substations, event center, community recreation center, golf course, parks, educational facilities, police station, nursing home and churches are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

Minimum Lot Size – 12,000 square feet
Maximum Building Size – 60,000 square feet
Minimum Parcel/Lot Size for Rezoning – 2 acres
Minimum Lot Width – 75 feet
Front Yard Setback - 25 feet
Side Yard on Street Side of Corner Lot - 15 feet
Side Yard Setback – 20 feet
Rear Yard Setback - 20 feet
Maximum Height - 35 feet (1+1)
Maximum Lot Coverage - 60%
Minimum building separation – to be determined by current City building and fire code.
Required street access – Major Collector or higher

SURROUNDING ZONING AND LAND USE

The area to the north is zoned Residential Multifamily Medium Density (RM-3) and Commercial Moderate (C-3-SPL) and is undeveloped. A bank is proposed for the C-3-SPL site.

The area to the south/southeast is zoned Residential Multifamily Medium Density (RM-3) and Commercial Moderate (C-3-SPL) and is developed as an apartment complex and an undeveloped tract.

The areas to the south and west are zoned Residential Single Family Medium/High Density (RS-3) and developed as single-family residential and an undeveloped tract.

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies Chad Colley Blvd as a Major Arterial.

MASTER LAND USE PLAN COMPLIANCE

The Chaffee Crossing Land Use Map classifieds the site as Mixed Master Land Use Plan classifies the site as Mixed Use: Residential/Commercial/Office. The applicant is will be applying for a Chaffee Crossing Land Use amendment to a Commercial/office land use classification. This classification is intended to create commercial, industrial, office, institutional, and technical developed that are connected to surrounding land uses and to guide

1B

the appropriate development of non-residential uses with a larger community context, and establish strong street presence.

NEIGHBORHOOD MEETING

A neighborhood meeting was held on Tuesday, December 1, 2015 at 2:00 P.M. on site. No neighboring property owners attended the meeting.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of the application contingent upon the following:

1. Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

2. The FCRA must approve the Land Use Map Amendment to the Chaffee Crossing Master Land Use map.

1C

PETITION FOR CHANGE IN ZONING MAP

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

2. Address of property: _____

3. The above described property is now zoned: N2 (NOT ZONED)

4. Application is hereby made to change the zoning classification of the above described property to C3 by EXTENSION.
(Extension or classification)

5. Why is the zoning change requested?

THE PROPERTY IS NOT CURRENTLY ZONED, AND THE OWNER WISHES TO CONSTRUCT A DENTAL CLINIC ON THE PROPERTY.

6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

MICHAEL RILEY, ARCHITECT
Owner or Agent Name
(please print)

28899 Brookehill Road
Shady Point, OK 74956
Owner or Agent Mailing Address

918-839-6032
Owner or Agent Phone Number

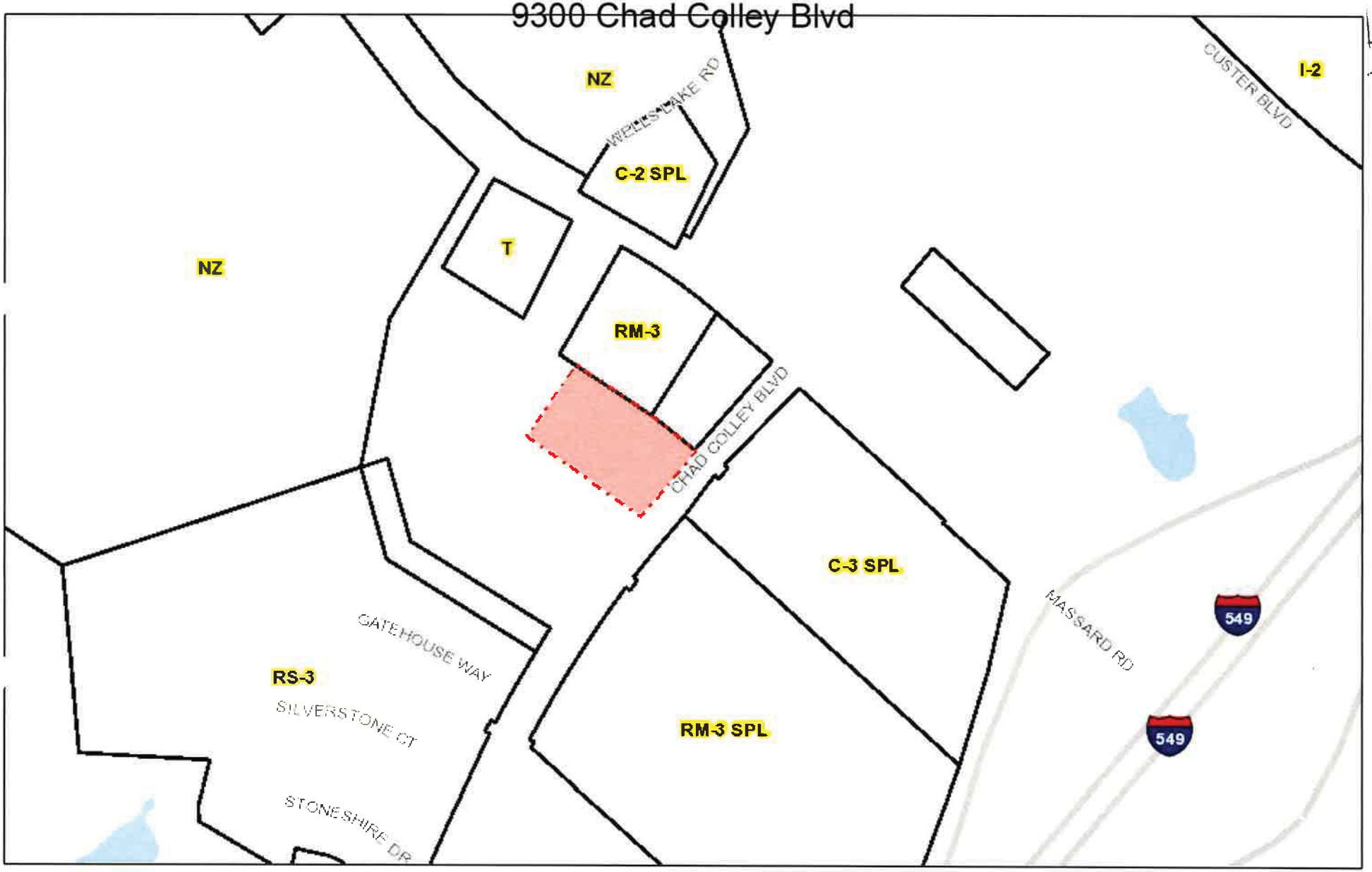
_____
Owner

or

MICHAEL A. RILEY
Agent

10

Rezoning #21-12-15: From Not Zoned to Commercial Moderate (C-3)
9300 Chad Colley Blvd



November 18, 2015

Fort Smith City Limts

Zoning

1:6,397

0 290 580 1,160 ft

0 90 180 360 m

City of Fort Smith GIS
Copyright 2013, City of Fort Smith

Fort Chaffee Redevelopment Authority
7020 Taylor Avenue
Fort Smith, AR 72916

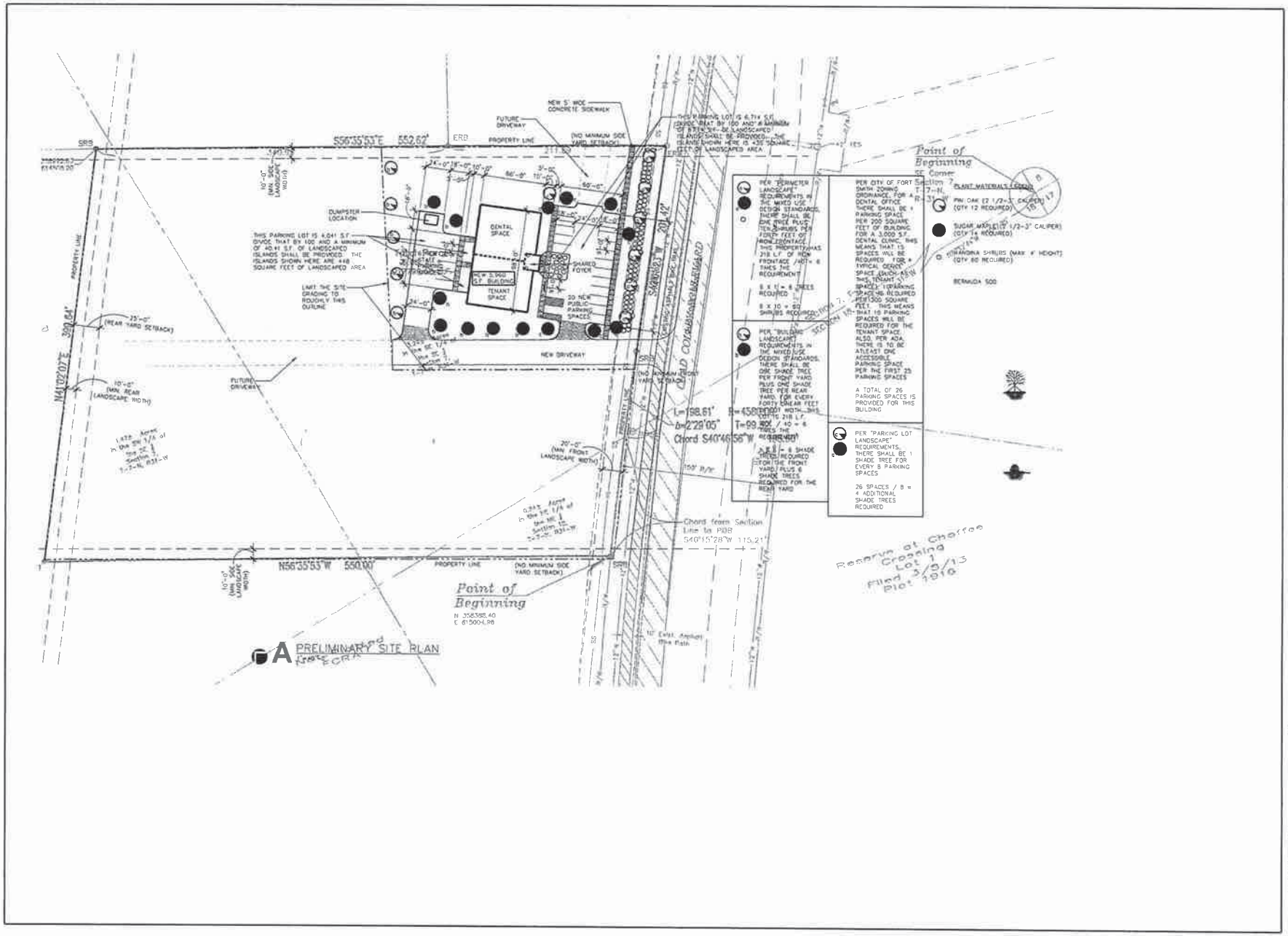
Arvest Bank
P. O. Box 11110
Fort Smith, AR 72903

J.W. Stephens Enterprises, LLC
123 Linwood Court
Little Rock, AR 72205

Massard I-49 Properties, LLC
110 Sagebrush Street
Pearcy, AR 71964

Southland Management Group, LLC
3403 Cavanaugh Road
Fort Smith, AR 72908

MR Capital Partners, LLC
6308 Riley Park Drive
Fort Smith, AR 72916



Sparkman Dental
At Chaffee Crossing
Fort Smith, Arkansas
MICHAEL ALLEN RILEY
918 839 8032 ph
www.michaelrileyarchitect.com
26899 Brockenhill Road
Shady Point, OK 74956
NOT FOR CONSTRUCTION
PROGRESS SET ONLY
Project Number 15.88
Date 11-11-15
Revisions
Sheet Number
C100
PRELIMINARY SITE PLAN
Point of Beginning
Point of Beginning
DENTAL SPACE
TENANT SPACE
NEW DRIVEWAY
FUTURE DRIVEWAY
DUMPSTER LOCATION
PROPERTY LINE
S56°35'53"E 552.62'
N56°35'53"W 550.00'
N41°02'07"E 390.84'
Chord from Section Line to POB S40°15'28"W 115.21'
Chord S40°46'56"W
L=198.61'
Reserve at Chaffee Crossing Lot 1 Filed 3/5/13 Plot 1916

Dr. Sparkman, DDS, PA
Family Dentistry

DRAFT

PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT
MINUTES
ROSE ROOM
CREEKMORE PARK COMMUNITY CENTER
5:30 P.M.
DECEMBER 8, 2015

On roll call, the following Commissioners were present: Don Keesee, Talicia Richardson, Michael Redd, Sarah Howe, Josh Carson, Bob Cooper, Jr. and Rett Howard.
On roll call, the following Commissioners were not present: Marshall Sharpe and Vicki Newton.

Vice Chairman Keesee called for the vote on the Planning Commission minutes from the November 10, 2015, meeting. Motion was made by Commissioner Howard, seconded by Commissioner Carson and carried unanimously to approve the minutes as written

Mr. Wally Bailey spoke on the procedures.

1. **A request by Michael Riley, agent for Fort Chaffee Redevelopment Authority and developer, Beau Sparkman, for a zone change from not Zoned (NZ) to Commercial Moderate (C-3) by Extension located at 9300 Chad Colley Boulevard.**

2. **A request by Michael Riley, agent for Fort Chaffee Redevelopment Authority and developer, Beau Sparkman, for development plan approval for a dental clinic located at 9300 Chad Colley Boulevard.**

   Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to facilitate the development of a 5,960 square foot dental office with tenant space, 25 parking spaces, landscaping, and architectural features with 100 percent use of high quality materials.

   Michael Riley agent for Fort Chaffee Redevelopment Authority, was present to speak on behalf of this request.

   No one was present to speak in opposition to the request.

   Motion was made by Commissioner Howard, seconded by Commissioner Carson and carried unanimously to amend this request to make approval subject to the following:

   - Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those

described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

- The Fort Chaffee Redevelopment Authority shall approve the Master Land Use Plan Amendments to the Chaffee Crossing Master Land Use map.

- Any signage in addition to the façade sign shall comply with the Chaffee Crossing Design Guidelines and the UDO. Should any digital face sign be installed, the digital face shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter.

- All exterior lighting shall comply with the Commercial and Outdoor Lighting requirements.

Vice Chairman Keesee then called for the vote on the rezoning request as amended. The vote was 6 in favor and 1 abstention. (Keesee)

3. **A request by Jeremy Jones for a text amendment to the Unified Development Ordinance to add motorcycles or ATV sales and service to the Commercial-4 zoning district as a permitted use.**

Mr. Wally bailey read the staff report indicating the purpose of this request is for a text amendment to the Unified Development Ordinance to allow auto vehicle dealer (indoors) in the Commercial-4, Commercial Heavy (C-5), Industrial Light (I-1), Industrial Moderate (I-2) and Industrial Heavy (I-3) zoning district as a permitted use and a conditional use in the Commercial Downtown (C-6) zoning district. The Planning Commission also approved the following definition created for the City of Fort Smith UDO entitled Auto and vehicle dealer (indoors):

Auto and vehicle dealer (indoors)

Shall mean a climate controlled facility used for the display and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, but not including heavy equipment. All sales, service, storage and display areas shall be indoors. Service and storage areas shall cumulatively be incidental and subordinate to the primary use of sales and displays.

Vice Chairman Keesee then called for the vote on the proposed text amendment. The vote was 7 in favor and 0 opposed.

4.

ORDINANCE NO._____

AN ORDINANCE AMENDING THE 2009 UNIFIED DEVELOPMENT ORDINANCE OF THE CITY OF FORT SMITH

WHEREAS, the Board of Directors passed and approved Ordinance No. 36-09 which adopted the Unified Development Ordinance on May 19, 2009; and,

WHEREAS, it is necessary to amend certain sections of the Unified Development Ordinance to provide clarity and remove conflicts with other provisions of the municipal code; and,

WHEREAS, the Planning Commission held a public hearing regarding these amendments and recommended on December 8, 2015, that said changes be made; and,

WHEREAS, three (3) copies of January 2016 Amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH THAT:

SECTION 1: The January 2016 Amendments to the Unified Development Ordinance are hereby adopted.

SECTION 2: The codifier shall amend the existing sections of the Unified Development Ordinance.

SECTION 3: It is hereby found and determined that the adoption of these amendments to the Unified Development Ordinance is necessary to alleviate an emergency created by the lack

of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendments be effective, and the amendment is hereby made effective, as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS_____DAY OF _____, 2016.

APPROVED:

_____

Mayor

ATTEST:

_____

City Clerk

Approved as to form:

_____

Publish One Time

JANUARY 2016

AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE

empowered to act on behalf of other persons.

Auto (rental and leasing)
shall mean an area or structure for storing or displaying cars, trucks, trailers, RVs and recreational goods, which are offered for rent for a fee.

Auto auction
shall mean a facility for the sale of automobiles to the highest bidder.

Auto and vehicle dealer
shall mean a facility for display, service and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, excluding heavy equipment.

Auto and vehicle dealer (indoors)
shall mean a climate controlled facility used for the display and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, but not including heavy equipment. All sales, service, storage and display areas shall be indoors. Service and storage areas shall cumulatively be incidental and subordinate to the primary use of sales and display.

Auto and vehicle impoundment or holding yard (no salvage)
shall mean a parcel of land or a building that is used for the impoundment of vehicles and storage of inoperable vehicles usually awaiting insurance adjustment or transport to a repair shop and where vehicles are kept for a period not to exceed sixty (60) days.

Auto and vehicle towing (wrecker)
shall mean the operating of a truck for the towing of inoperable motor vehicles.

Auto body and paint shop
shall mean a facility which provides collision repair services, including body frame straightening, replacement of damaged parts, or painting.

Auto detailing service
shall mean a facility for the cleaning, washing, waxing and polishing of motor vehicles including steam cleaning.

Auto glass, muffler and seatcover shop
shall mean an automotive service establishment specializing in assembly, fitting and installation of glass, seatcovers or mufflers in automobiles as a primary activity.

Auto insurance claims office
shall mean a branch office of a major auto insurance agency in which a liability adjuster assists in damage claims and adjustments to vehicles.

Auto manufacturing
see manufacturing, medium

Fort Smith Use Matrix																																						
								J	K	L	M	N	O					Q	R	S	T	U		W	X	Y	AB	Z	AC	AD	AE	AF							
							Districts	RE3	RE1	RS-1	RS-2	RS-3	RS-4	RS-5	RSD-2	RSD-3	RSD-4	RM-2	RM-3	RM-4	RMD	RH	T	C-1	C-2	C-3	C-4	C-5	C-6	I-1	I-2	I-3							
P = Permitted Use, C = Conditional Use, A = Accessory Use										R-1	R-2	R-3	R-4	R-6	DP-2	DP-3	DP-4	MF-2	MF-3	MF-4	R-5	H	T1,2,3	C-1	C-2	C-3	C-4	C-5	C-6	I-1,2	I-3	I-4							
Size or density restrictions for any use may be noted in the district																																						
Residence or Accommodation																																						
	Private Household																																					
		Single Family building																																				
			Accessory residential dwelling unit																				P	P	P	P	P	P	P										
Structure			Detached					P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P																
			Duplex												P	P	P	P	P	P	P	P	P																
			Guest house					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A																
			Manufactured home																		P																	
			Mobile home park																		C																	
			Mobile home subdivision																		C																	
			Row house											P							P																	
			Zero lot line dwelling unit											P							P																	
		Multifamily development																P	P	P	P	C			P	P	P	P	P									
			Community residential facility																P	P	P				P	P	P	P	P									
			Group home, family					P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P																
			Group home, neighborhood															P	P	P	P				P	P	P	P	P									
			Homeless shelter																									C	C	C								
			Orphanage																						C	C	C	C	C									
			Transitional dwelling																		P																	
	Housing for the Elderly																																					
		Assisted living																C	C	C	C	C	C		P	P	P	P	P									
		Retirement housing																P	P	P	P	P	P		P	P	P	P	P									
	Hotels, Motels, or other Accommodations																																					
		Bed and breakfast inn																C	C	C	C	C	C	C	P	P	P	P	P									
		Dormitory, sorority, fraternity																C	C	C	C				C	C	C	C	C									
		Hotel/motel																									P	P	P									
		Rooming or boarding house																C	C	C	C				P	P	P	P	C									
	General Sales or Services																																					
	Automobile Sales or Service																																					
		Auto & vehicle impoundment or holding yard (no salvage)																										C		P	P	P						
		Auto and vehicle dealer																									P	C	C	P	P	P						
		Auto and vehicle dealer (indoors)																									P	P	C	P	P	P						
		Auto and vehicle towing (wrecker)																										P		P	P	P						
		Auto auction																												P	P	P						
		Auto body shop and paint (new parts)																										C		P	P	P						
		Auto detailing service																							C	P	P	P	C	P	P	P						
		Auto glass, muffler, and seatcover shop																							C	C	C	P		P	P	P						
		Auto parts and accessories sales																							C	P	P	P	P	P	P	P						
		Auto quick lube																								P	P	P		P	P	P						
		Auto repair																										P		P	P	P						
		Auto repair or assembly (salvage parts)																														P						

December 29, 2015

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: Unified Development Ordinance Amendments

On December 8, 2015, the City Planning Commission held a public hearing to consider text amendments to the Unified Development Ordinance.

Mr. Wally Bailey read the staff report indicating that the purpose of this request is for a text amendment to the Unified Development Ordinance to allow auto vehicle dealer (indoors) in the Commercial-4, Commercial Heavy (C-5), Industrial Light (I-1), Industrial Moderate (I-2) and Industrial Heavy (I-3) zoning districts as a permitted use and a conditional use in the Commercial Downtown (C-6) zoning district.

Mr. Bailey noted the following definition created for the City of Fort Smith UDO entitled Auto and vehicle dealer (indoors):

> **Auto and vehicle dealer (indoors)**
>
> Shall mean a climate controlled facility used for the display and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, but not including heavy equipment. All sales, service, storage and display areas shall be indoors. Service and storage areas shall cumulatively be incidental and subordinate to the primary use of sales and display.

Following a discussion by the Commission, Vice-Chairman Keesee called for the vote on the proposed Unified Development Ordinance amendments. The vote was 7 in favor and 0 opposed.

Respectfully Submitted,

CITY PLANNING COMMISSION

Don Keesee, Vice-Chairman

DK/lp

cc: File
City Administrator

623 GARRISON AVENUE
P.O. BOX 1908
FORT SMITH, ARKANSAS 72902
(479) 784-2216
FAX (479) 784-2462

Printed on 100% Recycled Paper

Memorandum

To: Planning Commission
From: Wally Bailey, Director of Development Services
Date: December 4, 2015
Subject: UDO Land Use Matrix Amendment - Auto and vehicle dealer (indoors)

Mr. Jeremy Jones recently inquired about opening a Motorcycle or ATV Sales and Service at Central Mall. The Central Mall property is zoned Commercial-4 which is the zoning district reserved for the development of large shopping centers. Currently, the land use matrix does not permit the Motorcycle or ATV sales and service in Commercial-4 zoning districts. Subsequently Mr. Jones submitted an application requesting the Planning Commission consider a text amendment to allow this land use in Commercial-4 zoning districts as a permitted use.

After reviewing Mr. Jones' request, we noted that there are additional properties in Fort Smith that are currently zoned Commercial-4. Some of those properties are vacant and next to residential developments. This caused the staff some concern so we are offering an alternate proposal.

We looked to see if any other Arkansas communities had addressed this issue of automobile sales in a mall. The City of Fayetteville planning staff shared with us that they had experienced a very similar situation. They created a new land use category for vehicular sales (interior display only) which includes automobiles, ATV/Motorcycles boats and other watercraft.

Attached is a definition created for the City of Fort Smith UDO entitled Auto and vehicle dealer (indoors). This definition will allow the sales and display of new automobiles, motorcycles, recreation vehicles and travel trailers indoors. The service and storage areas shall be incidental and subordinate to the primary use of sales and display.

The land use chart will show this land use as a P for permitted use in the C4, C5, I1, I2, and I3 columns. We show this land use as a C in the Commercial-6 as this will be consistent with other vehicle sales in the Commercial-6 zoning district.

The proposed amendment is consistent with several policies and actions from the Implementation Matrix of the Comprehensive Plan. *(See the attached pages from the comprehensive plan.)*

Please let me know if you have any questions.

3A

Future Land Use

GOAL		POLICY		ACTION		METRIC	TIME	RESPONSIBLE PARTY
FLU-1	Achieve a successful and market-driven balance of future land uses consistent with the Preferred Future	FLU-1.1	Promote commercial development and future economic growth in centers and corridors designated in the Preferred Future in close proximity to existing infrastructure, schools, parks, and jobs.	FLU-1.1.1	Attract anchors in all Preferred Future centers to encourage complementary development, particularly for the Downtown Riverfront.	Number of new businesses opening in neighborhoods	Long	Fort Smith CBID; Chamber; Fort Smith Board of Realtors
				FLU-1.1.2	Update and implement the UDO (Unified Development Ordinance) and Master Land Use Map based on the Preferred Future.	Updated UDO and Master Land Use Map	Short	Planning & Zoning
				FLU-1.1.3	Review and adjust zoning classifications for consistency with the Preferred Future.	Zoning changes made, or finding of consistency reached	Short	Planning & Zoning
				FLU-1.1.4	Create an inventory of existing businesses and develop a plan to attract a wider variety of businesses currently not available to the community.	Increase in business diversity	Short	Chamber; Administration; Fort Smith Board of Realtors
				FLU-1.1.5	Create incentive programs, such as a Small Businesses Development Program.	Number of new businesses connected to development programs	Mid	Chamber; UAFS
		FLU-1.2	Ensure that sufficient, well designed and convenient on street and off street parking is provided to serve land uses.	FLU-1.2.1	Conduct an assessment of existing parking supply and demand and forecast future needs.	Assessment completion	Mid	Planning and Zoning; Engineering; Police; Parking Authority; Operations
				FLU-1.2.2	Based on the parking assessment, review the parking ratios and related regulations in the UDO and create a parking management plan for on street and off street parking near major activity centers.	The number of requested variances received by the Planning Dept.	Mid	Planning and Zoning; Engineering; Police; Operations
		FLU-1.3	Coordinate and plan future development with neighboring jurisdictions and the City of Fort Smith.	FLU-1.3.1	Exercise the City's extra-territorial jurisdiction over land in Sebastian County.		Mid	Planning & Zoning; Engineering; Utility Department
				FLU-1.3.2	Ensure that the subdivision of land within the allowable Planning Area will comply with City subdivision and infrastructure requirements, as amended, to address rural and estate development.	Subdivision compliance met	Long	Planning & Zoning; Engineering; Utility Dept; Fire Dept; Police

GOAL		POLICY		ACTION		METRIC	TIME	RESPONSIBLE PARTY
		FLU-1.4	Ensure adequate, well-maintained infrastructure, public safety, and public facilities for all development and prevent development ahead of infrastructure and service provision.	FLU-1.4.1	Conduct an assessment of current service boundaries and create regulations to guide the expansion of services.	Needs assessment and regulations created	Mid	Planning & Zoning; Utility Department; Fire Department; Engineering; Police Department; Operations
				FLU-1.4.2	Encourage development near community facilities and services (e.g., schools, recreation centers, health facilities) to fully utilize existing services and limit duplication.	Percent of new development within 1/4 mile of existing community facilities	Mid	Planning & Zoning; Utility Department; Engineering, Chamber, Fort Smith Homebuilders Association
		FLU-1.5	Provide opportunities for mixed-use development to occur in Downtown Fort Smith and identified emerging centers in order to provide access to a variety of uses; promote walkable, pedestrian friendly development; and encourage physical activity.	FLU-1.5.1	Locate mixed-use and commercial development near employment centers and higher density residential centers to provide options for convenience retail and restaurants close to where people live and work.	Percent of new development in targeted growth areas	Mid	Planning & Zoning; Fort Smith CBID; Chamber; Administration
		FLU-1.6	Create opportunities for the mixing of land uses to occur within single buildings and within emerging centers identified in the Preferred Future.	FLU-1.6.1	Develop corridor and area plans that address access management, land use, design, internal parking, and circulation.	Number of plans completed (3 Corridor Typologies Identified in CSS Element)	Long	Planning & Zoning; Engineering; AHTD
				FLU-1.6.2	Publicize new mixed use areas within the development and real estate community.	Percent of new development that incorporates mixing of uses	Long	Planning & Zoning, Fort Smith Homebuilder Association, Fort Smith Board of Realtors; Chamber
FLU-2	Activate Fort Smith's scenic riverfront	FLU-2.1	Encourage a mix of housing, retail, and entertainment attractions along the City's waterfront that support day and nighttime activity and a vibrant urban lifestyle.	FLU-2.1.1	Improve access in an effort to incentivize development in areas along the riverfront.	Increase in number of access points and type of access (bike, ped, transit)	Mid	Fort Smith Residents, Planning & Zoning; Greater Fort Smith Chamber of Commerce; Fort Smith CBID; Engineering
				FLU-2.1.2	Ensure that land development within the river district reflects uses appropriate to the 100-year flood plain and adjacency to the downtown and residential neighborhoods.	Amount of compatible new development	Long	Planning & Zoning; Fort Smith CBID; Engineering; Land Owners

GOAL		POLICY		ACTION		METRIC	TIME	RESPONSIBLE PARTY
		FLU-3.4	Develop and promote niche markets that distinguish the downtown from other retail and entertainment options, and reinforces downtown's position as a destination.	FLU-3.4.1	Promote the Farmer's Market and encourage more participation by providing shade.	Number of visitors to the Farmer's Market	Short	Fort Smith Residents, Local Business Owners, Greater Fort Smith Chamber of Commerce; Fort Smith CBID; Advertising and Promotion Commission; Parks Department
				FLU-3.4.2	Build Maybranch bike trail for connectivity.	The completion of the Maybranch bike trail	Long	Parks & Recreation; Engineering
		FLU-3.5	Locate future cultural activities, entertainment options, service-oriented businesses, and public, private, or institutional programs in downtown.	FLU-3.5.1	Identify potential key locations for cultural and institutional programs and uses downtown and the riverfront.	Number of new cultural and institutional programs Downtown and in the Riverfront area.	Mid	Fort Smith CBID; Greater Fort Smith Chamber of Commerce; Tourism; Convention Center; Parks; Advertising and Promotion Commission
Economic Development								
ED-1	Broaden employment sectors that will drive the City's economy	ED-1.1	Encourage and support start up companies and small businesses.	ED-1.1.1	Provide regulatory and financial incentives for small businesses (including food trucks, etc).	Number of new small businesses	Mid	Local Business Owners, Local Entrepreneurs, Greater Fort Smith Chamber of Commerce; Administration; Planning and Zoning; Building Safety
				ED-1.1.2	Work with successful local businesses to develop business 'boot camps' for new entrepreneurs.	Successful boot camp program complete	Mid	Local Business Owners, Local Entrepreneurs, Greater Fort Smith Chamber of Commerce; Administration
				ED-1.1.3	Expand and promote the small business development center that would connect businesses to SBA grants and programs, like the Microloan Program, facilitate a mentoring program for young entrepreneurs, and provide other business counseling services.	Number of businesses connected to SBA grants and programs	Mid	Local Business Owners, Greater Fort Smith Chamber of Commerce; Administration; UAFS; ATU
				ED-1.1.4	Support development of a "small business web portal" to streamline the City's permitting and licensing processes.	The completion of the web portal	Mid	Information & Technology; Finance; Planning and Zoning

GOAL		POLICY		ACTION		METRIC	TIME	RESPONSIBLE PARTY
				ED-1.1.5	Promote green building practices to help small businesses save on energy and operating costs.	Number of small businesses participating in energy conservation	Mid	Local Business Owners, Greater Fort Smith Chamber of Commerce; UAFS Sustainable Conservation House; Building Safety; Franchise Utilities
		ED-1.2	Support programs and efforts that increase opportunities for growth in medical and higher education sectors.	ED-1.2.1	Identify strategies to retain talent in the medical profession with a focus on underserved areas.	Increase in the number of people employed in the medical sector	Long	College Students, Fort Smith Residents, Medical Industry Partners, Greater Fort Smith Chamber of Commerce;
		ED-1.3	Support business expansion and new business development in sectors identified as experiencing leakage.	ED-1.3.1	Explore market feasibility of an outlet mall.	Completion of a market feasibility study for an Outlet Mall	Mid	Greater Fort Smith Chamber of Commerce; Administration
				ED-1.3.2	Expand shop local campaign and shop local campaign online.	Number of businesses participating in the shop local campaign	Short	Local Business Owners; Fort Smith Residents; Greater Fort Smith Chamber of Commerce; Information & Technology; Administration
		ED-1.4	Capitalize on Fort Smith's strategic position at the crossroads of multiple modes of transportation to increase the city's employment base and regional economic impact.	ED-1.4.1	Attract employers to Fort Smith by advertising the city's proximity to key transportation infrastructure (rail, MCKARNS water way, I-49).	Number of new employers attracted to Fort Smith	Long	Greater Fort Smith Chamber of Commerce; Fort Chaffee Redevelopment Authority; RITA; WAPDD; Port Authority
				ED-1.4.2	Partner with trade schools and colleges to prepare the city's workforce for transportation and logistics related jobs.	Number of local graduates from the transportation and logistics sector	Long	Greater Fort Smith Chamber of Commerce; UAFS; ATU; Fort Smith School District
		ED-1.5	Identify and develop collaborations to fill gaps in the capital market that fund business start-up, retention and expansion.	ED-1.5.1	Evaluate private and public financing entities' ability to provide seed capital for new business ventures.	Evaluation complete	Long	Local Business Owners; Capital Market Representatives; Fort Smith Chamber of Commerce
				ED-1.5.2	Explore the feasibility of creating "lending pools" for new business investment.	Completion of a feasibility study	Long	Greater Fort Smith Chamber of Commerce; Local Banks

GOAL		POLICY		ACTION		METRIC	TIME	RESPONSIBLE PARTY
		ED-4.2	Support all economic efforts operating under a well-coordinated organizational structure led by the Chamber of Commerce.	ED-4.2.1	Establish economic development incentive policies that measure the performance of City investments with a cost/benefit analysis of the long-term economic and quality-of-life benefits to the region.	Creation of a cost/benefit analysis	Short	Administration; Greater Fort Smith Chamber of Commerce; Local Business Owners; Finance; Internal Auditor
				ED-4.2.2	Support Chamber and AEDC in their efforts to increase jobs in the area.	Number of new jobs created in Fort Smith	Long	Greater Fort Smith Chamber of Commerce; Arkansas Economic Development Commission; Administration; Local Business Owners
ED-5	Diversify the local economic base and strengthen and stabilize the tax base to maintain viability during fluctuating economic cycles	ED-5.1	Identify industries which are growing in the region (and nationally) for which Fort Smith might provide a good fit.	ED-5.1.1	Conduct target industry analyses to determine existing and future industry concentrations and potential market segments for future retention and recruitment efforts.	Completion of a target industry analysis	Mid	Greater Fort Smith Chamber of Commerce; Administration; Local Business Owners
		ED-5.2	Encourage a full-service array of retail and service opportunities, thus limiting the necessity by residents and employees to leave the community to purchase goods and services (i.e. leakage).	ED-5.2.1	Periodically monitor the retail expenditures from Fort Smith and identify categories for which leakage can be reversed.	Leakage analysis updated	Short	Greater Fort Smith Chamber of Commerce; Local Business Owners; Finance
				ED-5.2.2	Work with the Chamber of Commerce to tailor retail economic development efforts to attract retailers who can complement, rather than compete with, Fort Smith's existing retail base.	Number of new retailers providing new goods or services	Short	Greater Fort Smith Chamber of Commerce; Administration; Local Business Owners
ED-6	Create a quality working environment that fosters an attractive sense of place	ED-6.1	Ensure that economic development objectives are included in the evaluation of all future City infrastructure projects, including parks and recreation facilities.	ED-6.1.1	Invest in beautification of major transportation corridors; the provision of trails, open lands, and public gathering spaces; innovative architectural and site design; and alternative transportation choices to all business areas.	Percent increase in funding for beautification in the targeted growth areas	Mid	Administration; Planning and Zoning Department; Parks & Recreation; Engineering; Transit; Sanitation; Beautify Fort Smith

Jeremy Jones

River City Cycles

3510 Grand Avenue

Fort Smith, Arkansas 72904

November 16, 2015

City of Fort Smith

Planning Department

623 Garrison Avenue

Fort Smith, Arkansas 72901

RE: Text Amendment

C-4 Zoning District

Please accept this letter as request to obtain a Text Amendment to the Unified Development Ordinance of the City of Fort Smith. Specifically, to add Motorcycle or ATV Sales and Service to the C-4 zoning district as a Permitted Use.

Attached please find Page 2 from the Land Use Matrix, noting our request for the Permitted Use legend to be placed on the Matrix in the C-4 column.

Please place this request on the agenda for the first available Planning Commission Study Session.

Your consideration in this matter is appreciated. If you have any questions or need further information, please contact me at 918-618-2262.

J Jones

3G

described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

- The Fort Chaffee Redevelopment Authority shall approve the Master Land Use Plan Amendments to the Chaffee Crossing Master Land Use map.

- Any signage in addition to the façade sign shall comply with the Chaffee Crossing Design Guidelines and the UDO. Should any digital face sign be installed, the digital face shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter.

- All exterior lighting shall comply with the Commercial and Outdoor Lighting requirements.

Vice Chairman Keesee then called for the vote on the rezoning request as amended. The vote was 6 in favor and 1 abstention. (Keesee)

3. **A request by Jeremy Jones for a text amendment to the Unified Development Ordinance to add motorcycles or ATV sales and service to the Commercial-4 zoning district as a permitted use.**

Mr. Wally bailey read the staff report indicating the purpose of this request is for a text amendment to the Unified Development Ordinance to allow auto vehicle dealer (indoors) in the Commercial-4, Commercial Heavy (C-5), Industrial Light (I-1), Industrial Moderate (I-2) and Industrial Heavy (I-3) zoning district as a permitted use and a conditional use in the Commercial Downtown (C-6) zoning district. The Planning Commission also approved the following definition created for the City of Fort Smith UDO entitled Auto and vehicle dealer (indoors):

Auto and vehicle dealer (indoors)

Shall mean a climate controlled facility used for the display and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, but not including heavy equipment. All sales, service, storage and display areas shall be indoors. Service and storage areas shall cumulatively be incidental and subordinate to the primary use of sales and displays.

Vice Chairman Keesee then called for the vote on the proposed text amendment. The vote was 7 in favor and 0 opposed.

RECESS PLANNING COMMISSION
CONVENE BOARD OF ZONING ADJUSTMENT

4. **Variance #37-12-15; A request by Affordable Construction Group, agent Gonzalo and Nely Portillo, for a variance from 20 feet to 0 feet minimum street frontage located at 3305 Newlon Road.**

   Ms. Brenda Andrews read the staff report indicating the purpose for the variance will allow Mr. Portillo to build a single family home at this location and utilize utility and access easements for utility installation and access to the property.

   Mitch Minnick was present to speak on behalf of this request.

   No one was present to speak in opposition to the request.

   Vice Chairman Keesee then called for the vote on the variance.
   Motion was made by Commissioner Howard, seconded by Commissioner Carson and carried with a vote of 6 in favor and 1 abstention (Richardson) to approve the development plan subject to the following:

   - A plat formally crating the lot shall be submitted for staff review and filing.
   - The utility and access easements shall be noted on the plat.
   - The development of the property shall be limited to one single family house and any future accessory buildings.

   Vice Chairman Keesee then called for the vote on the variance request as amended. The vote was 6 in favor and 1 abstention. (Richardson)

5. **Variance #38-12-15; A request by Ron Brixey, agent for Delmas Roberts, for a variance from 150 feet to 121.7 feet minimum driveway separation and from 25 feet to 10 feet front yard setback located at 2000 South Savannah Street.**

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FORT SMITH, ARKANSAS, AND THE 188TH WING OF THE ARKANSAS AIR NATIONAL GUARD

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

Section 1: The Memorandum of Understanding ("MOU") between the City of Fort Smith, Arkansas, and the 188th Wing of the Arkansas Air National Guard, which shall be substantially in the form attached hereto, is hereby approved.

Section 2: The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute this MOU to which the City of Fort Smith is a party.

THIS RESOLUTION ADOPTED this _____ day of _____, 2015.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to Form

_____
No Publication Required

Fort Smith Fire Department
200 North Fifth Street
Fort Smith, Arkansas 72901
479-783-4052

Terry Bigler
Interim Chief

Memo

To: Jeff Dingman, Acting City Administrator
From: Terry Bigler, Interim Fire Chief
Date: December 2, 2015
Re: Memorandum of Understanding with 188th Wing Arkansas National Guard

Due to the loss of the full-time firefighting mission at the Ebbing Air National Guard Base (EANGB), it has become necessary to redo the Memorandum of Understanding (MOU) with the 188th Wing of the Arkansas National Guard.

As outlined in the proposed MOU, the 188th is required by the Department of Defense Instruction (DoDI) 6055.6, DoD Fire and Emergency Services (F&ES) Program to have this MOU with the City.

Fire Department staff and the City Attorney have reviewed the agreement and are recommending approval of the MOU. Please contact me if you have any questions.

Attachments (1)

MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE
CITY OF FORT SMITH, ARKANSAS
AND
THE 188th WING, ARKANSAS AIR NATIONAL GUARD

This is a Memorandum of Understanding (MOU) between the City of Fort Smith, Arkansas (hereinafter known as the "CITY"), and the 188TH Wing, Arkansas Air National Guard (hereinafter known as the "WING"). When referred to collectively, the CITY and the WING are referred to as the "Parties."

1. BACKGROUND: Currently, the 188th Wing, Arkansas Air National Guard, leases from the Fort Smith Airport Authority (hereinafter referred to as the "Airport Authority") and licenses the Arkansas Air National Guard to occupy the real estate on which is situated the Ebbing Air National Guard Base (hereinafter known as "EANGB"). There is no 188th Wing full-time firefighter mission at the EANGB. Since the EANGB is located within the CITY emergency response area, the WING has identified the need for an MOU with the CITY to meet the emergency requirements of Department of Defense Instruction (DoDI) 6055.6, *DoD Fire and Emergency Services (F&ES) Program.*

2. PURPOSE: This MOU is initiated to address emergency response services and to permit the CITY to visit the EANGB for preplanning purposes. It also establishes the responsibilities between the CITY and the WING.

3. UNDERSTANDINGS OF THE PARTIES:

3.1. The CITY—

3.1.1. Will authorize the Fort Smith Fire Department to respond to the EANGB upon request from an authorized representative of the EANGB for an emergency response.

3.1.2. Will provide initial emergency responses to the EANGB, upon request. The amount of equipment, type of equipment and the number of personnel furnished shall be determined by a representative of the CITY.

3.1.3. Will utilize the National Incident Management System (NIMS).

3.1.4. Will provide a designated Incident Commander for all emergency responses to the EANGB.

3.1.5. Will initiate and coordinate any additional emergency response i.e., (Hazardous Materials, CBRNE, WMD, Technical Rescue, etc.) with the appropriate agency or agencies.

3.1.6. Will ensure the designated Incident Commander coordinates with the WING emergency response liaison, as requested or required by the CITY or the WING.

3.1.7. Will provide or request an appropriate level of personnel, type(s) of equipment, and any other required resources with a goal of meeting the following United States Air Force (USAF) minimum levels of service objectives for 90% of all responses:

3.1.7.1. Structural Fire/Investigative/Technical Rescue Responses:

First Arriving Company:	3 personnel within 4 minutes
Initial Full Alarm:	15 personnel within 8 minutes

3.1.7.2. HazMat/CBRNE Responses:

First Arriving Company: 3 personnel within 4 minutes

Initial Full Alarm: Will be dependent on the type of HazMat level of the incident

3.1.7.3. EMS Responses:

Fire Arriving Company – Basic Life Support (BLS) with AED:
3 personnel within 4 minutes

3.1.8. In the event that an exigent situation should arise that would necessitate such action, the Fort Smith Fire Department reserves the right to alter any level of personnel, type(s) of equipment, response times, and any other required resources to respond to any type of emergency responses. Additionally, the Fort Smith Fire Department reserves the right to recall immediately any or all of the manpower, vehicles, equipment or other resources, if, in the opinion of the Fort Smith Fire Chief, that to do otherwise would jeopardize municipal property or would endanger the lives or property of the citizens of the City of Fort Smith.

3.1.9 Prior to scheduling visits to EANGB for preplanning purposes, the CITY will provide a roster of intended visitors to the designated WING Point of Contact (POC). The roster will include the name, social security number, and proof of a valid driver's license for each individual. The CITY will provide an updated roster to the WING POC prior to each scheduled visit to EANGB.

3.2. The WING —

3.2.1. Will provide the CITY with access to EANGB for preplanning purposes.

3.2.2. Will provide an emergency response liaison to the CITY Incident Commander, as requested or required by either party. The WING liaison shall report to the CITY Incident Commander and provide coordination of WING resources, if required, requested and available.

3.2.3. Will provide access to the WING facility pre-fire plans during preplanning visits and emergency responses.

3.2.4. In coordination with the emergency response liaison, will provide access to EANGB facilities and fire alarm system keys during preplanning and emergency responses.

3.2.5. Will coordinate with the CITY Incident Commander in order to provide access to EANGB for additional emergency responders, as requested or required by the CITY Incident Commander.

3.2.6. During emergencies the CITY responders will be permitted expeditious entry to Sensitive Compartmented Information Facilities (SCIFs) or areas where Sensitive Compartmented Information (SCI) is located even though sanitization may not be possible. The health and safety of personnel are paramount. If inadvertent access to SCI occurs, an inadvertent disclosure statement will be administered after the emergency is over. The statements will only be administered if a reasonable opportunity existed for access to SCI.

4. CIVIL LIABILITY:

4.1. Each party waives all claims against the other party for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this agreement.

4.2. The CITY may claim reimbursement for the direct expenses and losses that are additional costs above the normal operating costs incurred while responding to an incident under this agreement as provided in 44 CFR Part 151, *Reimbursement for Costs of Fire Fighting on Federal Property.*

5. PERSONNEL: Each Party is responsible for all costs of its personnel, including pay and benefits, support and travel. Each Party is responsible for supervision and management of its personnel.

6. GENERAL PROVISIONS:

6.1. POINTS OF CONTACT: The following points of contact will be used by the Parties to communicate in the implementation of this MOU. Each Party may change its point of contact upon reasonable notice to the other Party.

6.1.1. For the CITY:

6.1.1.1 Primary: Terry Bigler, Assistant Fire Chief (479) 783-4052

6.1.1.2. Alternate: Phil Christensen, Division Chief, (479) 783-4052

6.1.2. For the WING:

6.1.2.1. Primary: SMSgt Terry Edwards, Fire Chief, (479) 573-5250

6.1.2.2. Alternate: MSgt Lisa Vanderford, Plans & Integration, (479) 573-5408

6.2. CORRESPONDENCE: All correspondence to be sent and notices to be given pursuant to this MOU will be addressed, if to the CITY, to:

6.2.1. Fire Chief
200 N 5th St
Fort Smith, AR. 72901

and, if to the WING, to:

6.2.2. Terry Edwards, SMSgt, AR ANG
4850 Leigh Ave
Fort Smith, AR. 72903
Terry.r.edwards2.mil@mail.mil

6.4. MODIFICATION OF MOU: This MOU may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. This MOU will be reviewed annually on or around the anniversary of its effective date by the CITY and the WING, and triennially in its entirety by NGB/A7.

6.5. DISPUTES: Any disputes relating to this MOU will, subject to any applicable law, Executive order, directive, or instruction, be resolved by consultation between the Parties.

6.6. TERMINATION OF UNDERSTANDING: This MOU may be terminated in writing at will by either Party.

6.7. TRANSFERABILITY: This MOU is not transferable except with the written consent of the Parties.

6.8. ENTIRE UNDERSTANDING: It is expressly understood and agreed that this MOU embodies the entire understanding between the Parties regarding the MOU's subject matter.

6.9. EFFECTIVE DATE: This MOU takes effect beginning on the day after the last Party signs.

6.10. EXPIRATION DATE: This MOU expires nine (9) years from the date the last Party signs.

APPROVED:

BY THE BOARD OF DIRECTORS AND SIGND BY THE MAYOR FOR THE CITY OF FORT SMITH

SANDY SANDERS
MAYOR

(Date)

Attest:

SHERRI GARD
CITY CLERK

(Date)

FOR THE 188TH WING

BOBBI J. DOORENBOS, COL, AR ANG
COMMANDER

16 Nov 15
(Date)

5B

ORDINANCE NO._____

AN ORDINANCE AUTHORIZING THE APPROPRIATION OF FUNDS FOR THE WATER AND SEWER REFUNDING AND CONSTRUCTION REVENUE BONDS, SERIES 2015

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

There is hereby authorized an appropriation in the amount of $2,193,042 from the unobligated balance of the Water and Sewer Operating Fund to the Water and Sewer Bond Fund to provide the principal and interest deposits due on the City of Fort Smith Water and Sewer Refunding and Construction Revenue Bonds, Series 2015.

PASSED AND APPROVED THIS_____DAY OF JANUARY, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form:

_____
No Publication Required

5B

MEMORANDUM

January 4, 2016

TO: Jeff Dingman, Acting City Administrator

FROM: Jennifer Walker, Finance Director

SUBJECT: Debt Service Payments Appropriation

The attached ordinance provides an appropriation from the unobligated balance of the Water Sewer Operating Fund to the Water Sewer Bond fund to provide the principal and interest payments for Refunding and Construction Bonds, Series 2015. The 2016 portion of the payments will be $2,193,042. Please let me know if you have additional questions.

Jennifer Walker

5C

RESOLUTION NO._____

RESOLUTION ACCEPTING BIDS FOR THE PURCHASE OF AGGREGATES, SAND, CONCRETE, AND ASPHALT CONCRETE PRODUCTS FOR 2016

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY FORT SMITH, ARKANSAS, THAT:

The Bids, as indicated by enclosure on the attached Bid Tabulation **12-16-15BA** for the purchase of concrete, asphalt, and other materials for 2016, are accepted.

This Resolution adopted this _____ day of January, 2016.

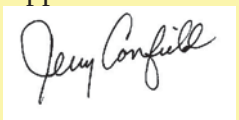
APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Approved as to form:



_____
No Publication Required

5C

Interoffice Memorandum

TO: Jeff Dingman, Acting City Administrator

FROM: Alie Bahsoon, Purchasing Manager AB

SUBJECT: 2016 Sand, Concrete & Asphalt Bid Tabulation

DATE: December 30, 2015

BID TAB: **12-16-15BA**

Attached you will find the 2016 bid tabulations for **Aggregates, Sand, Concrete, and Asphalt Concrete Materials.** These items will be used by various City departments and will remain in effect for all of 2016.

Please note that there was an average of $4.38 increase in the price of concrete from last year. These materials have been budgeted for accordingly in the 2016 budget. For your convenience, I have attached a copy of the 2015 bid tabulation for comparison purposes.

I recommend that the bids noted by enclosure on the attached tabulation be accepted. Please let me know if you should have any questions.

Tabulation of Bids for Concrete and Sand for **2016**

Bid Tab: 12-16-15BA

Description	APAC-Central, Inc. (Arkhola) Ft. Smith, AR							GCC Mid-Continent Ft. Smith, AR				Bid Item #
	At Plant *		At Plant **		At Plant		Delivered	At Plant		Delivered		
Crushed Stone (Aggregate Base)	**$11.55**	✓	**$11.80**	✓	N/A		N/A	N/A		N/A		2
3/4" to 1 1/2" Concrete Rock	**$12.70**	✓	**$13.45**	✓	N/A		N/A	N/A		N/A		3
Rip Rap	**$17.00**	✓	**$17.00**	✓	N/A		N/A	N/A		N/A		4
Gabion Stone	N/A		**$13.75**	✓	N/A		N/A	N/A		N/A		5
Concrete Class AAA/4000 PSI	N/A		N/A		$87.00		$99.00	**$80.00**	✓	**$92.00**	✓	6a
Concrete Class AAA (AE)/4000 PSI	N/A		N/A		$87.00		$99.00	**$80.00**	✓	**$92.00**	✓	6b
Concrete Class AAA (AE)(HES)/4000 PSI	N/A		N/A		$108.00		$118.00	**$94.00**	✓	**$108.00**	✓	6c
Concrete Class AA/3500 PSI	N/A		N/A		$84.00		$96.00	**$78.00**	✓	**$90.00**	✓	6d
Concrete Class AA AE/3500 PSI	N/A		N/A		$84.00		$96.00	**$78.00**	✓	**$90.00**	✓	6e
Concrete Class AA AE HES/3500 PSI	N/A		N/A		$104.00		$114.00	**$93.00**	✓	**$107.00**	✓	6f
Concrete Class A/3000 PSI	N/A		N/A		$76.00		$93.00	**$74.00**	✓	**$88.00**	✓	6g
Concrete Class A (AE)/3000 PSI	N/A		N/A		$76.00		$93.00	**$74.00**	✓	**$88.00**	✓	6h
Concrete Class A (AE)(HES)/3000 PSI	N/A		N/A		$100.00		$110.00	**$92.00**	✓	**$106.00**	✓	6i
Concrete Class B/2500 PSI	N/A		N/A		$76.00		$93.00	**$74.00**	✓	**$87.00**	✓	6j
Concrete Class B (HES)/2500 PSI	N/A		N/A		$100.00		$110.00	**$90.00**	✓	**$105.00**	✓	6k
Utility Backfill (Slurry)	N/A		N/A		$58.00		$68.00	**$56.00**	✓	**$66.00**	✓	7
Sand	N/A		N/A		$8.65	✓	N/A	N/A		N/A		8
Stone Chips	N/A		N/A		$15.50	✓	N/A	N/A		N/A		12
Optional Items												
Calcium Chloride – 1% (Per Cubic Yard)	N/A		N/A		N/A		$3.00	N/A		$3.00		N/A
Calcium Chloride – 2% (Per Cubic Yard)	N/A		N/A		N/A		$6.00	N/A		$6.00		N/A
Fiber (Per Bag)	N/A		N/A		N/A		$6.00	N/A		$6.00		N/A
Hot Water							$5.00			$5.00		N/A

All Prices Firm for 2016

✓ Awarded Bid * Preston Plant ** Jenny Lind Plant

GCC Mid-Continent orders; subject to a $75 delivery fee if less than 4 yards

2016 Bid Tabulation

Tabulation of Bids for Concrete and Sand for **2016**

Bid Tab 12-16-15BA

Description	**Arkhola Sand & Gravel Ft. Smith, AR**		**JOB Construction Poteau, OK**		Bid Item #
	At Plant		**At Plant**		
Asphalt Concrete Hot Mix Surface Course (II)	**$73.00**	✓	No bid		9
Asphalt Concrete Cold Plant Mix	**$95.00**	✓	No bid		10
Asphalt Concrete High Performance Cold Mix	N/A		**No bid**		11
Asphaltic Concrete Hot Mix Binder Course	**$68.00**	✓	No bid		13
Asphaltic Concrete Hot Mix Surface Course	**$73.00**	✓	No bid		14
Asphaltic Concrete Hot Mix Surface Course-AHTD 12.5 mm	**$82.00**	✓	No bid		15
Asphaltic Concrete Hot Mix Surface Course-AHTD 9.5 mm	**$84.00**	✓	No bid		16

All Prices Firm for 2016

✓ Awarded Bid

2016 Bid Tabulation

Tabulation of Bids for Concrete and Sand for **2015**

Bid Tab: 12-30-14BA

Description	APAC-Central, Inc. (Arkhola) Ft. Smith, AR							Mid-Continent Ft. Smith, AR				Bid Item #
	At Plant *		At Plant **		At Plant		Delivered	At Plant		Delivered		
Crushed Stone (Aggregate Base)	$11.55	✓	$11.80	✓	N/A		N/A	N/A		N/A		2
3/4" to 1 1/2" Concrete Rock	$12.70	✓	$13.45	✓	N/A		N/A	N/A		N/A		3
Rip Rap	$17.00	✓	$17.00	✓	N/A		N/A	N/A		N/A		4
Gabion Stone	N/A		$13.75	✓	N/A		N/A	N/A		N/A		5
Concrete Class AAA/4000 PSI	N/A		N/A		$81.00		$93.00	$75.00	✓	$87.00	✓	6a
Concrete Class AAA (AE)/4000 PSI	N/A		N/A		$81.00		$93.00	$75.00	✓	$87.00	✓	6b
Concrete Class AAA (AE)(HES)/4000 PSI	N/A		N/A		$94.00		$108.00	$88.00	✓	$102.00	✓	6c
Concrete Class AA/3500 PSI	N/A		N/A		$78.00		$91.00	$74.00	✓	$85.00	✓	6d
Concrete Class AA AE/3500 PSI	N/A		N/A		$78.00		$91.00	$74.00	✓	$85.00	✓	6e
Concrete Class AA AE HES/3500 PSI	N/A		N/A		$94.00		$108.00	$87.00	✓	$100.00	✓	6f
Concrete Class A/3000 PSI	N/A		N/A		$74.50		$88.00	$73.00	✓	$84.00	✓	6g
Concrete Class A (AE)/3000 PSI	N/A		N/A		$74.50		$88.00	$73.00	✓	$84.00	✓	6h
Concrete Class A (AE)(HES)/3000 PSI	N/A		N/A		$92.50		$108.00	$86.00	✓	$100.00	✓	6i
Concrete Class B/2500 PSI	N/A		N/A		$74.50		$106.00	$71.00	✓	$83.00	✓	6j
Concrete Class B (HES)/2500 PSI	N/A		N/A		$90.50		$106.00	$85.00	✓	$99.00	✓	6k
Utility Backfill (Slurry)	N/A		N/A		$56.00		$66.00	$55.00	✓	$65.00	✓	7
Sand	N/A		N/A		$8.65	✓	N/A	N/A		N/A		8
Stone Chips	N/A		N/A		$15.00	✓	N/A	N/A		N/A		12

Optional Items

Calcium Chloride – 1% (Per Cubic Yard)							$3.00			$3.00		N/A
Calcium Chloride – 2% (Per Cubic Yard)							$6.00			$6.00		N/A
Fiber (Per Bag)							$6.00			$6.00		N/A

All Prices Firm for 2015

✓ Awarded Bid

* Preston Plant

** Jenny Lind Plant

2015 Bid Tabulation

Tabulation of Bids for Concrete and Sand for **2015**

Bid Tab: 12-30-14BA

Description	Arkhola Sand & Gravel Ft. Smith, AR		JOB Construction Poteau, OK		Bid Item #
	At Plant		At Plant		
Asphalt Concrete Hot Mix Surface Course (II)	$73.00	✓	N/A		9
Asphalt Concrete Cold Plant Mix	$95.00	✓	N/A		10
Asphalt Concrete High Performance Cold Mix	N/A		$108.00	✓	11
Asphaltic Concrete Hot Mix Binder Course	$68.00	✓	N/A		13
Asphaltic Concrete Hot Mix Surface Course	$73.00	✓	N/A		14
Asphaltic Concrete Hot Mix Surface Course-AHTD 12.5 mm	$82.00	✓	N/A		15
Asphaltic Concrete Hot Mix Surface Course-AHTD 9.5 mm	$84.00	✓	N/A		16

All Prices Firm for 2015

✓ Awarded Bid

RESOLUTION NO. _____

RESOLUTION ACCEPTING BIDS FOR THE PURCHASE OF FLEET RUCKS

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY FORT SMITH, ARKANSAS, THAT:

The bids, as indicated by enclosure on the attached Bid Tabulation **12-09-15BA** for the purchase of various trucks for the City's fleet, are accepted.

This Resolution adopted this _____ day of January, 2016.

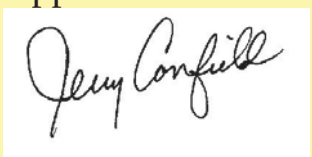
APPROVED:

_____
MAYOR

ATTEST:

_____
CITY CLERK

Approved as to form:



_____
No Publication Required

5D

Inter office Memorandum

TO: Jeff Dingman, Acting City Administrator

FROM: Alie Bahsoon, Purchasing Manager AB

SUBJECT: 2015 Utilities Fleet Bid Tabulation

DATE: December 30, 2015

BID TAB: **12-09-15BA**

Bids were solicited for the purchase and replacement of trucks for various departments within the Utilities Department.

You will find attached the bid tabulation and the recommendations for bid award for each respective bid. I am also providing a recap of the fleet being replaced. Said vehicles will be sold at the annual city auction due to age, high mileage, and/or maintenance issues:

- Bid 1-5606: Wastewater Equipment Maintenance-replace 1991 one ton flatbed (Asset 540)
- Bid 1-5610: Water Line Maintenance-replace 2003 two ton dump truck (Asset 531)
- Bid 1-5611: Sewer Line Maintenance-replace 2006 ½ ton pickup (Asset 940)
- Bid 4-5613: Metering/Transmission Line Maintenance–replace 2006 one ton flatbed (Asset 040)

Funds for these purchases are available and have been appropriated for from the 2015 Water and Sewer Revenue Bonds.

I am recommending that the Board accept and approve the bids as noted by enclosure on the attached bid tabulation.

Please let me know if you should have any questions.

CITY OF FORT SMITH
2015 Utilities Department Trucks Bid Tabulation NO. 12-09-15BA

BID	Breeden Dodge Ft. Smith, AR	Dunn Ford Stigler, OK	Smith Chevrolet Fort Smith, AR Chevrolet Division	Smith Chevrolet Fort Smith, AR Ford Division	Smith Chevrolet Fort Smith, AR Chrysler Division	Peterbilt of Ft. Smith Van Buren, AR	Shipley Motor Fort Smith, AR	Carco Intl. Ft. Smith, AR
1-5606	Yr: 2016 Make: RAM Model: 3500 Cost: $41,639 Bed: Cadet Del. 45-60 days	Yr: 2016 Make: Ford Model: F350 Cost: $38,338 Bed: Arrowhead Del. 45-60 days Cost: $38,465 Bed: Custom Equip Del. 45-60 days	Yr: 2016 Make: Chevrolet Model: Silverado 3500 Cost: $38,841 * ✓ Bed: Cadet Del. 75-90 days	Yr: 2016 Make: Ford Model: F350 Cost: $39,238 Bed: Cadet Del. 75-90 days	Yr: 2016 Make: RAM Model: 3500 Cost: $42,496 Bed: Cadet Del. 75-90 days	No Bid	No Bid	No Bid
1-5610	No Bid	No Bid	No Bid	No Bid	No Bid	Yr: 2016 Make: Peterbilt Model: 337 Bed: HilBilt Cost: $76,871 Del. 90 days	Yr: 2016 Make: HINO Model: 338 Bed: Davis Cost: $79,851 Del. 45-60 days	Yr: 2016 Make: Navistar Model: Durastar Bed: Davis Cost: $75,293 ✓ Del. 90 days
1-5611	Yr: 2016 Make: RAM Model: 1500 Cost: $19,219** Tow Pkg: Inc. Cruise: Inc. Del. 45-60 days	Yr: 2016 Make: Ford Model: F150 Cost: $22,766 Tow Pkg: Inc. Cruise: $203 Del. 45-60 days	Yr: 2016 Make: Chevrolet Model: Silverado 1500 Cost: $23,958 Tow Pkg: $330 Cruise: Inc. Del. 75-90 days	Yr: 2016 Make: Ford Model: F150 Cost: $22,916 ✓ Tow Pkg: $447 Cruise: $203 Del. 75-90 days	Yr: 2016 Make: RAM Model: 1500 Cost: $24,721 Tow Pkg: Inc. Cruise: Inc. Del. 75-90 days	No Bid	No Bid	No Bid

5D

BID	Breeden Dodge Ft. Smith, AR	Dunn Ford Stigler, OK	Smith Chevrolet Fort Smith, AR Chevrolet Division	Smith Chevrolet Fort Smith, AR Ford Division	Smith Chevrolet Fort Smith, AR Chrysler Division	Peterbilt of Ft. Smith Van Buren, AR	Shipley Motor Fort Smith, AR	Carco Intl. Ft. Smith, AR
4-5613	Yr: 2016 Make: Dodge Model: Ram Cost: $49,500 Bed: Cadet Del. 45-60 days	Yr: 2016 Make: Ford Model: F350 Cost: $48,755 Bed: Cadet Del. 45-60 days Cost: $48,532 Bed: Knapheide Del. 45-60 days	Yr: 2016 Make: Chevrolet Model: Silverado 3500 Cost: $46,752 ✓ Bed: Galion Del. 75-90 days	Yr: 2016 Make: Ford Model: F350 Cost: $48,993 Bed: Galion Del. 75-90 days	No Bid	No Bid	No Bid	No Bid

- Bid 1-5606 1 Ton 4x2 Single Cab Truck, Long Chassis, Dual Rear Wheels, Flat Bed **Qty. 1 (Waste Water Equip. Maintenance)**
- Bid 1-5610 2 Ton Single Axle Cab and Chassis Dump Truck; Qty. 1 **(Water Line Maintenance)**
- Bid 1-5611 1/2 Ton, Regular Cab, 4 Wheel Drive, V6 P/U Truck; **Qty. 1 (Sewer Line Maintenance)**
- Bid 4-5613 1 Ton Heavy Duty Cab & Chassis, 4x4, w/Flat Steel Bed with Lift Gate ; **Qty. 1 (Metering/Transmission Line Maintenance)**

Bids advertised 11-29-2015
Bids opened 12-09-2015
✓ Recommend Bid Award

*Requesting local vendor preference
**Vendor recalled bid due to incorrect pricing; quoted a 2 wheel drive truck

Note: Randall Ford & Sallisaw Ford did not submit bids

RESOLUTION NO. _____ 5 E

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH SHANNON & WILSON, INC., FOR PROVIDING ENGINEERING SERVICES ASSOCIATED WITH YEAR 2016 POST CONSTRUCTION MONITORING AND INSPECTION OF THE LAKE FORT SMITH DAM AND RESERVOIR

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

SECTION 1: An Agreement with Shannon & Wilson, Inc., for providing engineering services associated with Year 2016 Post Construction Monitoring and Inspection of the Lake Fort Smith Dam and Reservoir, Project 16-01-ED1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute an Agreement for an amount of $86,388.00, for performance of said services.

This Resolution adopted this _____ day of January 2016

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____npr

INTER-OFFICE MEMO

TO: Jeff Dingman, Acting City Administrator DATE: December 28, 2015

FROM: Steve Parke, Director of Utilities

SUBJECT: Lake Fort Smith Dam and Reservoir
Year 2016 Post Construction Monitoring

For the past seven years the city has contracted with Shannon & Wilson to provide post construction monitoring of the Lake Fort Smith dam and reservoir. Post construction monitoring provides insight about the embankment's movement due to internal stress, verifies that the structure is performing as anticipated by its designers, and that desired factors of safety are met for the protection of downstream life and property. To date, the monitoring and inspection reports show that the embankment and structures are performing well.

Shannon & Wilson have submitted a proposal for providing post construction monitoring services and a comprehensive on-site inspection of the dam and reservoir for Year 2016. Under this proposal, Mickle Wagner Coleman will provide quarterly instrumentation readings and surveys which will be analyzed by Shannon & Wilson and documented in quarterly reports. In early 2017, Shannon & Wilson will provide an annual summary report of all data gathered in 2016. In addition, with assistance from Burns & McDonnell, Shannon & Wilson will perform a comprehensive inspection of the dam and reservoir and prepare a report documenting the condition of the structure. As in past years, these reports will be submitted to the Arkansas Natural Resources Commission. The total fee for providing the year 2016 services shall not exceed $86,388 without written approval of the City and includes the services of Mickle Wagner Coleman and Burns & McDonnell as sub-consultants to Shannon & Wilson.

A Resolution authorizing an agreement with Shannon & Wilson for providing post construction monitoring and the comprehensive on-site inspection for year 2016 is attached. Funds for this service are available from the water treatment operations budget.

Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

SHANNON & WILSON, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS

ALASKA
CALIFORNIA
COLORADO
FLORIDA
MISSOURI
OREGON
WASHINGTON
WISCONSIN

December 4, 2015

Mr. Lance McAvoy
City of Fort Smith
P.O. Box 1908
Fort Smith, Arkansas 72901

RE: PROPOSAL FOR POST CONSTRUCTION DAM MONITORING AND 2016 ANNUAL INSPECTION LAKE FORT SMITH CITY OF FORT SMITH, ARKANSAS

Dear Mr. McAvoy:

In response to your request of November 20, 2015 Shannon & Wilson, Inc. (SW), is pleased to submit this proposal for continuing services for monitoring the new Lake Fort Smith Dam. Included will be coordinating the services of Mickle Wagner Coleman (MWC) and Burns & McDonnell (B&M); reducing, plotting and reporting the instrumentation readings on a bi-monthly basis; an annual summary report for the instrumentation readings; and an annual inspection and report of the dam.

MWC will continue to collect the embankment extensometer and inclinometer data on a quarterly basis. We have included one set of additional readings to account for potential data quality problems or unexpected readings during the monitoring. The surface monuments, auxiliary spillway TDRs and observation wells will be read twice during 2016. B&M will review the quarterly and annual reports for any issues that they believe affect the operation or safety of the facilities.

SW will reduce the data provided by MWC and the piezometer, lake level, rainfall, and V-notch weir data provided by the City. The reduced data will be plotted, interpreted, and summarized in informal reports distributed via e-mail. Early in 2017 an annual summary report of all data collected during 2016 will be prepared and hard copies distributed.

2043 WESTPORT CENTER DRIVE
ST. LOUIS, MISSOURI 63146-3564
314-699-9660 FAX: 314-699-9661
TDD 1-800-833-6388
www.shannonwilson.com

41-2-23785

In late winter or early spring 2016, SW will perform an annual inspection of the project. This year the embankment, principal spillway, auxiliary spillway, intake tower excavation, outlet works excavation, and God's Ranch Road slopes will be inspected. About two days on-site are expected to be required to perform the inspection. Conditions will be documented on the inspection forms included in the O&M manual for the project and via photographs. The results of the inspection will be summarized in a formal report, one copy of which should be forwarded to the Dam Safety office of the State of Arkansas. Prior to submission of the final report a draft report will be submitted via e-mail for your review/comment. At this time we anticipate the inspection team consisting of three engineers/geologists from SW, one of which will be Mike Lambert. The third person is being added to provide for continuity of the inspection due to the age maturity of the existing inspectors.

We will provide the services as described above on a unit price basis in accordance with the attached Monthly Breakdown 2016 and Summary Costs 2016 estimate forms. The total fee for the services discussed above shall not exceed Eighty-Six Thousand, Three Hundred, Eighty-Eight Dollars ($86,388) without written approval of the City of Fort Smith.

The attached Shannon & Wilson, Inc., Standard Terms and Conditions and City of Fort Smith Policy Regarding Workers Who are not Citizens of the United States are incorporated and made a part of this agreement.

OUR SERVICE PROMISE TO YOU

Shannon & Wilson is dedicated to helping your project succeed and to making your experience with us a positive one. Our hope is that, if you enjoy working with us on this project, you will use our services on your next project! To that end, we want you to be completely satisfied with our performance, our personnel, and our project documentation. We encourage you to discuss any discrepancies between our service and your expectations with your project manager. If you still do not feel that we are delivering on our promise of superior service, we encourage you to take your concerns straight to our Saint Louis Office Manager, Tom Abkemeier. Tom's direct number is (314) 564-8109. Your project is important to us and we promise to do our best to deliver our services to your full satisfaction.

If this proposal meets with your approval, please sign in the space provided below and return one signed copy of this letter, which will serve as your authorization for us to proceed with the stated work. If you will be issuing a purchase order or other contracting documents, please reference this proposal.

If you have any questions regarding this proposal or desire to modify the scope of work, please call me. We appreciate your continued confidence in Shannon & Wilson, Inc.

Sincerely,

SHANNON & WILSON, INC.

Michael Lambert

Michael Lambert, P.E.
Senior Associate

MTL:TJA/tad

Enc: Lake Fort Smith Post Construction Instrumentation Monitoring – Monthly Breakdown 2016
Lake Fort Smith Post Construction Dam Monitoring – Summary Costs 2016
Standard General Terms and Conditions (All Purpose)
City of Fort Smith Policy Regarding Workers Who are not Citizens of the United States

Accepted:

City of Fort Smith, Arkansas

_____
By

_____
Title

_____
Date

Direct Correspondence and Billings to

Lance A. McAvoy
Attention

City of Fort Smith Utility Department
Organization

3900 Kelley Highway
Address

Fort Smith, AR 72904
City, State, & Zip

LanceM@FortSmithAR.gov
E-mail Address

Lake Fort Smith Post Construction Instrumentation Monitoring - Monthly Breakdown 2016

	MWC Periodic Costs 2016							B&M
	Embankment Extens. and Inclinometers	Surface Monuments	Auxiliary TDR & OW's	Lambert	Bilello	Accounting	Monthly Total	Periodic Billing 2016
January								
February	$2,500	$3,750		$692	$2,489	$140	$3,321	$480
March								
April								
May	$2,500		$1,500	$692	$2,489	$140	$3,321	$480
June								
July								
August	$2,500	$3,750		$692	$2,489	$140	$3,321	$480
September								
October								
November	$2,500		$1,500	$692	$2,489	$140	$3,321	$480
December								
Extra Allowance	$2,500			$1,384	$2,370	$0	$3,754	$480
Total Each Column:	$12,500	$7,500	$3,000	$4,152	$12,326	$560		$2,400
	TOTAL	**$23,000**		**TOTAL**	**$17,038**			**$2,400**

NOTES FOR MWC COSTS:
1. Pricing above reflects cost per trip. Trips planned according to SW Monitoring Schedule.
2. Additional trips required due to earthquakes, rapid draw down or other events will be the same prices as listed above.

NOTES FOR B&M COSTS:

1. Includes an allowance for all routine, non-travel expenses such as computer usage, telephone, fax, photocopy, etc.

NOTES FOR SW COSTS:
1. Scope as follows: Data will be reduced, plotted on spreadsheets and submitted with informal summary report on a quarterly basis.

2. All instrumentation data will be obtained by local personnel and emailed to SW for evaluation. City collects vwpz, lake level and v-notch weir readings and emails data monthly to SW.

As indicated in the table inclinometer and extensometer data, surface monument data, and auxiliary spillway TDR's and OW's data will be collected by MWC and emailed to SW.

Lake Fort Smith Post Construction Dam Monitoring - Summary Costs 2016

Description	Cost ($)
MWC Periodic Cost	$23,000
B&M Periodic Billing	$2,400
B&M Summary Report Review	$2,800
B&M Field Dam 2016 Inspection	$0
B&M 2016 Inspection Report Review	$3,700
Subtotal	$31,900
S&W Markup (7%)	$2,233
SUBTOTAL	**$34,133**

Description	Cost ($)
SW Periodic Reporting	$17,038
SW Summary Report	$8,152
SW Field Dam 2016 Inspection and Report	$27,065
SUBTOTAL	**$52,255**

TOTAL NOT TO EXCEED ESTIMATE **$86,388**

NOTES FOR COSTS:

1. SW Summary Report will include summary of instrumentation data and interpretation of embankment response.
2. Costs based on the monthly breakdown as indicated. Please note that these costs are based on the assumption that no extraordinary conditions will arise during the monitoring period.

SHANNON & WILSON, INC.
Geotechnical and Environmental Consultants

Attachment to and part of our Proposal: 41-2-23785-001

Date: December 4, 2015

To: Mr. Lance McAvoy

Re: Proposal

STANDARD GENERAL TERMS AND CONDITIONS

ARTICLE 1 – SERVICES OF SHANNON & WILSON

Shannon & Wilson's scope of work ("Services") shall be limited to those Services expressly set forth in its Proposal and is subject to the terms and conditions set forth herein.

Shannon & Wilson shall procure and maintain all business and professional licenses and registrations necessary to provide its Services. Upon Client's request (and for additional Compensation, if not already included in Shannon & Wilson's Proposal), Shannon & Wilson shall assist Client in attempting to obtain, or on behalf of Client and in Client's name attempt to obtain, those permits and approvals required for the project for which Shannon & Wilson's Services are being rendered.

Client acknowledges, depending on field conditions encountered and subsurface conditions discovered, the number and location of borings, the number and type of field and laboratory tests, and other similar items, as deemed necessary by Shannon & Wilson in the exercise of due care, may need to be increased or decreased; if such modifications are approved by Client, Shannon & Wilson's Compensation and Schedule shall be equitably adjusted.

If conditions actually encountered at the project site differ materially from those represented by Client and/or shown or indicated in the contract documents, or are of an unusual nature which materially differ from those ordinarily encountered and generally recognized as inherent for the locality and character of the Services provided for in Shannon & Wilson's scope of Services, Shannon & Wilson's Compensation and Schedule shall be equitably adjusted.

Without increasing the Services, compensation ("Compensation"), or schedule ("Schedule") contained in Shannon & Wilson's Proposal, Shannon & Wilson may employ such subcontractors as Shannon & Wilson deems necessary to assist in furnishing its Services.

If Shannon & Wilson's scope of Services is increased or decreased by Client, Shannon & Wilson's Compensation and Schedule shall be equitably adjusted.

ARTICLE 2 – TIMES FOR RENDERING SERVICES

Shannon & Wilson shall perform its Services in accordance with the Schedule set forth in its Proposal.

If Shannon & Wilson's Proposal sets forth specific periods of time for rendering Services, or specific dates by which Services are to be completed, and such periods of time or dates are extended or delayed through no fault of Shannon & Wilson, Shannon & Wilson's Compensation and Schedule shall be equitably adjusted.

If Shannon & Wilson's Schedule is accelerated by Client, Shannon & Wilson's Compensation shall be equitably adjusted.

ARTICLE 3 – PAYMENTS TO SHANNON & WILSON

Invoices shall be prepared in accordance with Shannon & Wilson's standard invoicing practices and shall be submitted to Client by Shannon & Wilson monthly. The amount billed in each invoice shall be calculated as set forth in Shannon & Wilson's Proposal.

Shannon & Wilson shall not exceed the estimate contained in its Proposal without the prior written consent of Client; provided however, unless the Client authorizes additional funds in excess of the estimate contained in Shannon & Wilson's Proposal, Shannon & Wilson shall have no obligation to continue Services on the project.

Invoices are due and payable within 30 days of receipt. If Client fails to pay Shannon & Wilson's invoice within 30 days after receipt, the amounts due Shannon & Wilson shall accrue interest at the rate of one and one-half percent (1.5%) per month (or the maximum rate of interest permitted by law, if less) after the 30th day. In addition, Shannon & Wilson may, after giving seven (7) days written notice to Client, suspend all Services under this Agreement until Shannon & Wilson has been paid in full.

If Client disputes Shannon & Wilson's invoice, only the disputed portion(s) may be withheld from payment, and the undisputed portion(s) shall be paid.

Records of Shannon & Wilson's direct and indirect costs and expenses pertinent to its Compensation under this Agreement shall be kept in accordance with generally accepted accounting practices and applicable federal, state, or local laws and regulations. Upon request, such records shall be made available to Client for inspection on Shannon & Wilson's premises and copies provided to Client at cost.

ARTICLE 4 – CLIENT'S RESPONSIBILITIES

Client shall grant or obtain free access to the project site for all equipment and personnel necessary for Shannon & Wilson to perform its Services.

ARTICLE 5 – STANDARD OF CARE / ABSENCE OF WARRANTIES / NO RESPONSIBILITY FOR SITE SAFETY OR CONTRACTOR'S PERFORMANCE

Standard of Care

The standard of care for all professional Services performed or furnished by Shannon & Wilson under this Agreement shall be the skill and care ordinarily exercised by other members of Shannon & Wilson's profession, providing the same or similar services, under the same or similar circumstances, at the same time and locality as the Services were provided by Shannon & Wilson. The installation, construction, alteration, or repair of any object or structure by Shannon & Wilson shall be performed in a good and workmanlike manner in accordance with general industry standards, and conform to this Agreement.

Subsurface explorations and testing identify actual subsurface conditions only at those points where samples are taken, at the time they are taken. Actual conditions at other locations of the project site, including those inferred to exist between the sample points, may differ significantly from conditions that exist at the sampling locations. The passage of time or intervening causes may cause the actual conditions at the sampling locations to change as well.

Interpretations and recommendations made by Shannon & Wilson shall be based solely upon information available to Shannon & Wilson at the time the interpretations and recommendations are made.

Shannon & Wilson shall be responsible for the technical accuracy of its Services, data, interpretations, and recommendations resulting therefrom, and Client shall not be responsible for discovering deficiencies therein. Shannon & Wilson shall correct any substandard Services without additional Compensation, except to the extent that such inaccuracies are directly attributable to deficiencies in Client-furnished information.

Warranties
Shannon & Wilson makes no guarantees or warranties, express or implied, under this Agreement or otherwise, about Shannon & Wilson's professional Services.

Shannon & Wilson warrants for one (1) year from substantial completion of the Services, all goods delivered hereunder shall be new and free from defects in material or workmanship, and shall conform to the specifications, drawings, or sample(s) specified or furnished, if any, and shall be merchantable and fit for their intended purpose(s). Shannon & Wilson warrants that Shannon & Wilson has good and marketable title to all goods delivered hereunder, and that all goods delivered hereunder shall be free and clear of all claims of superior title, liens, and encumbrances of any kind.

Client-Furnished Documents
Shannon & Wilson may use requirements, programs, instructions, reports, data, and information furnished by Client to Shannon & Wilson in performing its Services under this Agreement. Shannon & Wilson may rely on the accuracy and completeness of requirements, programs, instructions, reports, data, and other information furnished by Client to Shannon & Wilson. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from Shannon & Wilson's reliance on Client-furnished information, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Site Damage
Shannon & Wilson shall take reasonable precautions to minimize damage to the project site, but it is understood by Client that, in the normal course of Shannon & Wilson's Services, some project site damage may occur, and the correction of such damage is not part of Shannon & Wilson Services unless so stated in Shannon & Wilson's Proposal. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from any project site damage caused by Shannon & Wilson, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Buried Structures
If there are any buried structures and/or utilities on the project site where subsurface explorations are to take place, Client shall provide Shannon & Wilson with a plan showing their existing locations. Shannon & Wilson shall contact the one-number utility locator service to request that they identify any utilities. Shannon & Wilson shall use reasonable care and diligence to avoid contact with buried structures and/or utilities as shown. Shannon & Wilson shall not be liable for any loss or damage to buried structures and/or utilities resulting from inaccuracy of the plans, or lack of plans, or errors by the locator service relating to the location of buried structures and/or utilities. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify, and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from damage to buried structures and/or utilities caused by Shannon & Wilson's sampling, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Aquifer Cross-Contamination
Despite the use of due care, unavoidable contamination of soil or groundwater may occur during subsurface exploration when drilling or sampling tools are advanced through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading contaminants off the project site. Because Shannon & Wilson is powerless to totally eliminate this risk despite use of due care, and because sampling is an essential element of Shannon & Wilson's Services, Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from cross-contamination caused by Shannon & Wilson's sampling, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Opinions of Probable Construction Costs
If opinions of probable construction costs are included in Shannon & Wilson's Proposal, Shannon & Wilson's opinions of probable construction costs shall be made on the basis of its experience and qualifications and represent its judgment as a professional generally familiar with the industry. Opinions of probable construction costs are based, in part, on approximate quantity evaluations that are not accurate enough to permit contractors to prepare bids. Further, since Shannon & Wilson has no control over: the cost of labor, materials, equipment, or work furnished by others; the contractor's actual or proposed construction methods or methods of determining prices; competitive bidding; or market conditions, Shannon & Wilson cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of the components of probable construction cost prepared by Shannon & Wilson. If Client or any contractor wishes greater assurance as to probable construction cost, Client or contractor shall employ an independent cost estimator.

Review of Contractor's Shop Drawings and Submittals
If review of a contractor's shop drawings and submittals are included in Shannon & Wilson's Proposal, Shannon & Wilson shall review and take appropriate action on the contractor's submittals, such as shop drawings, product data, samples, and other data, which the contractor is required to submit, but solely for the limited purpose of checking for general overall conformance with Shannon & Wilson's design concept. This review shall not include a review of the accuracy or completeness of details, such as quantities; dimensions; weights or gauges; fabrication processes; construction means, methods, sequences or procedures; coordination of the work with other trades; or construction safety precautions, all of which are the sole responsibility of the contractor. Shannon & Wilson's review shall be conducted with reasonable promptness while allowing sufficient time, in Shannon & Wilson's judgment, to permit adequate review. Review of a specific item shall not be construed to mean that Shannon & Wilson has reviewed the entire assembly of which the item is a component. Shannon & Wilson shall not be responsible for any deviations by the contractor in the shop drawings and submittals from the construction documents, which are not brought to the attention of Shannon & Wilson by the contractor in writing.

Construction Observation
If construction observation is included in Shannon & Wilson's Proposal, Shannon & Wilson shall visit the project site at intervals Shannon & Wilson deems appropriate, or as otherwise agreed to in writing by Client and Shannon & Wilson, in order to observe and keep Client generally informed of the progress and quality of the work. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of any contractor's work, but rather are to allow Shannon & Wilson, as a professional, to become generally familiar with the work in progress in order to determine, in general, whether the work is progressing in a manner indicating that the work, when fully completed, will be in accordance with Shannon & Wilson's general overall design concept.

Shannon & Wilson's authority shall be limited to observing, making technical comments regarding general overall compliance with Shannon & Wilson's design concept, and rejecting any work which it becomes aware of that does not comply with Shannon & Wilson's general overall design concept. Shannon & Wilson's acceptance of any non-conforming work containing latent defects or failure to reject any non-conforming Services not inspected by Shannon & Wilson shall not impose any liability on Shannon & Wilson or relieve any contractor from complying with their contract documents. All construction contractors shall be solely responsible for construction site safety, the quality of their work, and adherence to their contract documents. Shannon & Wilson shall have no authority to direct any contractor's actions or stop any contractor's work.

If Shannon & Wilson is not retained to provide construction observation of the implementation of its design recommendations, Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson, and indemnify and hold Shannon & Wilson harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from the implementation of Shannon & Wilson's design recommendations, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

No Responsibility for Site Safety
Except for its own subcontractors and employees, Shannon & Wilson shall not: supervise, direct, have control over, or authority to stop any contractor's work; have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by any contractor; be responsible for safety precautions and programs incident to any contractor's work; or be responsible for any failure of any contractor to comply with laws and regulations applicable to the contractor, all of which are the sole responsibility of the construction contractors. This requirement shall apply continuously, regardless of time or place, and shall in no way be altered because a representative of Shannon & Wilson is present at the project site performing his/her duties. Notwithstanding anything to the contrary, Shannon & Wilson shall never be deemed to have assumed responsibility for the project's site safety by either contract or conduct. No act or direction by Shannon & Wilson shall be deemed the exercise of supervision or control of any contractor's employees or the direction of any contractor's performance. Any direction provided by Shannon & Wilson shall be deemed solely to ensure the contractor's general overall compliance with Shannon & Wilson's design concept.

No Responsibility for Contractor's Performance
Except for its own subcontractors and employees, Shannon & Wilson shall not be responsible for safety precautions, the quality of any contractor's work, or any contractor's failure to furnish or perform their work in accordance with their contract documents.

Except Shannon & Wilson's own employees and its subcontractors, Shannon & Wilson shall not: be responsible for the acts or omissions of any contractor, subcontractor or supplier, or other persons at the project site, or otherwise furnishing or performing any work; or for any decision based on interpretations or clarifications of Shannon & Wilson's design concept given without the consultation and concurrence of Shannon & Wilson.

Approval of Contractor's Applications for Payment
If approval of a contractor's applications for payment are included in Shannon & Wilson's Proposal, Shannon & Wilson shall review the amounts due the contractor and issue a recommendation about payment to Client. Shannon & Wilson's review and approval shall be limited to an evaluation of the general progress of the work and the information contained in the contractor's application for payment and a representation by Shannon & Wilson that to the best of the Shannon & Wilson's knowledge, the contractor has performed work for which payment has been requested, subject to further testing and inspection upon substantial completion. The issuance of a recommendation for payment shall not be construed as a representation that: Shannon & Wilson has made an exhaustive check or a detailed or continuous inspection check of the quality or quantity of the contractor's work; approved the contractors means, methods, sequences, procedures, or safety precautions; or that contractor's subcontractors, laborers, and suppliers have been paid.

ARTICLE 6 – CONFIDENTIALITY AND USE OF DOCUMENTS

Confidentiality
Shannon & Wilson agrees to keep confidential and to not disclose to any person or entity (other than Shannon & Wilson's employees and subcontractors), without the prior consent of Client, all information furnished to Shannon & Wilson by Client or learned by Shannon & Wilson as a result of its Services on the project; provided however, that these provisions shall not apply to information that: is in the public domain through no fault of Shannon & Wilson; was previously known to Shannon & Wilson; or was independently acquired by Shannon & Wilson from third-parties who were under no obligation to Client to keep said information confidential. This paragraph shall not be construed to in any way restrict Shannon & Wilson from making any disclosures required by law. Client agrees that Shannon & Wilson may use and publish Client's name and a general description of Shannon & Wilson's Services with respect to the project in describing Shannon & Wilson's experience and qualifications to others.

Copyrights and Patents – Shannon & Wilson shall indemnify, hold harmless, and defend Client from any and all actions, damages, demands, expenses (including reasonable attorneys' fees and costs), losses, and liabilities arising out of any claims that any goods or Services furnished by Shannon & Wilson infringe any patent, trademark, trade name, or copyright.

Use of Documents
All documents prepared by Shannon & Wilson are instruments of service with respect to the project, and Shannon & Wilson shall retain a copyrighted ownership and property interest therein (including the right of reuse) whether or not the project is completed.

All reports, documents, plans, drawings, specifications or other written material (hereinafter called Written Products) as well as electronically prepared models of any part of the Owner's infrastructure (hereinafter called Models) prepared by Engineer under this Agreement will be considered works made for hire, and shall be considered joint property of the Owner and Engineer upon completion of the services or termination of the Agreement and payment in full of all monies due to Engineer. Engineer may retain copies of such Written Products and Models developed under this Agreement as desired, but no such Written Products and/or Models shall be the subject of copyright application by Engineer.

Shannon & Wilson grants to Client a non-exclusive, irrevocable, unlimited, royalty-free license to use any documents prepared by Shannon & Wilson for Client. Client may make and retain copies of such documents for their information and use. Such documents are not intended or represented to be suitable for reuse by Client, or others, after the passage of time, on extensions of the project, or on any other project. Any such reuse without written verification or adaptation by Shannon & Wilson, as appropriate for the specific purpose intended, shall be at Client's sole risk, and Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from such reuse, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract. Any verification or adaptation of the documents for extensions of the project or for any other project by Shannon & Wilson shall entitle Shannon & Wilson to additional Compensation to be agreed upon by Client and Shannon & Wilson.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Shannon & Wilson. Text, data, or graphics files in electronic media format are furnished solely for the convenience of Client. Any conclusion or information obtained or

derived from such electronic files shall be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because data stored in electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving an electronic file agrees that it shall perform acceptance tests or procedures within 60 days after its receipt, after which, unless notice of any errors are given in writing to the delivering party, the receiving party shall be deemed to have accepted the data thus transferred. Any errors reported within the 60-day acceptance period shall be corrected by the party delivering the electronic files at their sole expense. Shannon & Wilson shall not be responsible for maintaining documents stored in electronic media format after acceptance by Client.

When transferring documents in electronic media format, neither Client nor Shannon & Wilson makes any representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used for the document's creation.

ARTICLE 7 - INSURANCE

Shannon & Wilson shall purchase and maintain during the term of this Agreement, the following insurance coverage at its sole expense:

Commercial General Liability - $1,000,000 each occurrence/$2,000,000 annual aggregate Bodily Injury/Property Damage Combined Single Limit including Blanket Contractual Liability, Broad Form Products and Completed Operations, Explosion/Collapse/Underground (XCU) Exposures, and Washington Stop Gap coverage.

Auto Liability - $1,000,000 Bodily Injury/Property Damage Combined Single Limit including Owned, Hired, and Non-Owned Liability coverage.

Umbrella Liability - $10,000,000 Bodily Injury/Property Damage combined Single Limit in excess of Commercial General Liability, Auto Liability, and Employers' Liability.

Workers' Compensation - Statutory in monopolistic states and $500,000 per accident/$500,000 per disease/$500,000 disease policy aggregate Employers' Liability in non-monopolistic including if applicable, U.S. Longshore & Harbor Workers coverage.

Professional Liability - $5,000,000 per claims/$5,000,000 annual aggregate for professional errors and omissions including Pollution Liability coverage.

If requested in writing by Client, Shannon & Wilson shall name Client as an additional insured on its Commercial General Liability policy.

If requested in writing by Client, Shannon & Wilson shall deliver to Client certificates of insurance evidencing such coverage. Such certificates shall be furnished before commencement of Shannon & Wilson's Services.

Client shall cause Shannon & Wilson and its subcontractors to be listed as additional insureds on any Commercial General Liability insurance carried by Client that is applicable to the project.

Client shall require the project owner to require the general contractor on the project to purchase and maintain Commercial General Liability, Builder's Risk, Automobile Liability, Workers compensation, and Employers Liability insurance, with limits no less than set forth above, and to cause Shannon & Wilson and its subcontractors to be listed as additional insureds on the Commercial General Liability insurance. Client shall require the project owner include the substance of this paragraph in the prime construction contract.

All insurance policies required under this Article shall contain a waiver of subrogation.

ARTICLE 8 - HAZARDOUS ENVIRONMENTAL CONDITIONS

Disclosure of the Existence of Hazardous Environmental Conditions
Client has disclosed to Shannon & Wilson all data known to Client concerning known or suspected hazardous environmental conditions, including but not limited to, the existence of all asbestos, PCBs, petroleum, hazardous waste, or radioactive material, if any, located at or near the project site, including its type, quantity, and location, or has represented to Shannon & Wilson that, to the best of Client's knowledge, no hazardous environmental conditions exist at or near the project site.

If any hazardous environmental condition is encountered or believed to exist, Shannon & Wilson shall notify Client and, to the extent required by applicable laws and regulations, the project site owner, and appropriate governmental officials.

Disposal of Non-Hazardous Samples and Hazardous or Toxic Substances
All substances on, in, or under the project site, or obtained from the project site as samples or as byproducts (e.g., drill cuttings and fluids) of the sampling process are the project site owner's property. Shannon & Wilson shall preserve such samples for forty-five (45) calendar days after Shannon & Wilson's issuance to Client of the final instrument of service that relates to the data obtained from them. Shannon & Wilson shall dispose of all non-hazardous samples and sampling process byproducts in accordance with applicable law; provided however, any samples or sampling process byproducts that are, or are believed to be, affected by regulated contaminants shall be packaged by Shannon & Wilson in accordance with applicable law, and turned over to Client or left on the project site. Shannon & Wilson shall not transport store, treat, dispose of, or arrange for the transportation, storage, treatment, or disposal of, any substances known, believed, or suspected to be affected by regulated contaminants, nor shall Shannon & Wilson subcontract for such activities.

Shannon & Wilson shall, at Client's request (and for additional Compensation, if not already included in Shannon & Wilson's Proposal), help Client or the project site owner identify appropriate alternatives for transportation, storage, treatment, or disposal of such substances, but Shannon & Wilson shall not make any independent determination about the selection of a transportation, storage, treatment, or disposal facility.

Client or the project site owner shall sign all manifests for the transportation, storage, treatment, or disposal of substances affected by regulated contaminants; provided however, notwithstanding any other provisions of this Agreement to the contrary, if Client directs Shannon & Wilson, Shannon & Wilson's employees, or Shannon & Wilson's agents to sign such manifests and/or to hire for Client or the project site owner a contractor to transport store, treat, or dispose of the contaminated substances, Shannon & Wilson shall do so only as Client's disclosed agent.

Contaminated Equipment and Consumables
Client shall reimburse Shannon & Wilson for the cost of decontaminating field or laboratory equipment that is contaminated by regulated materials encountered at the project site and for the cost of disposal and replacement of contaminated consumables. In some instances, the cost of decontamination may exceed the fair market value of the equipment, were it not contaminated, together with the cost of properly transporting and disposing of the equipment. In such instances, Shannon & Wilson will notify Client and give Client the option of paying for decontamination or purchasing the equipment at its fair market value immediately prior to contamination. If Client elects to purchase equipment, Client and Shannon & Wilson will enter into a specific agreement for that purpose. Any equipment that cannot be decontaminated shall be considered a consumable.

Client's Liability for Hazardous or Toxic Materials
Except to the extent caused by Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract, and only to the maximum extent permitted by law, Client shall: indemnify and hold harmless Shannon & Wilson, its subcontractors and their partners, officers, directors, employees, and agents; from and against any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees), or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever; arising from the arrangement for and/or ownership, operation, generation, labeling, transportation, storage, disposal, treatment, release, or threatened release of any hazardous or toxic materials, as defined by CERCLA, MTCA, or similar federal, state, or local environmental laws, on and/or from the project site.

ARTICLE 9 - ALLOCATION OF RISK

Indemnification of Client
To the maximum extent permitted by law, Shannon & Wilson shall: indemnify and hold harmless Client, its appointed and elected officials, partners, officers, directors, employees, and agents; from and against any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage, (including bodily injury, death, or property damage to Shannon & Wilson's own employees) or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever; arising from the negligent or wrongful acts, errors, or omissions, or breach of contract or warranty express or implied, by Shannon & Wilson or any of its subcontractors; but only to the extent of Shannon & Wilson's and its subcontractor's relative degree of fault. In furtherance of these obligations, and only with respect to Client, its appointed and elected officials, partners, officers, directors, employees and agents, Shannon & Wilson waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit, or similar laws. Shannon & Wilson acknowledges that this waiver of immunity was mutually negotiated.

Limitation on Shannon & Wilson's Liability for Damages

A. Total Liability for Damages Limited to Insurance Proceeds
Notwithstanding any other provisions of this Agreement, and only to the maximum extent permitted by law, the total liability for damages, in the aggregate, under this Agreement of Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, agents and, or any of them, to Client and/or anyone claiming by, through, or under Client, for any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage, (including bodily injury, death, or property damage to Shannon & Wilson's own employees) or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising out of, resulting from, or in any way related to the project or this Agreement, shall be limited to the insurance proceeds payable on behalf of or to Shannon & Wilson by any insurance policies applicable thereto. If you are unwilling or unable to limit our liability for damages in this manner, we will negotiate this limitation and its associated impact on our approach, Services, Schedule, and Compensation, with you. You must notify us in writing before we commence any of our Services of your intention to negotiate this limitation and its associated impact on our approach, Services, Schedule, and Compensation. Absent your prior written notification to the contrary, we will proceed on the basis that our total liability for damages is limited as set forth above.

B. Professional Liability for Damages Limited to $50,000 or 10% of Fee
With respect to professional errors or omissions only, notwithstanding any other provisions of this Agreement, and only to the maximum extent permitted by law, the total professional liability for damages, in the aggregate, under this Agreement of Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, agents, or any of them, to Client and/or anyone claiming by, through, or under Client, for any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees) or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising out of, resulting from, or in any way related to the professional errors or omissions of Shannon & Wilson, its subcontractors, or their partners, officers, directors, employees, agents or, or any of them, shall be capped in the aggregate total amount of $50,000.00, or ten percent (10%) of the total Compensation actually paid to Shannon & Wilson under this Agreement, whichever is greater. If you are unwilling or unable to limit our professional liability for damages to these sums, we will negotiate the amount of this limitation and its associated impact on our approach, Services, Schedule, and Compensation, with you. You must notify us in writing before we commence any of our Services of your intention to negotiate the amount of this limitation and its associated impact on our approach, Services, Schedule, and Compensation. Absent your prior written notification to the contrary, we will proceed on the basis that our total professional liability for damages is limited to $50,000.00 or ten percent (10%) of the total Compensation actually paid to Shannon & Wilson under this Agreement, whichever is greater.

ARTICLE 10 – MISCELLANEOUS

Termination
This Agreement may be terminated without further obligation or liability by either party, with or without cause (for convenience), upon 30 days prior written notice to the other. Shannon & Wilson shall be entitled to Compensation for all Services performed prior to the termination of this Agreement. This Agreement may be terminated by the non-breaching party upon any breach of this Agreement that remains uncured after 10 days notice to the breaching party by the non-breaching party. Upon payment of all amounts due Shannon & Wilson, Client shall be entitled to copies of Shannon & Wilson's files and records pertaining to Services performed prior to the termination of this Agreement.

Successors, Assigns, and Beneficiaries
This Agreement shall be binding upon each party's assigns, successors, executors, administrators, and legal representatives.

Neither Client nor Shannon & Wilson may assign or transfer any rights under or interest in this Agreement without the written consent of the other. No assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Shannon & Wilson to any third-party. All duties and responsibilities undertaken under this Agreement shall be for the sole and exclusive benefit of Client and Shannon & Wilson. There are no intended

third-party beneficiaries. Notwithstanding the foregoing, should a court find a third-party to be a beneficiary of this Agreement, it is the intent of the parties that the judicially created third-party beneficiary be bound by and subject to all of the terms and conditions of this Agreement.

Statutes of Limitation, Notice of Claims, Jurisdiction, Venue, Choice of Law and Alternative Dispute Resolution
Any applicable Statute of Limitation shall be deemed to commence running on the date which the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than the date of substantial completion of Shannon & Wilson's Services under this Agreement. To the maximum extent permitted by law, as a condition precedent to commencing a judicial proceeding, a party shall give written notice of their claims, including all amounts claimed, and the factual basis for their claims, to the other party within one (1) year of when the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than one (1) year from the date of substantial completion of Shannon & Wilson's Services under this Agreement.

This Agreement shall be construed in accordance with and governed by the laws (except choice and conflict of law provisions) of the state in which the Project is located.

Any judicial action shall be brought in the state in which the Project is located.

Attorneys' Fees
Should any dispute or claims arise out of this Agreement, whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise, the prevailing party shall be entitled to an award of their reasonable attorneys' fees and costs, including upon appeal and in the enforcement of any judgment. Should neither party prevail on all of their claims or receive all of the relief they sought, then the substantially prevailing party shall be awarded their reasonable attorneys' fees and costs, including upon appeal and in the enforcement of any judgment.

Waiver
A waiver of any of the terms and conditions or breaches of this Agreement shall not operate as a subsequent waiver.

Headings
The headings used in this agreement are for general ease of reference only. They have no meaning and are not part of this Agreement.

Integration
This Agreement, together with all attachments hereto, are incorporated by reference into each other, and supercede all prior written and oral discussions, representations, negotiations, and agreements on the subject matter of this Agreement and represent the parties' complete, entire, and final understanding of the subject matter of this Agreement.

Survival
Notwithstanding completion or termination of this Agreement for any reason, all representations, warranties, limitations of liability, and indemnification obligations contained in this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

Severability
If any of the terms or conditions of this Agreement are found to be void or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect, and the court shall attempt to judicially reform the void or unenforceable provisions to the maximum extent possible, consistent with the original intent expressed in the provisions, to render it valid and enforceable. If the court is unable to reform the provisions to render it valid and enforceable, the court shall strike only that portion which is invalid or unenforceable, and this Agreement shall then be construed without reference to the void or unenforceable provisions.

POLICY REGARDING WORKERS WHO ARE NOT CITIZENS OF THE UNITED STATES

The Engineer shall keep fully informed of all federal, state and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any manner affect those engaged or employed in the work required by the Agreement, specifically including without limitations, laws and regulations pertaining to the employment of persons who are not citizens of the United States. Further, the Engineer shall at all times observe and comply with all such laws, ordinances, regulations, quarantines, orders, and decrees and shall protect and indemnify the city of Fort Smith and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree. The Engineer shall cause similar provision to be placed in each subcontract entered into by the Engineer.

The Engineer agrees that the Engineer shall be subject to an administrative penalty of up to five hundred dollars ($500.00) to be imposed by the City for any violation of the foregoing provisions or the required certification in the form provided in the Agreement. The Engineer shall be entitled to a due process hearing before the City Administrator if requested in writing within five (5) working days of the City's notification of potential imposition of administrative penalty.

CERTIFICATION

Engineer hereby certifies compliance with the requirements of Policy Regarding Workers Who Are Not Citizens of the United States.

BY:

Michael Lambert

January 2016

January 2016

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2016

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 27	28	29	30	31	Jan 1, 16 8:00am CITY OFFICES CLOSED (CITY OFFICES)	2
3	4 11:00am Property Owners Appeal Bd. (TENTATIVE - Planning Conf. Rm.)	5 11:30am Planning Com. S.S. (Creekmore) 6:00pm Bd. of Directors (FSM Public Schools Serv. Cntr.)	6	7 12:00pm Housing Assistance Bd. (Main Library) 6:00pm Historic Dist. Com. (220 North 7 Street)	8	9
10	11	12 5:30pm Planning Com. (Creekmore) 6:00pm Bd. Study Session (Main Library)	13 12:00pm Parks Com. (Creekmore)	14 12:15pm Oak Cemetery Com. (Creekmore)	15	16
17	18 8:00am CITY OFFICES CLOSED (OBS. OF MARTIN LUTHER KING, JR. DAY)	19 9:30am CBID (Area Agency) 4:30pm Library Bd. of Trustees (Main Library) 6:00pm Bd. of Directors (FSM Public Schools Serv.	20	21	22	23
24	25	26 12:00pm Bd. Study Session (Main Library) 4:00pm A & P (Convention Center) 5:30pm Airport Com.	27	28 5:30pm Historic District Study Ses. (220 North 7 Street)	29	30
31	Feb 1	2	3	4	5	6