



Mayor – Sandy Sanders

City Administrator – Carl Geffken

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**

**July 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 JUNE 21, 2016 REGULAR MEETING**

#### **ITEMS OF BUSINESS:**

1. Items regarding annexation and land use of 11512 Old Highway 71 South:
  - A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (*Rye Hill Baptist Church, 11512 Old Highway 71 South*)
  - B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Unclassified / Extraterritorial Jurisdiction Commercial Neighborhood to General Commercial / Rezoning: from not zoned (NZ) / Extraterritorial Open-1 (ETJ O-1) to Commercial Moderate (C-3) by classification located at 11512 Old Highway 71 South*)
2. Ordinance rezoning identified property and amending the zoning map (*from Industrial Light (I-1) to Industrial Moderate (I-2) by extension located at 400 Phoenix Avenue*)

3. Resolution authorizing execution of telecommunications services agreement with Cox Arkansas Telcom, LLC (\$18,386.75 / Information & Technology Department / Budgeted – Communications 4401-210)
4. Resolution authorizing an amendment to an agreement with River Valley Sports Complex altering the language of the draw schedule

**OFFICIALS FORUM ~ presentation of information requiring no official action**  
*(Section 2-36 of Ordinance No. 24-10)*

- Mayor
- Directors
- City Administrator

**ADJOURN**

**1A.**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE ACCEPTING CERTAIN TERRITORY INTO  
THE CITY OF FORT SMITH, ARKANSAS**

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

**WHEREAS**, on the 20<sup>th</sup> day of May, 2016, before the County Court of Sebastian County, Arkansas, Greenwood District, there came to be heard a Petition, in proper form and substance, executed by all of the real estate owners in the territory to be annexed;

**WHEREAS**, the property desired to be annexed was described accurately as follows:

**TRACT 1:**

Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Greenwood District, Sebastian County, Arkansas being more particularly described as follows: Commencing at an existing P/K Nail marking the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North 00 degrees 19 minutes 59 seconds West, 437.51 feet along the East line of said Southeast Quarter of the Northeast Quarter; thence North 89 degrees 47 minutes 00 seconds West, 256.65 feet to a set rebar being the Point of Beginning; thence North 89 degrees 47 minutes 00 seconds West, 104.00 feet to an existing rebar; thence North 00 degrees 46 minutes 00 seconds East, 208.70 feet to an existing rebar; thence South 89 degrees 47 minutes 00 seconds East, 104.00 feet to a set rebar; thence South 00 degrees 46 minutes 00 seconds West 208.70 feet to the point of beginning.

**TRACT 2**

Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Greenwood District, Sebastian County, Arkansas being more particularly described as follows: Commencing at an existing P/K nail marking the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North 00 degrees 19 minutes 59 seconds West, 437.51 feet along the East line of said Southeast Quarter of the Northeast Quarter; thence North 89 degrees 47 minutes 00 seconds West, 360.65 feet to an existing rebar being the point of beginning; thence North 89 degrees 47 minutes 00 seconds West, 337.44 feet to an existing rebar on the Easterly right of way line of U.S. Highway 71;

thence North 30 degrees 42 minutes 46 seconds East, 555.75 feet to a set rebar; thence South 89 degrees 43 minutes 49 seconds East, 60.00 feet to an existing rebar; thence South 00 degrees 46 minutes 00 seconds West, 478.84 feet to the point of beginning.

**WHEREAS**, the County Court for Sebastian County, Arkansas, Greenwood District approved the Petition and ordered the annexation of the described property.

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

The territory above described be accepted into the City of Fort Smith, Arkansas, annexed to the City of Fort Smith, Arkansas, and made a part thereof for all purposes as provided by law.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

**APPROVED:**

\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

**Approved as to form:**



\_\_\_\_\_  
**Publish One Time**



# Memorandum

---

**To:** Carl Geffken, City Administrator  
**From:** Wally Bailey, Director of Development Services  
**Date:** May 20, 2016  
**Subject:** Rye Hill Baptist Church Annexation – 11512 Old Highway 71 South

The Rye Hill Baptist Church has petitioned the City of Fort Smith to consider the annexation of real property currently located in Sebastian County and contiguous to the existing Rye Hill Baptist Church campus that is located within the city limits. Rye Hill Baptist Church is the sole owner of the property.

The 2.68 acres to be annexed is undeveloped. The purpose for the annexation is for this property to be used to facilitate an expansion of the church. (*Maps are attached that show the proposed development.*)

The petition for annexation was filed by Joshua T. Carson on behalf of Rye Hill Baptist Church. Mr. Carson filed the Petition in accordance with A.C.A. 14-40-609 (Annexation by 100% Petition). The Arkansas Code requires the Petition be presented to the County Assessor and County Clerk for them to verify (1) the identity of the petitioner; (2) verify there are no property owners included in the petition that do not wish to be included in the petition; (3) verify the property is contiguous with the city; and (4) verify that there are no enclaves created by the proposed annexation. Following their review the Petition was presented to the County Judge for his review of the petition and verifications for accuracy.

A.C.A. 14-40-609(b)(2)(C) requires the Petition to include a schedule of services of the annexing city or town that will be extended to the area within three (3) years after the date the annexation becomes final. To address this issue the Petitioner states “*All of those rights and privileges that are had and enjoyed by the inhabitants within the limits of the city of Fort Smith, Arkansas.*” The city currently provides services to that portion of the Rye Hill Baptist Church campus that is located within the city limits.

David Hudson, County Judge, issued an order recommending annexation after finding that the application was complete and accurate, that no enclaves will be created and the Petition contains a schedule of services. A copy of Judge Hudson’s Order is attached.

Now that Judge Hudson has issued his Order, the next step in the annexation process is for the Board of Directors to consider the annexation request. The Fort Smith Municipal Code section 27-105(A) states that all applications for annexation must be accompanied by a rezoning application and a Master Land Use Plan Map amendment application. The Planning Commission reviewed a rezoning and master land use plan amendment at their June 14, 2016 meeting and they recommended approval of both applications contingent on the Board of Director’s approval of the annexation petition. An ordinance amending the zoning map and the master land use plan map will accompany this item on the Board of Director’s agenda.

The annexation petition, rezoning and master land use plan amendment are ready for presentation to the Board of Directors at the July 5, 2016 regular meeting.

The annexation shall be final thirty (30) days following the Board's approval of the Ordinance accepting the property into the City of Fort Smith contingent upon no appeals having been filed in the circuit court during the thirty (30) day period.

Please contact me if you have any questions.

# JONES, JACKSON & MOLL, PLC

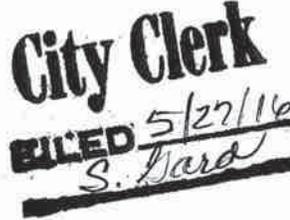
ATTORNEYS AT LAW  
401 North 7th Street  
Post Office Box 2023  
Fort Smith, Arkansas 72902-2023

ROBERT L. JONES, JR. (1922-2004)  
RANDOLPH C. JACKSON\*  
MARK A. MOLL  
J. RANDALL MCGINNIS  
KATHRYN A. STOCKS\*  
MICHAEL T. NEWMAN\*\*  
JOSHUA T. CARSON

May 26, 2016

TELEPHONE (479) 782-7203  
FACSIMILE (479) 782-9460

Sender's e-mail:  
jcarson@jjmlaw.com



\*Also licensed in Oklahoma  
\*\* Also licensed in Oklahoma  
and Missouri

Ms. Sherri Gard  
City Clerk  
623 Garrison Ave.  
Fort Smith, AR 72901

Re: In the Matter of Annexing Certain Contiguous Real Property  
to the City of Fort Smith, Arkansas – Rye Hill Baptist Church

Dear Sherri:

Enclosed is the \$350.00 filing fee for the annexation.

Sincerely,

JONES, JACKSON & MOLL, PLC

By:

Joshua T. Carson

JTC/lm

Enclosure

cc: Ronnie Keener  
Juanita Culverson



**David Hudson**

Sebastian County Judge  
County Court House  
35 South 6th Street, Room 106  
Fort Smith, Arkansas 72901  
(479) 783-6139  
FAX (479) 784-1550

May 20, 2016

**FILED**

MAY 20 2016

SHARON BROOKS  
County Clerk & Recorder

BY JS

Mr. Carl Jeffken  
City Administrator  
623 Garrison Avenue  
3<sup>rd</sup> Floor, Room 315  
Fort Smith, AR 72901

Regarding: Annexation by 100% Petition under ACA-14-40-609

Dear Carl:

Enclosed is a petition for annexation and county court order following procedures outlined in ACA 14-40-609 which became effective July 22, 2015.

Should you have any questions concerning this matter you may contact me or Joshua Carson at Jones, Jackson and Moll at 479.782.7203.

Sincerely,

A handwritten signature in cursive script that reads "David Hudson".

David Hudson  
County Judge

cc: Joshua Carson, Jones, Jackson, Moll

IN THE MATTER OF ANNEXING  
CERTAIN CONTIGUOUS REAL PROPERTY TO THE CITY OF  
FORT SMITH, ARKANSAS

RYE HILL BAPTIST CHURCH,  
PETITIONER

CC-2016-1-6  
COUNTY COURT ORDER  
NO. CCO-2016-92

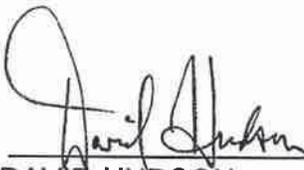
ORDER AUTHORIZING ANNEXATION  
PURSUANT TO ARK. CODE ANN. §14-40-609

I, David Hudson, County Judge of Sebastian County, Arkansas, having reviewed the attached Petition for Annexation as verified by the Sebastian County Assessor and Sebastian County Clerk, hereby recommend annexation after finding as follows:

- (1) That the Petition for Annexation and verifications are complete and accurate;
- (2) That no enclaves will be created by the proposed annexation; and
- (3) That the Petition contains a schedule of services.

The County Clerk is hereby directed to forward a copy of this Order and the related Petition to the Mayor or other appropriate municipal authority of the City of Fort Smith, Arkansas for consideration of annexation via ordinance or resolution by the City of Fort Smith, Arkansas.

IT IS SO ORDERED.

  
\_\_\_\_\_  
DAVID HUDSON,  
COUNTY JUDGE

**FILED**

MAY 20 2016

SHARON BROOKS  
County Clerk & Recorder

5/20/2016  
DATE

BY SS



**Sharon Brooks**  
**Sebastian County Clerk and Recorder**

35 S. 6th Street, Room 102  
P.O. Box 1089  
Fort Smith, Arkansas 72902-1089  
479.782.5065 Fax 479.784.1567  
sbrooks@co.sebastian.ar.us

MAY 20, 2016

City of Fort Smith  
Po Box 1908  
Fort Smith, AR 72902

RE: Annexation-CC-2016-1-G- Rye Hill Baptist Church  
Pursuant to ACA § 14-40-609

Dear Mayor Sandy Sanders:

The County has received and processed a proposed annexation pursuant to ACA § 14-40-609 related to annexation by 100% of the property owners. I am transmitting to you a copy of the documents relating to the proposed annexation for the consideration by the City of Fort Smith Council. The process has confirmed the property is contiguous and the 100% of the owners of the property proposed to be annexed have signed the petition.

If your council and you approve the annexation, please ask your clerk or recorder to return to me one (1) certified copy of the plat of the annexed property and one (1) certified copy of the ordinance or resolution approving the annexation so that I can send those on to the Secretary of State and the Director of the Tax Division of the Public Service Commission as required by the statute.

Please feel free to contact me if you have questions.

A handwritten signature in cursive script that reads "Jean Stealing".

Sincerely,  
**Greenwood**

301 East Center  
P.O. Box 428  
Greenwood, Arkansas 72936-0428  
479.996.4195 Fax 479.996.4165

CC-2016-1-6  
**IN THE MATTER OF ANNEXING  
CERTAIN CONTIGUOUS REAL PROPERTY TO THE  
CITY OF FORT SMITH, ARKANSAS**

**FILED**

APR 26 2016

SHARON BROOKS  
County Clerk & Recorder

**PETITION FOR ANNEXATION**

BY JS

Comes now Rye Hill Baptist Church, an Arkansas non-profit corporation ("Petitioner"), and for its Petition to the Board of Directors of Fort Smith, Arkansas, pursuant to A.C.A. § 14-40-609 ("Annexation by 100% Petition"), states as follows:

1. The Petitioner is a church located in Fort Smith, Arkansas. The Petitioner owns the real property on which the church is situated in Fort Smith, Arkansas and has purchased 2 tracts of adjacent property for purposes of further developing the church. However, this adjacent property lies just outside the borders of the City of Fort Smith, Arkansas.

2. The Petitioner, as 100% owner of the herein-described real property lying in Sebastian County, Arkansas, does hereby petition the Board of Directors of Fort Smith, Arkansas (the "Board") to annex the said real property to the City of Fort Smith, Arkansas, as provided for by A.C.A. § 14-40-609. The Petitioner further states that this Petition is signed by the sole owner of the real property to be annexed, and that it owns all of the acreage affected thereby.

3. By this Petition, the Petitioner appoints Joshua T. Carson of Jones, Jackson & Moll, PLC to act on its behalf in presenting this matter to the Board and all other governing bodies, as necessary.

4. The description of the real property (2 adjoining tracts) to be annexed to the City of Fort Smith, Arkansas is as follows:

TRACT 1:

*Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Greenwood District, Sebastian County, Arkansas being more particularly described as follows: Commencing at an existing P/K Nail marking the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North 00 degrees 19 minutes 59 seconds West, 437.51 feet along the East line of said Southeast Quarter of the Northeast Quarter; thence North 89 degrees 47 minutes 00 seconds West, 256.65 feet to a set rebar being the Point of Beginning; thence North 89 degrees 47 minutes 00 seconds West, 104.00 feet to an existing rebar; thence North 00 degrees 46 minutes 00 seconds East, 208.70 feet to an existing rebar; thence South 89 degrees 47 minutes 00 seconds East, 104.00 feet to a set rebar; thence South 00 degrees 46 minutes 00 seconds West 208.70 feet to the point of beginning.*

TRACT 2

*Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Greenwood District, Sebastian County, Arkansas being more particularly described as follows: Commencing at an existing P/K nail marking the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence North 00 degrees 19 minutes 59 seconds West, 437.51 feet along the East line of said Southeast Quarter of the Northeast Quarter; thence North 89 degrees 47 minutes 00 seconds West, 360.65 feet to an existing rebar being the point of beginning; thence North 89 degrees 47 minutes 00 seconds West, 337.44 feet to an existing rebar on the Easterly right of way line of U.S. Highway 71; thence North 30 degrees 42 minutes 46 seconds East, 555.75 feet to a set rebar; thence South 89 degrees 43 minutes 49 seconds East, 60.00 feet to an existing rebar; thence South 00 degrees 46 minutes 00 seconds West, 478.84 feet to the point of beginning.*

5. Petitioner states that the real property described herein and sought to be annexed to the City of Fort Smith, Arkansas lies in Sebastian County and is contiguous to and adjoins the City of Fort Smith, Arkansas. A copy of a map and survey plats of the 2 tracts of real property sought to be annexed are attached hereto respectively as Exhibit "A". A copy of the coordination approval letter from the Arkansas Secretary of State GIS department is attached hereto as Exhibit "B".

6. The Schedule of Services to be extended and provided by the annexing City of Fort Smith is as follows:

All of those rights and privileges that are had and enjoyed by the inhabitants within the limits of the City of Fort Smith, Arkansas

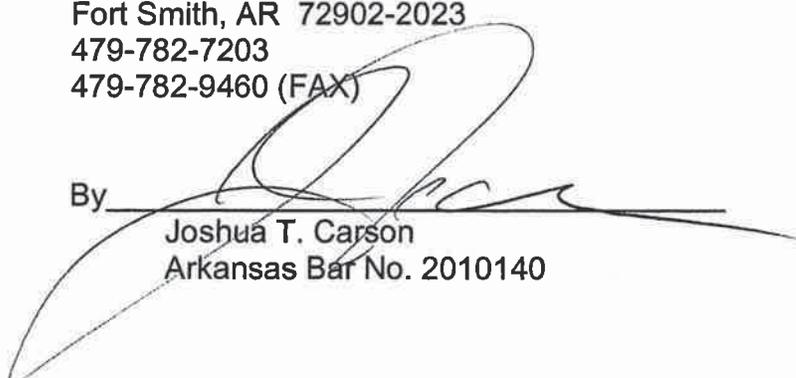
WHEREFORE, pursuant to A.C.A. § 14-40-609, the undersigned Petitioner prays that within fifteen (15) days of the filing of this Petition with the Sebastian County Assessor and Sebastian County Clerk, said Assessor and Clerk verify this Petition and present the same to the Sebastian County Judge; that within fifteen (15) days of receipt of the verified Petition, the County Judge verify the same and issue an Order on the Petition in accordance with A.C.A. § 14-40-609(c)(2)(D) and forward this Petition and said Order to the Board of Directors of the City of Fort Smith; that the Board of Directors of the City of Fort Smith grant the Petition by ordinance or resolution accepting the real property described herein for annexation to the City of Fort Smith, Arkansas; and that Petitioner be granted all other relief to which it is entitled.

Respectfully submitted,

RYE HILL BAPTIST CHURCH

JONES, JACKSON & MOLL, PLC  
401 N. 7th Street  
P. O. Box 2023  
Fort Smith, AR 72902-2023  
479-782-7203  
479-782-9460 (FAX)

By



Joshua T. Carson  
Arkansas Bar No. 2010140

**VERIFICATION**

STATE OF ARKANSAS            )  
  ) ss.  
COUNTY OF SEBASTIAN        )

The Petitioner, Rye Hill Baptist Church, acting by its authorized officer named below, hereby states upon oath that the foregoing Petition for Annexation is true and correct to the best of its knowledge, information and belief.

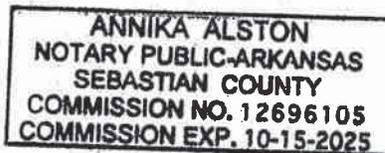
RYE HILL BAPTIST CHURCH

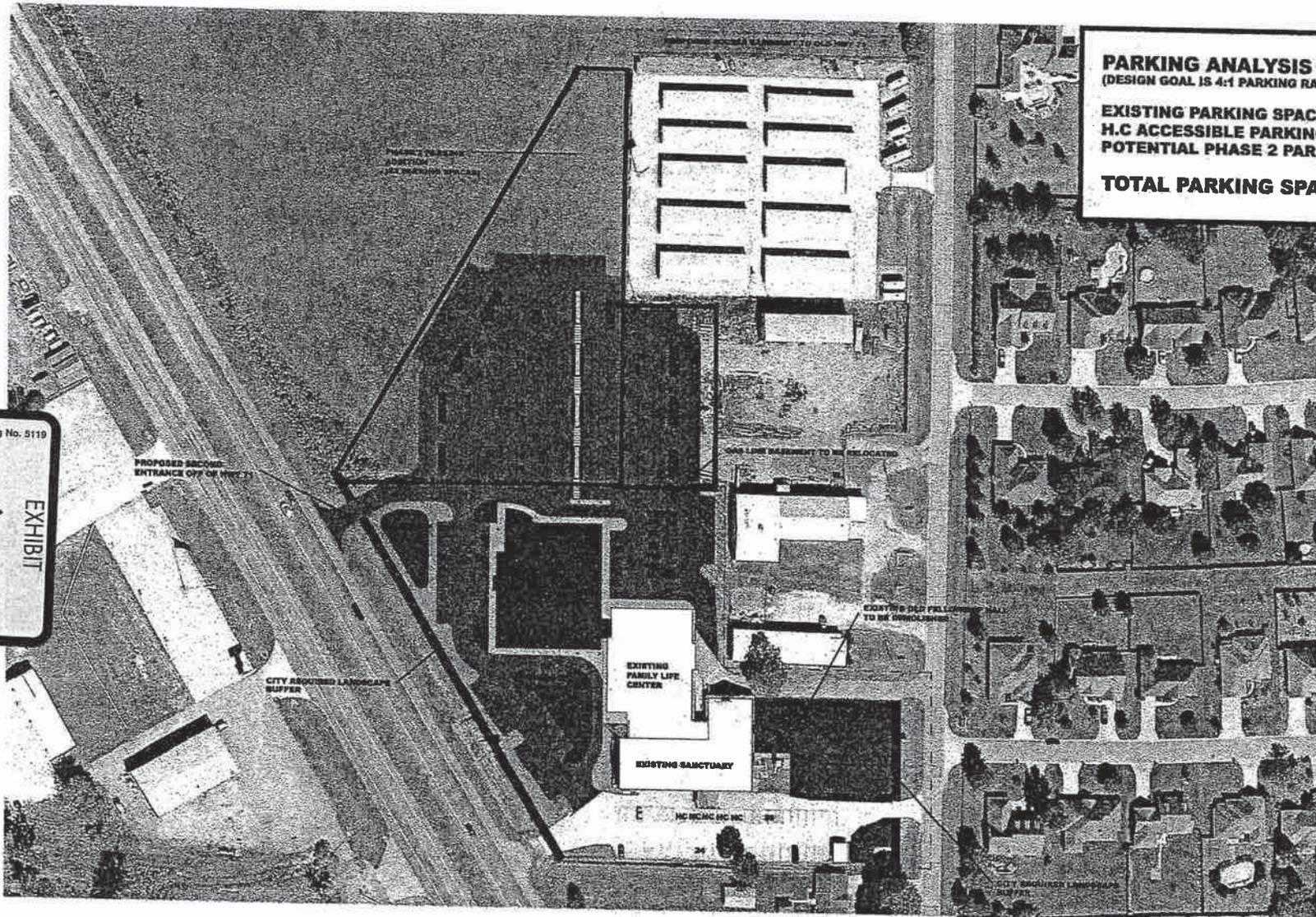
By Jeanita Culverson  
Title: Treasurer

WITNESS my hand and seal on this 13th day of April, 2016.

Annika Alston  
Notary Public

My Commission Expires:  
10-15-2025





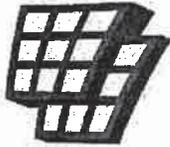
**PARKING ANALYSIS AND PROPOSED DESIGN**  
 (DESIGN GOAL IS 4:1 PARKING RATIO FOR 800 SEAT SANCTUARY)

EXISTING PARKING SPACES - 143  
 H.C ACCESSIBLE PARKING SPACES- 20 (9 REQUIRED)  
 POTENTIAL PHASE 2 PARKING SPACES - 52 SPACES

**TOTAL PARKING SPACES - 400**

**PROPOSED SANCTUARY ADDITION  
 SITE PLAN**

**MASTER PLAN** **RYE HILL BAPTIST CHURCH** **BILD ARCHITECTS PLLC**



ARKANSAS  
GIS OFFICE

April 19, 2016

Mr. Joshua Carson  
Jones, Jackson & Moll, PLC  
401 N. 7<sup>th</sup> Street  
P.O. Box 2023  
Fort Smith, AR 72902

RE: City of Fort Smith Annexation Coordination Requirement

Mr. Carson,

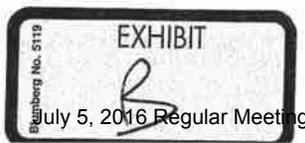
Thank you for coordinating with our office as you seek to annex property into the City of Fort Smith, AR situated in the southeast quarter of the northeast quarter of section 23, township 7 north, range 32 west. This letter represents confirmation that you have properly coordinated with our office (Arkansas GIS Office) as specified in § 14-40-101 (Act 914 of 2015) of the 90<sup>th</sup> General Assembly.

Our office will wait completion of any additional steps necessary for the proposed boundary change, which normally comes from the Arkansas Secretary of State Elections Division after any appropriate filing by the County Clerk.

Thank you,

Richie Pierce, Sr. GIS Analyst  
/rp

ARKANSAS GIS OFFICE · 1 CAPITOL MALL SUITE 6D · LITTLE ROCK · ARKANSAS · 72201  
PHONE (501) 682-2767 · [www.gis.arkansas.gov](http://www.gis.arkansas.gov) · FAX (501) 682-6077



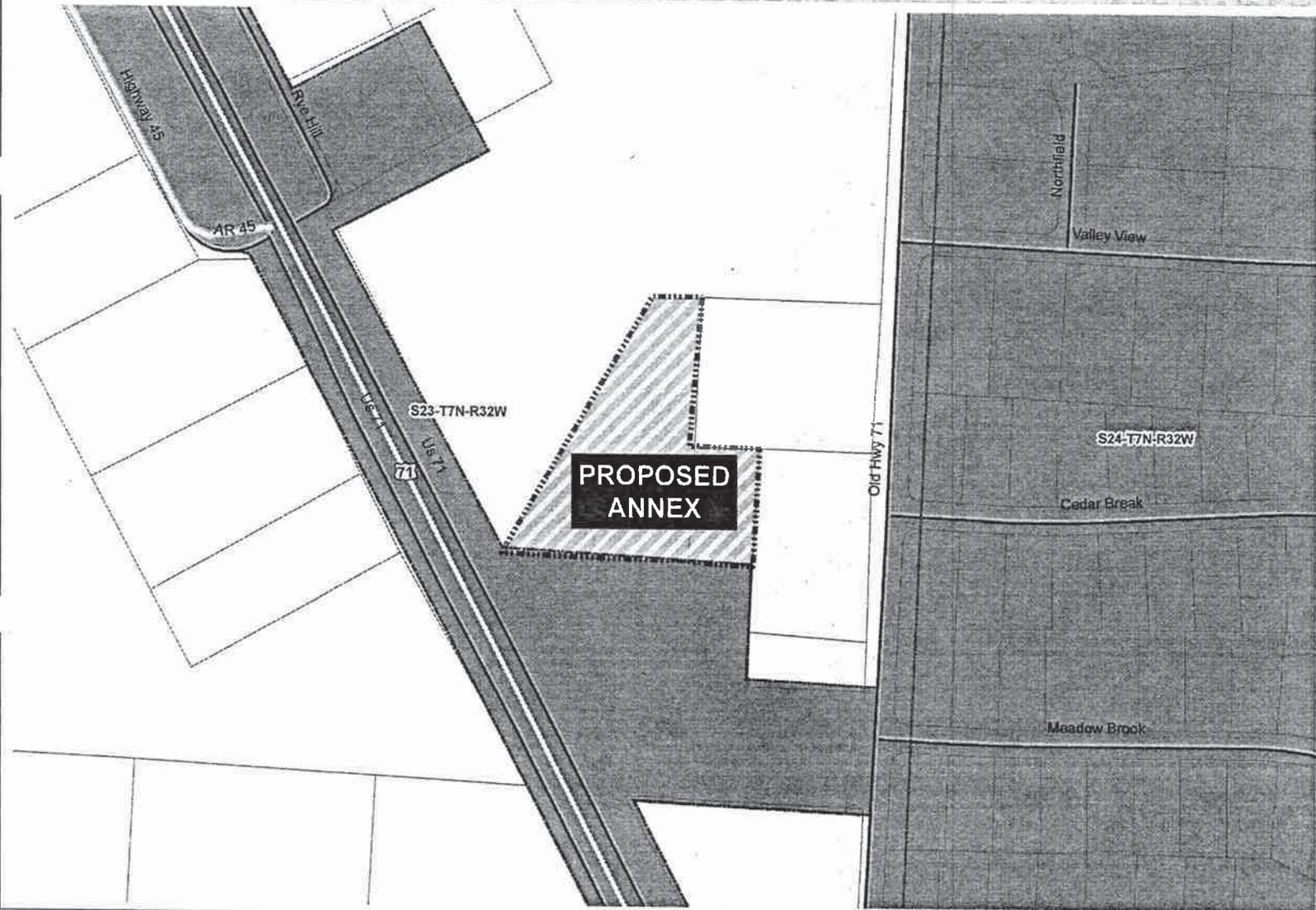
Proposed Annex: City of Forth Smith  
April 2016

City: Forth Smith  
Mayor: Sandy Sanders

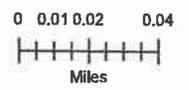
Arkansas Code 14-40-101.

Before an entity undertakes an annexation, consolidation, or detachment proceeding under this chapter, the entity shall coordinate with the Arkansas Geographic Information Systems Office for preparation of legal descriptions and digital mapping for the relevant annexation, consolidation, and detachment areas.

The map contained herein, is evidence, the entity has met requirements of Act 914 of 2015



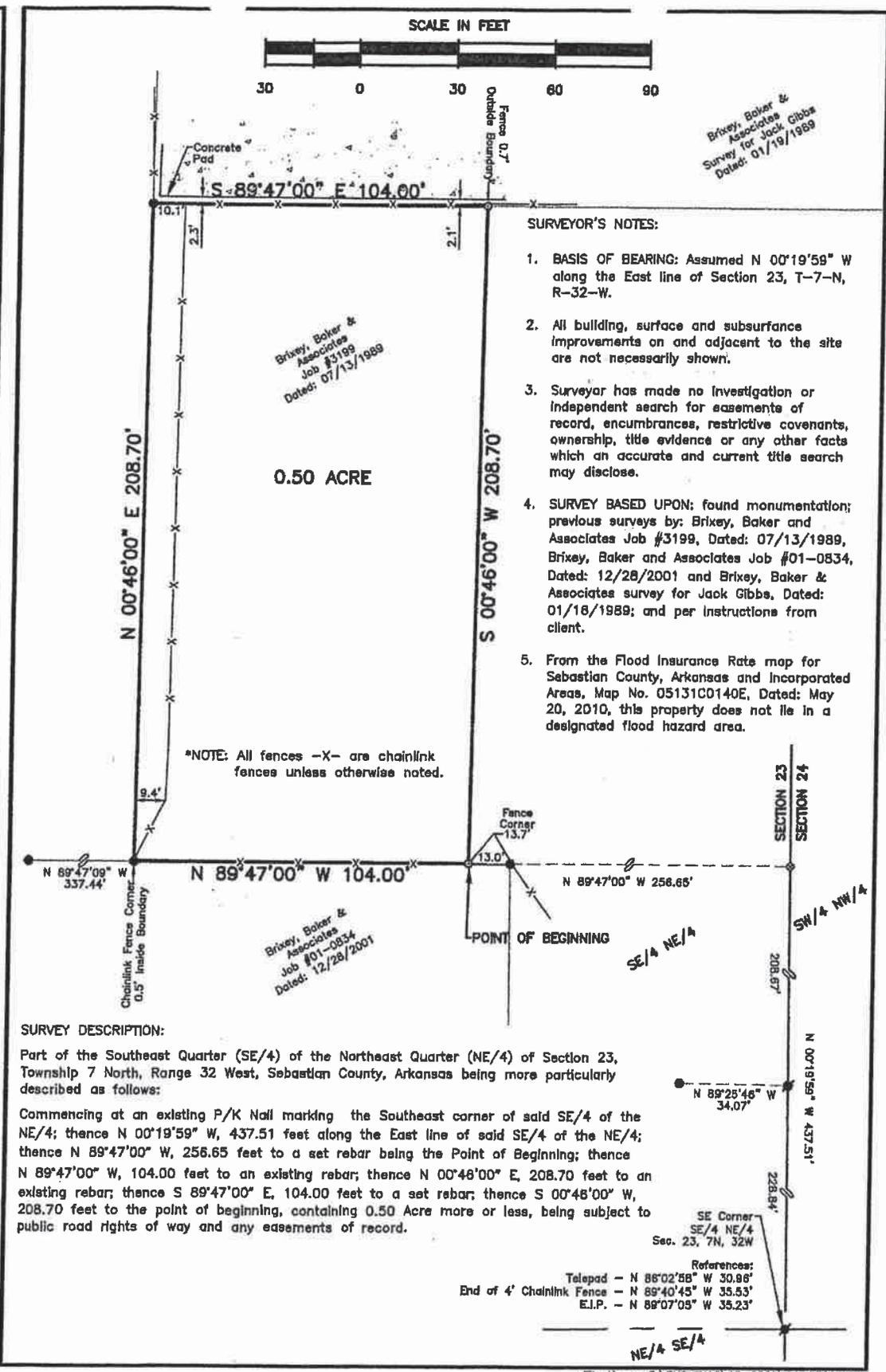
- Proposed Annex
- Township-Range
- Sections
- Parcels
- Highway
- Minor Road
- Existing City
- Neighboring City
- County Boundary



ARKANSAS  
GIS OFFICE

**BRIXEY ENGINEERING & LAND SURVEYING, INC.**  
**CONSULTING ENGINEERS - LAND SURVEYORS**  
 Fort Smith, Arkansas 72906 (479) 646-8884  
 P.O. Box 6180  
 5223 East Highway 45

© BRIXEY ENGINEERING & LAND SURVEYING, 2016  
 Any unauthorized use of this drawing or data by others is at the sole risk of the user. Brixey, Baker & Associates, Inc. and its employees shall not be held liable for claims, costs or damages, including reasonable attorney's fees, arising from improper use of this drawing or data, or by another party.



**LEGEND**

Computed Point	⊙
Set 1/2" Iron Pin	⊙
Exist. 1/2" Iron Pin	⊙
Set R.R. Spike	⊙
Exist. R.R. Spike	⊙
Set Nail	⊙
Exist. Nail	⊙
Exist. Stone	⊙
Exist. Monument	⊙
Exist. Fence	-X-



**PROPERTY SURVEY**

PART OF THE SE/4 OF THE NE/4  
 SECTION 23, T-7-N, R-32-W  
 SEBASTIAN COUNTY, ARKANSAS

Prepared For: Rye Hill Baptist Church

500-07N-32W-0-23-120-65-0988

Date:	01/22/2018
Drawn By:	TMC
Computed By:	DPB
Job No.:	16-0009
Filed:	



SCALE IN FEET



EASEMENT DESCRIPTION:

A thirty foot (30') wide easement for ingress and egress across part of the Southeast Quarter (SE/4) of the Northeast Quarter (NE/4) of Section 23, Township 7 North, Range 32 West, Sebastian County, Arkansas being more particularly described as follows:

Commencing at an existing P/K nail marking the Southeast corner of said SE/4 of the NE/4; thence N 00°19'59" W, 916.32 feet along the East line of said SE/4 of the NE/4; thence N 89°43'49" W, 28.25 feet to an existing rebar on the West right of way line of Old Highway 71 being the Point of Beginning; thence N 89°43'49" W, 353.20 feet to a set rebar; thence N 30°42'46" E, 34.80 feet to a set rebar; thence S 89°43'49" E, 365.90 feet to a set rebar on said right of way line; thence S 00°53'09" W, 30.00 feet along said right of way line to the point of beginning.

SURVEYOR'S NOTES:

1. BASIS OF BEARING: Assumed N 00°19'59" W along the East line of Section 23, T-7-N, R-32-W.
2. All building, surface and subsurface improvements on and adjacent to the site are not necessarily shown.
3. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership, title evidence or any other facts which an accurate and current title search may disclose.
4. SURVEY BASED UPON: found monumentation; previous surveys by: Brixey Engineering & Land Surveying Job #18-0009, Dated: 01/22/2016, Brixey Engineering & Land Surveying Job #08-0006, Dated: 01/16/2008; Brixey, Baker and Associates Job #01-0834, Dated: 12/28/2001 and Brixey, Baker & Associates survey for Jack Gibbs, Dated: 01/16/1989; and per instructions from client.
5. From the Flood Insurance Rate map for Sebastian County, Arkansas and Incorporated Areas, Map No. 05131C0140E, Dated: May 20, 2010, this property does not lie in a designated flood hazard area.

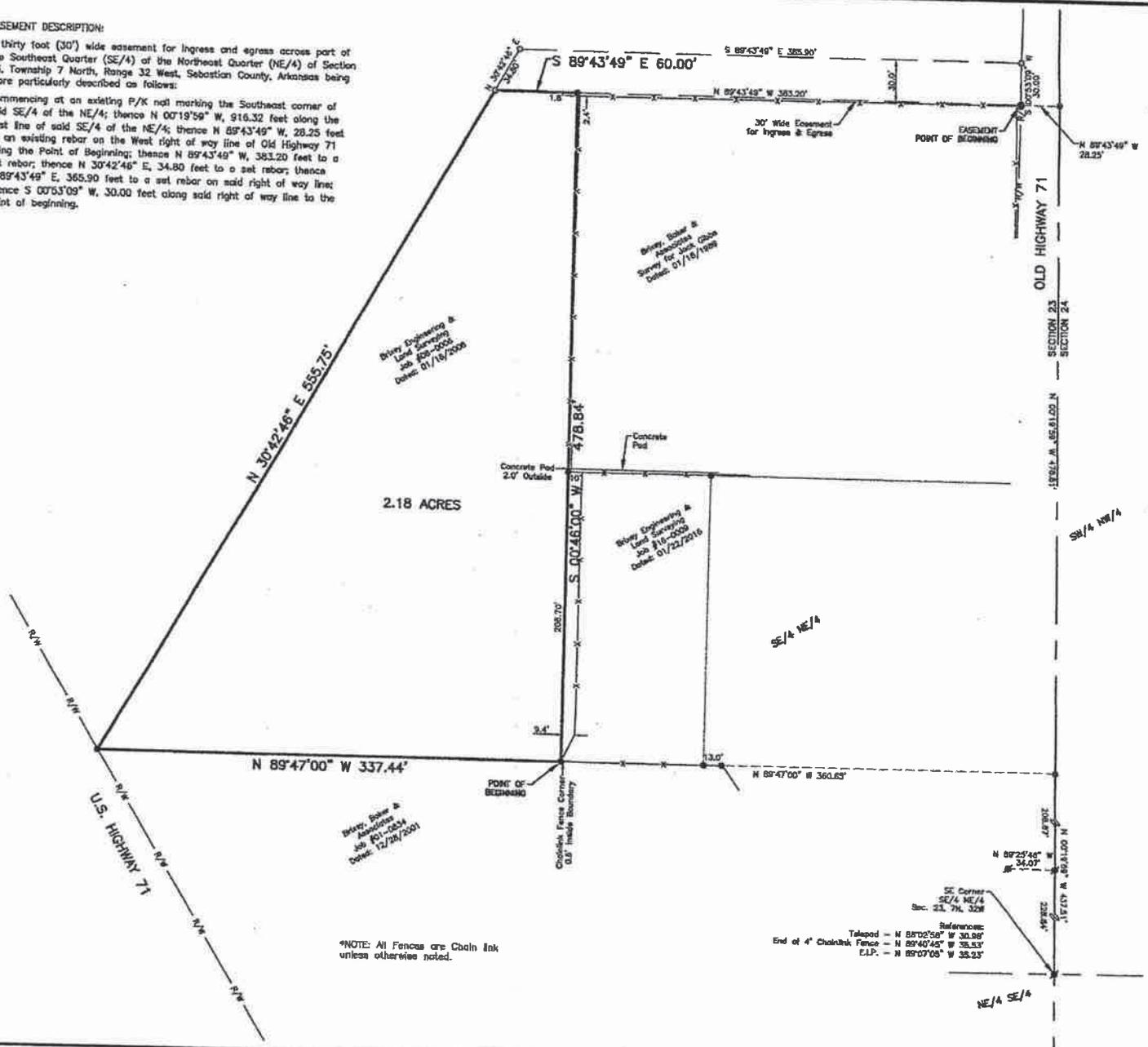
SURVEY DESCRIPTION:

Part of the Southeast Quarter (SE/4) of the Northeast Quarter (NE/4) of Section 23, Township 7 North, Range 32 West, Sebastian County, Arkansas being more particularly described as follows:

Commencing at an existing P/K nail marking the Southeast corner of said SE/4 of the NE/4; thence N 00°19'59" W, 437.51 feet along the East line of said SE/4 of the NE/4; thence N 89°47'00" W, 360.85 feet to an existing rebar being the Point of Beginning; thence N 89°47'00" W, 337.44 feet to an existing rebar on the Eastern right of way line of U.S. Highway 71; thence N 30°42'46" E, 555.75 feet to a set rebar; thence S 89°43'49" E, 60.00 feet to an existing rebar; thence S 00°48'00" W, 478.84 feet to the point of beginning, containing 2.18 Acres more or less, being subject to public road rights of way and any easements of record.



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Any unauthorized use of this drawing or data by others is at the user's risk of the user. Brixey Engineering & Land Surveying, Inc. shall be held harmless and without liability from claims, suits or damages of any nature resulting from or arising out of any use of this drawing or data, or by any other party.



\*NOTE: All Fences are Chain Link unless otherwise noted.

Reference:  
Tapeed - N 89°02'59\"/>

**BRIXEY ENGINEERING & LAND SURVEYING, INC.**  
CONSULTING ENGINEERS — LAND SURVEYORS  
8223 East Highway 45 P.O. Box 8180 Fort Smith, Arkansas 72906 (479) 946-8994

LEGEND

Computed Point	•••••
Set 1/2" Iron Pin	•••••
Set 1/2" Iron Pin	•••••
Set R.R. Spike	•••••
Set R.R. Spike	•••••
Set Nail	•••••
Set Nail	•••••
Set Stone	•••••
Set Monument	•••••
Set Fence	•••••



File Name: G:\SURVE\18-0014\16-0014.dwg  
Date: 03/04/2016  
Drawn By: TMC  
Computed By: DFB  
Job No. 18-0014  
Sheet:  
Title:

**PROPERTY SURVEY**  
PART OF THE SE/4 OF THE NE/4  
SECTION 23, T-7-N, R-32-W  
SEBASTIAN COUNTY, ARKANSAS

Prepared For: Rye Hill Baptist Church

500-D7N-32W-0-23-120-85-0988

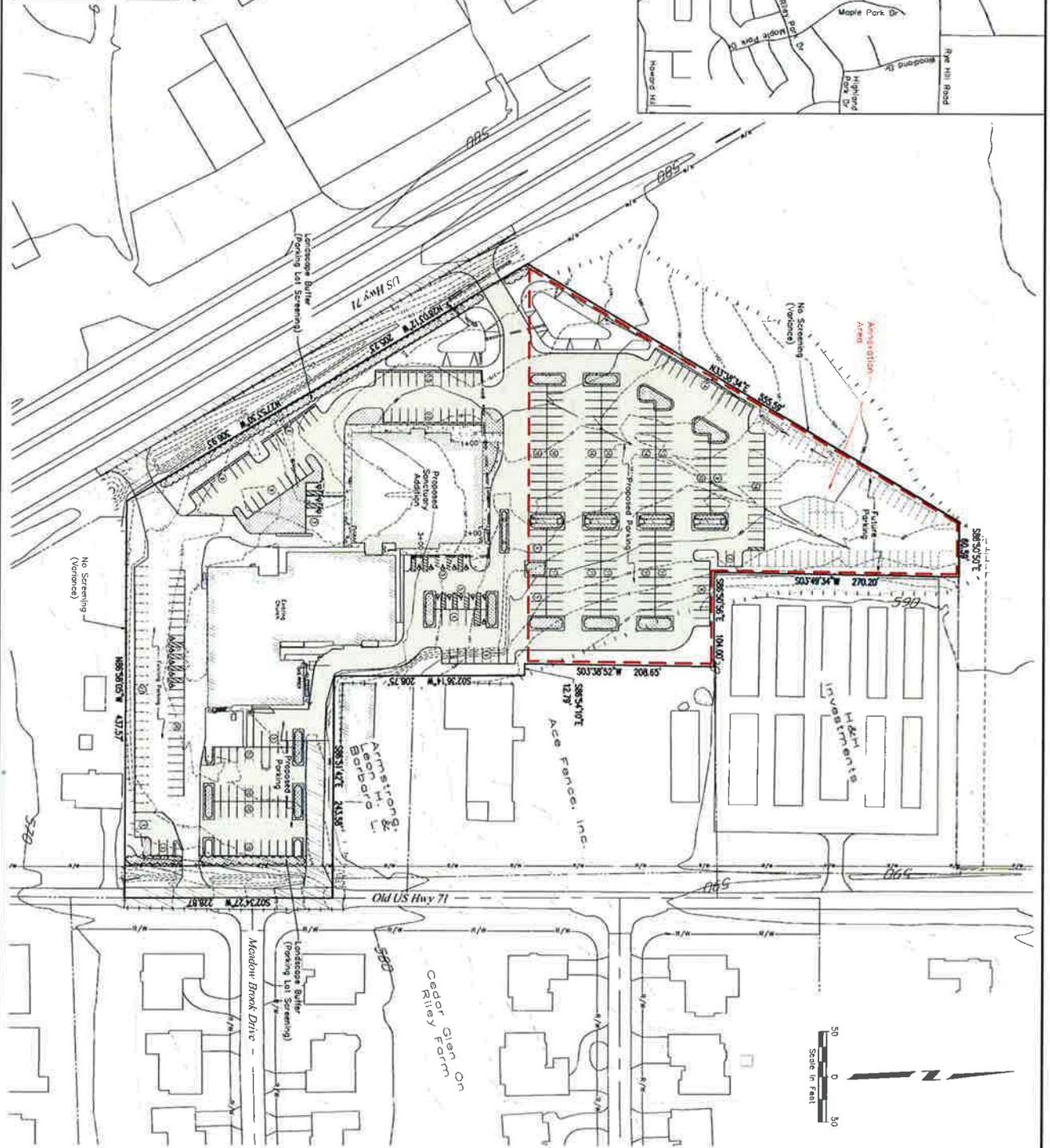
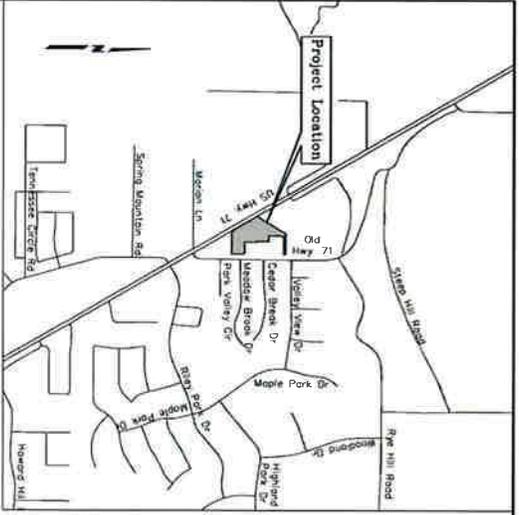
**GENERAL INFO**

Setting: County: 000  
 Total Number of Lots: 0  
 Total Number of Units: 0  
 Project Name: Rye Hill Baptist Church  
 Project No: 160716  
 Project Date: 07/16/16

**BUILDING HEIGHT**

Building Height: 20' 0" (to top of roof)  
 Building Height: 20' 0" (to top of finished floor)  
 Building Height: 20' 0" (to top of ground level)

**Vicinity Map**  
 Scale 1" = 1000'



DEVELOPMENT PLAN	
RYE HILL BAPTIST CHURCH	
FORT SMITH, SEBASTIAN COUNTY, ARKANSAS	

**MICKLE WAGNER COLEMAN** Engineers-Consultants-Surveyors  
 3434 Country Club Ave. (479) 649-8484  
 P.O. Box 1507 Fax: (479) 649-8486  
 Fort Smith, Arkansas info@mwc-eng.com

DATE	REVISION	BY

1B.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING THE MASTER LAND USE PLAN MAP AND  
REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP**

---

**WHEREAS**, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on June 14, 2016, that said change be made; and,

**WHEREAS**, the Planning Commission determined the change to the Master Land Use Plan Map does conform to the goals and objectives of the Comprehensive Plan.

**WHEREAS**, the City Planning Commission has heretofore held a public hearing to consider request No. 13-6-16 to rezone certain properties hereinafter described, and, having considered said request, recommended on June 14, 2016, 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:** The hereinafter described property is hereby reclassified on the Master Land Use Plan Map from Unclassified and Extra Territorial Jurisdiction Neighborhood Commercial to General Commercial is hereby amended to reflect said amendment to-wit:

Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Sebastian County, Arkansas. Being more particularly described as follows:

Beginning at the Southeast Corner of said Southeast Quarter of the Northeast Quarter; Thence along the south line of said Southeast Quarter of the Northeast Quarter, N86°58'05"W, 437.98 feet to the easterly right-of-way of U.S. Highway 71; Thence along said easterly right-of-way, N27°53'30"W, 306.93 feet; Thence continuing along said easterly right-of-way, N28°03'12"W, 205.23 feet; Thence leaving said right-of-way, N33°38'34"E, 555.59 feet; Thence S86°50'50"E, 60.58 feet; Thence S03°49'34"W, 270.20 feet; Thence S86°50'56"E, 104.00 feet; Thence S03°38'52"W, 208.65 feet; Thence S86°54'10"E, 12.79 feet; Thence S02°36'14"W, 208.75 feet; Thence S86°51'42"E, 243.78 feet to a point on the east line of said Southeast Quarter of the Northeast Quarter; Thence S02°46'17"W, 228.86 feet to the Point of Beginning. Containing 7.23 acres, more or less.

More commonly known as 11512 Old Highway 271 South.

**SECTION 2:** The hereinafter described property is hereby rezoned from Not Zoned (NZ) and Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Commercial Moderate (C-3) by Classification.

Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Sebastian County, Arkansas. Being more particularly described as follows:

Beginning at the Southeast Corner of said Southeast Quarter of the Northeast Quarter; Thence along the south line of said Southeast Quarter of the Northeast Quarter, N86°58'05"W, 437.98 feet to the easterly right-of-way of U.S. Highway 71; Thence along said easterly right-of-way, N27°53'30"W, 306.93 feet; Thence continuing along said easterly right-of-way, N28°03'12"W, 205.23 feet; Thence leaving said right-of-way, N33°38'34"E, 555.59 feet; Thence S86°50'50"E, 60.58 feet; Thence S03°49'34"W, 270.20 feet; Thence S86°50'56"E, 104.00 feet; Thence S03°38'52"W, 208.65 feet; Thence S86°54'10"E, 12.79 feet; Thence S02°36'14"W, 208.75 feet; Thence S86°51'42"E, 243.78 feet to a point on the east line of said Southeast Quarter of the Northeast Quarter; Thence S02°46'17"W, 228.86 feet to the Point of Beginning. Containing 7.23 acres, more or less.

more commonly known as 11512 Old Highway 71 South.

The zoning map of the City of Fort Smith is hereby amended to reflect said rezoning.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**City Clerk**

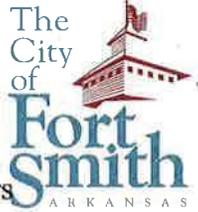
\_\_\_\_\_  
**Mayor**

**Approved as to form:**



\_\_\_\_\_  
**Publish One Time**

June 28, 2016



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

Re: A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of the Building Committee for Rye Hill Baptist Church, for a Master Land Use Plan Amendment from Not Classified and ETJ Neighborhood Commercial to General Commercial and a zone change from Not Zoned (NZ) and Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Commercial Moderate (C-3) by Classification located at 11512 Old Highway 71 South.

On June 14, 2016, the City Planning Commission held a public hearing to consider the above requests.

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for the annexation of 2.68 acres and an expansion of the existing Rye Hill Baptist Church sanctuary addition along with additional parking and landscaping.

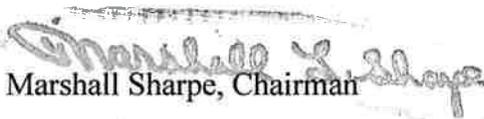
Mr. Nick Griffin was present to speak on behalf of these requests. Mr. Frank Hug spoke in support of these requests.

No one was present to speak in opposition to these requests.

Chairman Sharpe then called for the vote on the Master Land Use Plan amendment. The Master Land Use Plan Amendment was approved by a vote of 8 in favor and 1 abstention (Carson), subject to the submitted development plan and Board of Directors' approval of the annexation petition.

Chairman Sharpe then called for the vote on the rezoning request. The rezoning was approved by a vote of 8 in favor and 1 abstention (Carson), subject to the approved conditional use application and Board of Directors' approval of the annexation petition.

Respectfully Submitted,

  
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

# MLUPA - from ETJ Neighborhood Commercial & Unclassified to General Commercial 11512 Old Highway 71

56



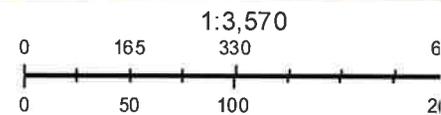
# Rezoning #13-6-16: From Not Zoned & ETJ Open-1 to Commercial Moderate (C-3) 11512 Old Hwy 71 South

69

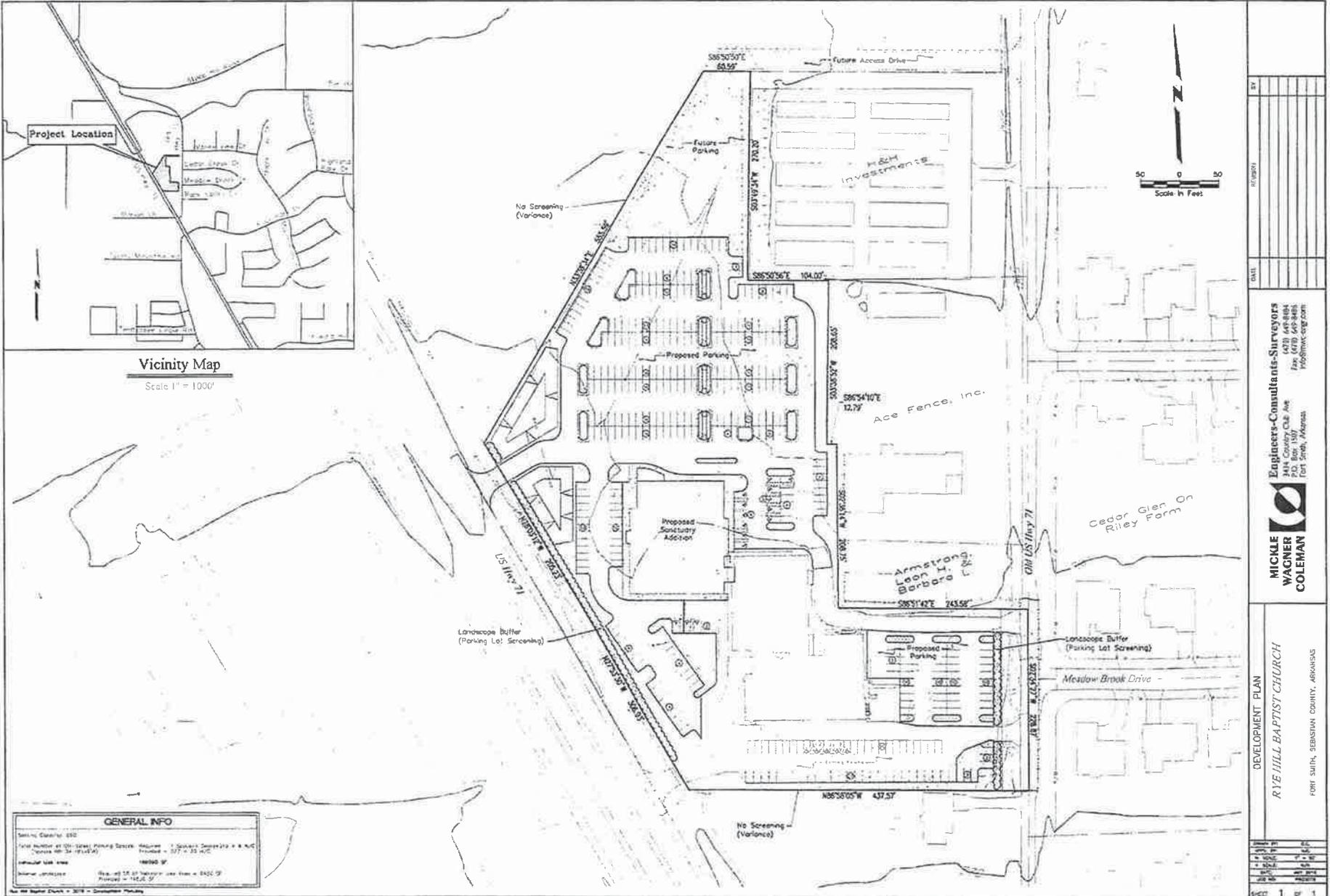


May 24, 2016

-  Fort Smith City Limits
-  Zoning
-  Subdivisions



6F



Vicinity Map  
Scale 1" = 1000'

GENERAL INFO	
Planning Commission #	030
Total Number of (20) Spaces Parking District	Required = 1 Spaces Separated by 5' & 4' C
Capacity for (20) Spaces	Provided = 377 = 33' 4" C
Minimum Lot Area	Required 50'
Minimum Lot Area	Provided = 142,000 sq'
Other Comments	See all 15 of 'History' use from = ENCC 9'
Principal =	142,000 sq'



DATE	BY

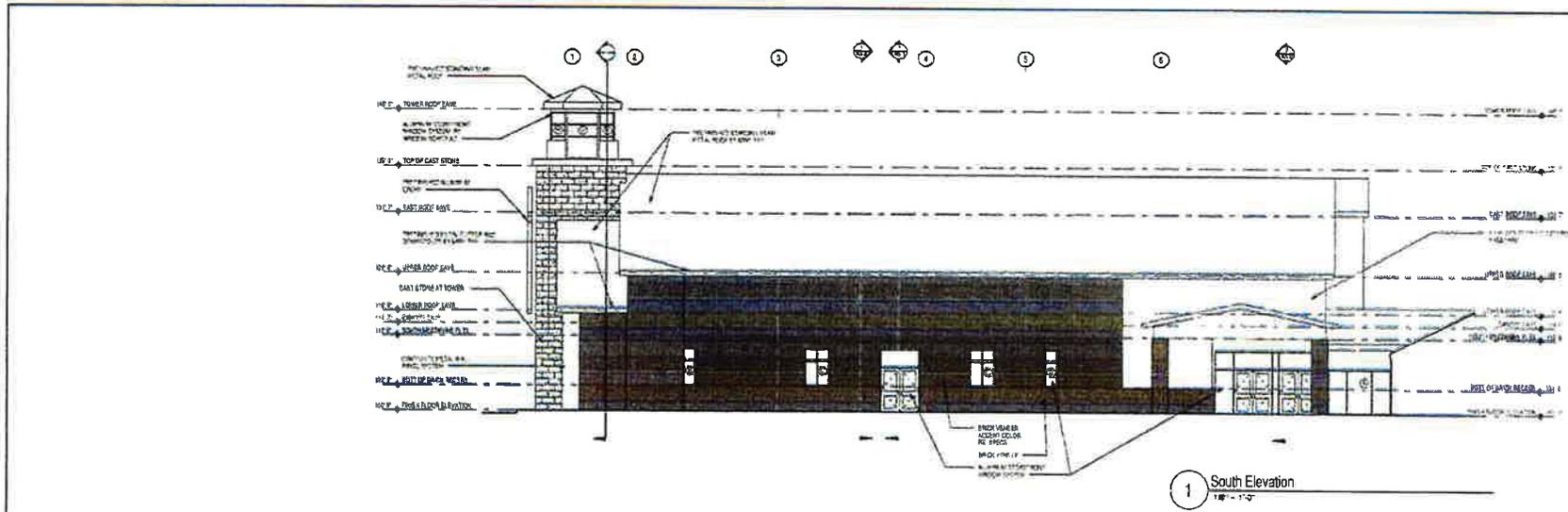
**Engineers-Consultants-Surveyors**  
 M&H County Club, Inc.  
 P.O. Box 1307  
 Fort Smith, Arkansas  
 (479) 648-8884  
 Fax: (479) 648-8885  
 info@mhc-ecsg.com

**MICKLE WAGNER COLEMAN**

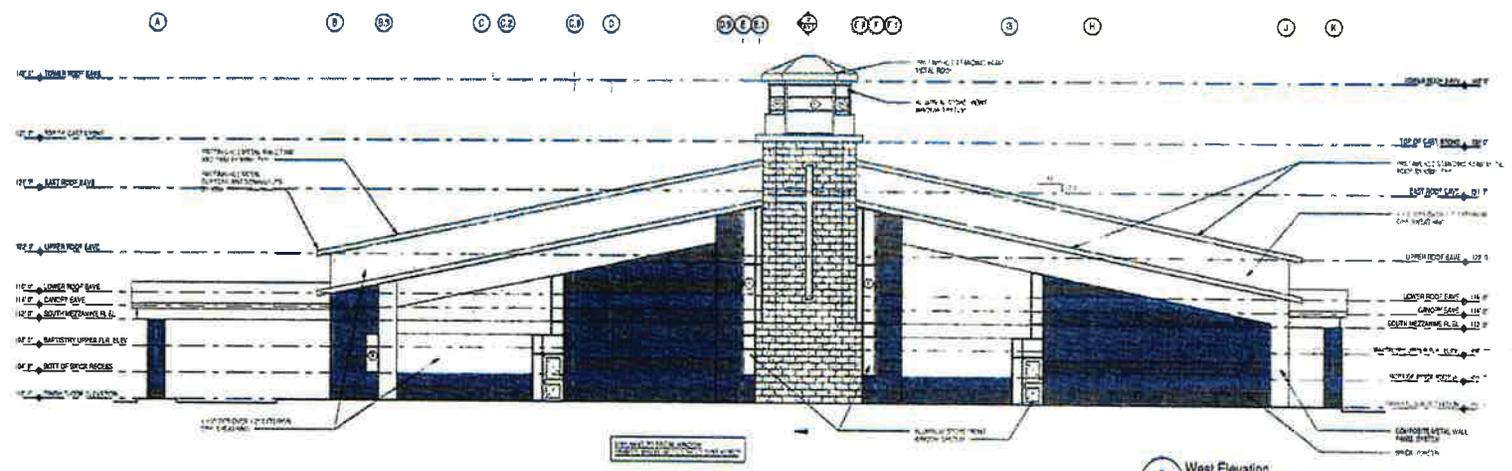
DEVELOPMENT PLAN  
**RYE HILL BAPTIST CHURCH**  
 FOUR SUITE, SEBASTIAN COUNTY, ARKANSAS

DATE	BY

76



1 South Elevation  
1/8" = 1'-0"



2 West Elevation  
1/8" = 1'-0"

**BILD**  
ARCHITECTURE

60% PRELIMINARY  
05-15-2016

A NEW SANCTUARY ADDITION FOR  
**RYE HILL BAPTIST CHURCH**  
FORT SMITH, AR

2016-001  
05/15/2016

A4.1





## Master Land Use Plan Amendment

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** June 3, 2016

**Re:** Proposed Master Land Use Plan Amendment by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of the building Committee for Rye Hill Baptist Church, at 11512 Old Hwy 71 from Not Classified and ETJ Neighborhood Commercial to General Commercial.

The Planning Department is in receipt of an application from Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of the building Committee for Rye Hill Baptist Church, to amend the Master Land Use Map from Not Classified and ETJ Neighborhood Commercial to General Commercial to accommodate a proposed Commercial Moderate (C-3) zoning request and annexation of 2.68 acres. The subject property is on the west side of Old Highway 71 and on the east side of U.S. Highway 71 South between Park Valley Circle and Valley View Drive. The tract contains an approximate area of seven acres with approximately 228 feet of street frontage along Old Highway 71 South and approximately 511 feet of street frontage along Highway 71 South.

The property is currently Not Zoned and ETJ Open-1. A companion zoning application requests a Commercial Moderate (C-3) zoning district. The Master Land use Plan is a guide to zoning and development and must be considered with the companion application.

### ADJACENT LAND USE CLASSIFICATIONS AND USES

Land Use classification and use contiguous to the subject lot are as follows:

The area to the north and east is classified as ETJ Neighborhood Commercial and ETJ Light Commercial Office and is developed as a fence contractor, HVAC contractor, and mini storage units.

The area to the east across Old Highway 71 is classified as Residential Detached and is developed as single family residential neighborhood.

The area to the south is classified as ETJ Neighborhood Commercial and developed as a single family residence.

The area to the west across U.S. Highway 71 is classified as ETJ Neighborhood Commercial and developed as auto sales, carport sales, trailer sales and other commercial developments.

**Purposed Land Use**

The proposed Land Use classification of General Commercial is intended to provide opportunities for business transactions and activities, and meet the consumer needs of the community.

**Characteristics and Use:**

**Criteria for Designation:**

**Compliance Noted**

- |  |     |
|--|-----|
| • Compatible with and complimentary to surrounding uses.   | YES |
| • Located on high volume arterials and collectors  | YES |
| • Located as a cluster of like services  | YES |
| • Accessible by most modes of transportation   | YES |
| • Appropriately located for minimum impact of adjacent uses, and, by volume of activity and trips generated by use | YES |

**MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies U.S. Highway 71 South as a Boulevard and Old Highway 71 South as a Local Road.

**NEIGHBORHOOD MEETING**

A neighborhood meeting was held Thursday, June 2, 2016, at 5:30 P.M. on site. One neighboring property owner attended the meeting and did not have any concerns.

**STAFF COMMENTS AND RECOMMENDATIONS**

Based on compatibility with surrounding land use classifications and land uses, staff recommends approval of the application contingent upon approval of the companion rezoning and conditional use applications, and Board of Directors' approval of the annexation petition.

5B



**For a Minor, Standard or Major Master Land Use Plan Amendment**, please attach the following information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

1. A legal description of the subject property that is to be amended (reclassified).

**Rye Hill Baptist 7.22 Acre Legal (Overall Site)**

Part of the Southeast Quarter of the Northeast Quarter of Section 23, Township 7 North, Range 32 West, Sebastian County, Arkansas. Being more particularly described as follows:

Beginning at the Southeast Corner of said Southeast Quarter of the Northeast Quarter; Thence along the south line of said Southeast Quarter of the Northeast Quarter, N86°58'05"W, 437.57 feet to the easterly right-of-way of U.S. Highway 71; Thence along said easterly right-of-way, N27°53'30"W, 306.93 feet; Thence continuing along said easterly right-of-way, N28°03'12"W, 205.23 feet; Thence leaving said right-of-way, N33°38'34"E, 555.59 feet; Thence S86°50'50"E, 60.58 feet; Thence S03°49'34"W, 270.20 feet; Thence S86°50'56"E, 104.00 feet; Thence S03°38'52"W, 208.65 feet; Thence S86°54'10"E, 12.79 feet; Thence S02°36'14"W, 208.75 feet; Thence S86°51'42"E, 243.58 feet to a point on the east line of said Southeast Quarter of the Northeast Quarter; Thence S02°34'27"W, 228.87 feet to the Point of Beginning. Containing 7.22 acres, more or less, and being subject to any rights-of-way, easements or other matters of record or fact.

2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location.

3. The area dimensions of the property in square feet or acres.

4. Describe existing road conditions and new roads to be included in the development and the effect of the proposed development on existing roads and traffic conditions:

The property lies between Old Highway 71 South and Highway 71 South. Old Highway 71 South is two lanes and Highway 71 South is a 4 lane divided highway. The impact from this development will be minimal on both roads.

5. Describe the existing public utility services and infrastructure (such as water, sewer, fire/police) which are available to the property and the source/method of providing additional utilities and infrastructure to the property if necessary:

The Site currently has Fort Smith water and sewer service. A 6" fire line and hydrant will be extended to the property for fire protection. Fort Smith Fire and Police Department will serve the property.

6. Provide a statement of the proposed build-out density and maximum potential build-out density (units per acre) permitted by the proposed land use classification:

N/A; the proposed development is a church and parking lot.

7. Identify any known or anticipated environmental concerns:

None.

**For a Standard or Major Master Land Use Plan Amendment only**, please attach the following additional information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

8. An analysis of the impact of the amendment on surrounding properties and plans in terms of:

a. Describe potential changes to development patterns in terms of local and regional impacts:

None

b. Describe the consistency in zoning between existing and planned uses:

The property is currently not zoned.

c. Provide explanation of the need for and demand in the proposed uses:

The Church continues to grow and needs the additional space.

9. Provide an analysis of the long term development plan for the area (10-20 years) which incorporates a review of the land use, transportation, and infrastructure impact to both the City of Fort Smith and the property owner:

This area is along Highway 71 South and the future uses will likely be commercial, transitional, or residential. The Church will fit well for these land uses. There will be minimal impact on land use, transportation, or infrastructure.

**For a Comprehensive Plan-Text Amendment only**, please attach the following information. Provide answers on a separate sheet and attach it to this application:

1. A typewritten copy of the proposed changes to the text in underline/strikeout (also known as "track changes") format.
2. A description of the reasons supporting the amendment and the special circumstances requiring the change:

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** June 2, 2016

**Re:** Rezoning #13-6-16 - A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of the building Committee for Rye Hill Baptist Church for Planning Commission consideration of a zone request from Not Zoned (NZ) and Extra Territorial Jurisdiction Open-1 (ETJ-O-1) to Commercial Moderate (C-3) by classification at 11512 Old Hwy 71 South

## PROPOSED ZONING

Approval of the rezoning will allow for the annexation of 2.68 acres and an expansion of the existing Rye Hill Baptist church sanctuary addition along with additional parking and landscaping.

## LOT LOCATION AND SIZE

The subject property is on the west side of Old Highway 71 and on the east side of U.S. Highway 71 South between Park Valley Circle and Valley View Drive. The tract contains an approximate area of 7 acres with approximately 228 feet of street frontage along Old Highway 71 South and approximately 511 feet of street frontage along U.S. Highway 71 South.

## REQUESTED ZONING

The requested 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.

6A

**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. A complete list of the uses permitted by right and by conditional use approval is enclosed.

**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
- Minimum building separation – to be determined by current City building and fire code.
- Required street access – Major Collector or higher
- Maximum Height - 35 feet (1+1)
- Maximum Lot Coverage - 60%

**EXISTING ZONING**

The existing zoning on this tract is Extraterritorial Jurisdiction Open-1(ETJ Open-1) and not zoned (NZ). Characteristics of the ETJ Open-1 zone are as follows:

**Purpose:**

A zone to protect the undeveloped areas within the city’s extraterritorial zoning jurisdiction from incompatible land use or other specific uses that may constitute a nuisance to the residents therein or uses that may create an endangerment to the health, safety, or general welfare of the jurisdiction’s population.

**Permitted Uses:**

Single family homes, duplexes, nurseries and greenhouses, truck farms, golf courses, fire and police station, utility substations and parks, playgrounds and other open spaces.

**Conditional Uses:**

Agricultural uses (limited), churches, country clubs more than ten (10) acres, boarding schools, nursing homes, orphanages, educational services and public buildings.

LB

### **SURROUNDING ZONING AND LAND USE**

The area to the north and east is zoned ETJ O-1 and developed as a fence contractor, HVAC contractor, and mini storage units.

The area to the east across Old Highway 71 is zoned Residential Single Family Medium Density (RS-2) and developed as single family residences.

The area to the south is zoned ETJ-Open-1 and is developed as a single family residence.

The area to the west across the U.S. Highway 71 is zoned ETJ-Open-1 and developed as auto sales, carport sales, trailer sales and other commercial developments.

### **MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies U.S. Highway 71 South as a Boulevard and Old Highway 71 South as a Local Road.

### **MASTER LAND USE PLAN COMPLIANCE**

The Master Land Use Plan classifies the site as ETJ Neighborhood Commercial and not classified. ETJ Neighborhood Commercial classification is intended to provide an area in which the primary use of the land is for commercial and service uses to serve the daily convenience needs of the surrounding residential neighborhood. The use is intended to be located within small districts located within walking distance from the edge of surrounding residential areas. A companion Master Land Use Plan amendment has been submitted to change the land use classification to General Commercial. This classification is intended to provide opportunities for business transactions and activities, and meet the consumer needs of the community.

### **NEIGHBORHOOD MEETING**

A neighborhood meeting was held Thursday, June 2, 2016, at 5:30 P.M. on site. One neighboring property owner attended the meeting and did not have any concerns.

### **STAFF COMMENTS AND RECOMMENDATIONS**

Based on compatibility with surrounding land uses, staff recommends approval of the request subject to approval of the Master Land Use Plan amendment, Conditional Use Application, and the Board of Director's approval of the annexation petition.

6 C

**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)

See Attached

2. Address of property: 11512 Old Highway 71 South

3. The above described property is now zoned: Not Zoned 3 ETS den -1

4. Application is hereby made to change the zoning classification of the above described property to Commercial Moderate C-3 by Classification.  
(Extension or classification)

5. Why is the zoning change requested?

To permit church expansion  
\_\_\_\_\_  
\_\_\_\_\_

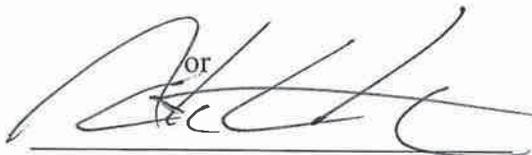
6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

Mickle Wagner Coleman, Inc.  
Owner or Agent Name  
(please print)

\_\_\_\_\_  
Owner

P.O. Box 1507, Ft. Smith, AR. 72902  
Owner or Agent Mailing Address

  
Agent

479-649-8484  
Owner or Agent Phone Number

6D

**DRAFT**

**Planning Commission Meeting Minutes  
June 14, 2016**

**access for an Industrial Moderate (I-2) zone located at 400 Phoenix Avenue.  
(companion item to items #2 & #3)**

Chairman Sharpe called for the vote on the variance request. The vote was 9 in favor and 0 opposed.

**RECESS BOARD OF ZONING ADJUSTMENT  
RECONVENE PLANNING COMMISSION**

- 5. A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a Master Land Use Plan Amendment from Unclassified and Extra Territorial Jurisdiction Commercial Neighborhood to General Commercial located at 11512 Old Highway 71 South. (companion item to items #6, #7 & #8)**
- 6. Rezoning #13-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a zone change from Not Zoned (NZ) and Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Commercial Moderate (C-3) by Classification located at 11512 Old Highway 71 South. (companion item to items #5, #7 & #8)**
- 7. Conditional Use #8-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a church expansion located at 11512 Old Highway 71 South. (companion item to items #5, #6 & #8)**
- 8. Variance #18-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a variance from Section 27-602-4 (C) (8)-6 ft. screening fence, wall or landscape buffer adjacent to property zoned for residential purposes located at 11512 Old Highway 71 South. (companion item to items #5, #6 & #7)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for the annexation of 2.68 acres and an expansion of the existing Rye Hill Baptist Church sanctuary addition along with additional parking and landscaping.

Mr. Nick Griffin and Mr. Frank Hug were present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these requests.

5. **A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a Master Land Use Plan Amendment from Unclassified and Extra Territorial Jurisdiction Commercial Neighborhood to General Commercial located at 11512 Old Highway 71 South. (companion item to items #6, #7 & #8)**

Chairman Sharpe called for the vote on the Master Land Use Plan Amendment. The Master Land Use Plan Amendment was approved by a vote of 8 in favor and 1 abstention (Carson), subject to the submitted development plan and Board of Directors' approval of the annexation petition.

6. **Rezoning #13-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a zone change from Not Zoned (NZ) and Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Commercial Moderate (C-3) by Classification located at 11512 Old Highway 71 South. (companion item to items #5, #7 & #8)**

Chairman Sharpe called for the vote on the rezoning request. The rezoning was approved by a vote of 8 in favor and 1 abstention (Carson), subject to the submitted development plan and Board of Directors' approval of the annexation petition.

7. **Conditional Use #8-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a church expansion located at 11512 Old Highway 71 South. (companion item to items #5, #6 & #8)**

Chairman Sharpe called for the vote on the conditional use request. The conditional use was approved by a vote of 8 in favor and 1 abstention (Carson), subject to the following:

- Approval of the annexation petition by the City Board of Directors.
- 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.
- Signage shall comply with the Unified Development Ordinance for signage permitted in commercial zones. 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.

**RECESS PLANNING COMMISSION  
RECONVENE BOARD OF ZONING ADJUSTMENT**

- 8. Variance #18-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a variance from Section 27-602-4 (C)(8)-6 ft. screening fence, wall or landscape buffer adjacent to property zoned for residential purposes located at 11512 Old Highway 71 South. (companion item to items #5, #6 & #7)**

Chairman Sharpe called for the vote on the variance request. The variance was approved by a vote of 8 in favor and 1 abstention (Carson).

**RECESS BOARD OF ZONING ADJUSTMENT  
RECONVENE PLANNING COMMISSION**

- 9. Conditional Use #9-6-16; A request by Tony Pham, agent for Vasiliki Investments, LLC, for a conditional use for a pool hall located at 1217 South Waldron Road.**

Ms. Maggie Rice read the staff report indicating that the purpose of the conditional use request is to allow the applicant to open a pool hall at this location in an existing space at LaVilla Shopping Center. Ms. Rice stated that a neighborhood meeting was held on Tuesday, May 24, 2016, at 1217 South Waldron Road with no neighboring property owners in attendance. Ms. Rice noted that two (2) phone calls had been received from adjacent property owners concerned about the sale of alcohol at this location. The applicant stated on his application that no alcohol would be served.

Mr. Tony Pham was present to speak on behalf of this request.

Ms. Mariah Watkins and Ms. Linda Mann spoke in opposition to this request citing their concerns relative to alcohol sales.

Following a discussion by the Commission, Chairman Sharpe called for the vote on the conditional use request. The conditional use request was approved by a vote of 8 in favor and 1 opposed (Newton), on the condition that alcohol will not be served or provided. It was also noted that the requirements for the conditional use must begin to be met within one (1) year of the Planning Commission's approval.

- 10. Conditional Use #10-6-16; A request by Ron Brixey, agent for Ferguson Childcare, Inc., for a conditional use for a temple located at 5201 Virginia Avenue.**

Ms. Maggie Rice read the staff report indicating that the purpose of the conditional use request is to allow for an existing child care facility to be remodeled for a temple. It was noted that the site would add some additional parking to comply with the minimum number of parking spaces.

2.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP**

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**WHEREAS**, the City Planning Commission has heretofore held a public hearing upon request No. 12-6-16 to rezone certain properties hereinafter described, and, having considered said request, recommended on June 14, 2016, 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:

Tract 1, Valmont Addition – Lot split as filed for record on September 21, 1982

AND

A part of the Fractional Southeast Quarter of the Northwest Quarter of Section 32, Township 8 North, Range 32 West, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the Northwest Corner of said SE/4, NW/4; thence S 86°30'36"E, 68.08 feet along the North line of said SE/4, NW/4; thence S 03°25'53"W, 30.18 feet to the Point of Beginning; thence S 86°36'43"E, 272.32 feet; thence S 02°03'32"W, 105.33 feet to a point on the North line of Tract 1, Valmont Addition – Lot Split; thence N 86°31'30"W, 324.68 feet along said North line to a point on the Easterly right-of-way of State Line Road; thence N 02°24'55"E, 35.02 feet along said right-of-way line; thence S 86°50'46"E, 50.45 feet; thence N 03°25'53"E, 69.58 feet to the Point of Beginning, containing 0.70 acres more or less.

more commonly known as 400 Phoenix Avenue, should be, and is hereby rezoned from

Industrial Light (I-1) to Industrial Moderate (I-2) by Extension.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.**

**APPROVED:**

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**Mayor**

**ATTEST:**

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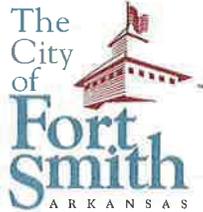
**City Clerk**

**Approved as to form:**



---

**Publish One Time**



June 28, 2016

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

Re: A request by Ron Brixey, agent for William Lovvorn, for Planning Commission consideration of a zone request from Industrial Light (I-1) to Industrial Moderate (I-2) by Extension located at 400 Phoenix Avenue.

On June 14, 2016, 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 this request is to bring the current use of the property into compliance with the zoning requirements and to facilitate an expansion of an existing pallet making business with an approximate 22,000 square foot addition.

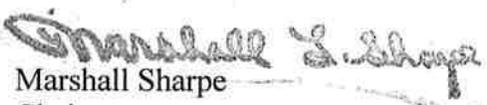
Mr. Ron Brixey was present to speak on behalf of this request.

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

Chairman Sharpe then called for the vote on the rezoning request. The vote was 9 in favor and 0 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

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** June 2, 2016

**Re:** Rezoning #12-6-16 - A request by Ron Brixey, agent for William Lovvorn, for Planning Commission consideration of a zone request from Industrial Light (I-1) to Industrial Moderate (I-2) by extension at 400 Phoenix Avenue

## PROPOSED ZONING

This proposed rezoning will bring the current use of the property into compliance with the zoning requirements and facilitate an expansion.

## LOT LOCATION AND SIZE

The subject property is on the southeast corner of the intersection of State Line Road and Phoenix Avenue. The tract contains an area of 5.29 acres with approximately 484 feet of street frontage along State Line Road and approximately 330 feet of street frontage along Phoenix Avenue.

## REQUESTED ZONING

The proposed zoning on this tract is Industrial Moderate (I-2). Characteristics of this zone are as follows:

### Purpose:

To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an I-2 zoning district are primarily contained indoors and have heavier traffic generation than Industrial-1 uses. I-2 zoning is appropriate within the Industry classification of the Master Land Use Plan.

### Permitted Uses:

Auto and boat related businesses, a variety of retail businesses, offices, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

**Conditional Uses:**

Truck stop, pet cemetery, animal food processing, bus station, sports complex and police station are examples of uses permitted as conditional uses.

**Area and Bulk Regulations:**

- Minimum Lot Size – 20,000 square feet
- Maximum Height - 45 feet (1+1), 27-431(C)3
- Maximum Lot Coverage - 60%
- Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 10 acres
- Existing District (By Extension) – 20,000 square feet
- Minimum Lot Width – 100 feet
- Front Yard Setback - 50 feet
- Side Yard on Street Side of Corner Lot - 50 feet
- Side Yard Setback – 25 feet
- Rear Yard Setback - 20 feet
- Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)
- Minimum building separation – to be determined by current City building and fire code.
- Required street access – Major Arterial or higher

**EXISTING ZONING**

The existing zoning on this tract is Industrial Light (I-1). Characteristics of this zone are as follows:

**Purpose:**

To provide for a mixture of light manufacturing, office park, research and development, and limited retail/service retail land uses in an attractive, business park setting. The Industrial Light district may be used as a zoning buffer between mixed uses, commercial uses and heavier industrial uses. The I-1 zoning district is appropriate with the Office, Research, and Light Industrial (ORLI) and Industry classifications of the Master Land Use Plan.

**Permitted Uses:**

Auto and boat related businesses, a wide variety of retail businesses, indoor flea market, pawnshop, financial services, offices, bar or tavern, restaurant, animal and pet services, manufacturing and commercial communication towers are examples of permitted uses.

**Conditional Uses:**

Homeless shelter, truck stop, outdoor flea market, beer garden, restaurant with outdoor dining, pet cemetery, animal food processing, petroleum distribution facility, bus station, recycling center, sports complex, educational facilities and police station are examples of uses permitted as conditional uses.

2B

**Area and Bulk Regulations:**

Minimum Lot Size – 20,000 square feet  
Maximum Height - 45 feet (1+1)  
Maximum Lot Coverage - 75%  
Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres  
Existing District (By Extension) – 20,000 square feet  
Minimum Lot Width – 100 feet  
Front Yard Setback - 25 feet  
Side Yard on Street Side of Corner Lot - 15 feet  
Side Yard Setback – 10 feet  
Rear Yard Setback - 10 feet  
Side/Rear (adjoining SF Residential District/Development) – 100 feet (may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process)  
Minimum building separation – to be determined by current City building and fire code.  
Required street access – Major Arterial or higher

**SURROUNDING ZONING AND LAND USE**

The area to the north is zoned Industrial Light (I-1) and is developed as a machine shop.  
The area to the east is zoned Industrial Light (I-1) and is developed as a vacant warehouse.  
The area to the south is zoned Industrial Moderate (I-2) and is developed as Hickory Springs Manufacturing.  
The area to the west is located in Oklahoma.

**MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies State Line Road as a Local Road and Phoenix Avenue as a Major Collector.

**MASTER LAND USE PLAN COMPLIANCE**

The Master Land Use Plan classifies the site as Office, Research and Light Industrial. This classification is to provide opportunities for clean, indoor, minimum impact, research, development, assembly, manufacturing, warehousing, distribution, and supportive goods and services.

**NEIGHBORHOOD MEETING**

The neighborhood meeting was waived this requirement due to the fact that there will be minimum impact to surrounding property owners.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval of the application contingent upon approval of the companion variance application.

20

**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)  
 Tract 1, Valmont Addition – Lot split  
 And a Part of the Fractional SE/4 of the NW/4  
 Section 32, Township 8 North, Range 32 West  
 Sebastian County, Arkansas  
 SEE ATTACHED EXHIBIT

2. Address of property: 400 Phoenix Avenue

3. The above described property is now zoned: I-1 (Industrial Light)

4. Application is hereby made to change the zoning classification of the above described property to I-2 (Industrial Moderate) by Extension.  
(Extension or classification)

5. Why is the zoning change requested?

Request is made in order to bring the current use of the property into compliance with City zoning requirements and to facilitate future expansion and development

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

Signed:

Ron Brixey  
Owner or Agent Name  
(please print)

\_\_\_\_\_  
Owner

5223 E. Highway 45, Fort Smith AR 72916  
Owner or Agent Mailing Address

or  
Ron Brixey  
Agent

479-646-6394  
Owner or Agent Phone Number

20

NOTICE OF REQUEST FOR A ZONE CHANGE, A REQUEST FOR A VARIANCE, AND A DEVELOPMENT PLAN REVIEW FOR PROPERTY LOCATED AT 400 PHOENIX AVENUE

DESCRIPTION OF PROPERTY:

The property is currently used as a wood products manufacturing facility. Products include wood pallets and crates. An addition to the cutting and assembly building is proposed. No change in use is proposed.

REASON FOR ZONE CHANGE REQUEST:

The Zoning of this property is currently I-1, Industrial Light. The current use is non-compliant with uses allowed by I-1 zoning. In order obtain a building permit for the addition, the City has required that the zoning be changed to I-2, Industrial Moderate. This change will bring the operation into compliance with zoning regulations.

REASON FOR VARIANCE REQUEST:

I-2 zoning regulations require that street access be from a street designated as Major Arterial or higher. Phoenix Avenue is classified as a Major Collector. The requested variance will bring the current access into compliance with the proposed zoning by variance.

REASON FOR DEVELOPMENT PLAN REVIEW:

The City needs to review the Development Plan to understand and document exactly what is proposed.

The applications for Zone Change, a Request for Variance, and a Development Pan Review all require that a Neighborhood Meeting be conducted to allow the neighboring property owners the opportunity to ask questions and to comment on the proposal. However, due to the minimum potential impact to the neighborhood, the City has waived this requirement and instead has required that notice of the proposals be sent to all owners of property located within 300 feet of the subject property and that an opportunity to comment or ask questions be provided.

WHAT IS REQUESTED:

Any concerns or comments or objections the neighboring owners might have with regard to the proposals.

DEADLINE TO RESPOND:

June 7, 2016 at 10:00 AM

HOW TO RESPOND:

By Mail to:

Brixey Engineering & Land Surveying, Inc.  
Attn: Ron Brixey  
P.O. Box 6180  
Fort Smith, Arkansas 72906

By E-Mail:

ron@ brixeyeng.com

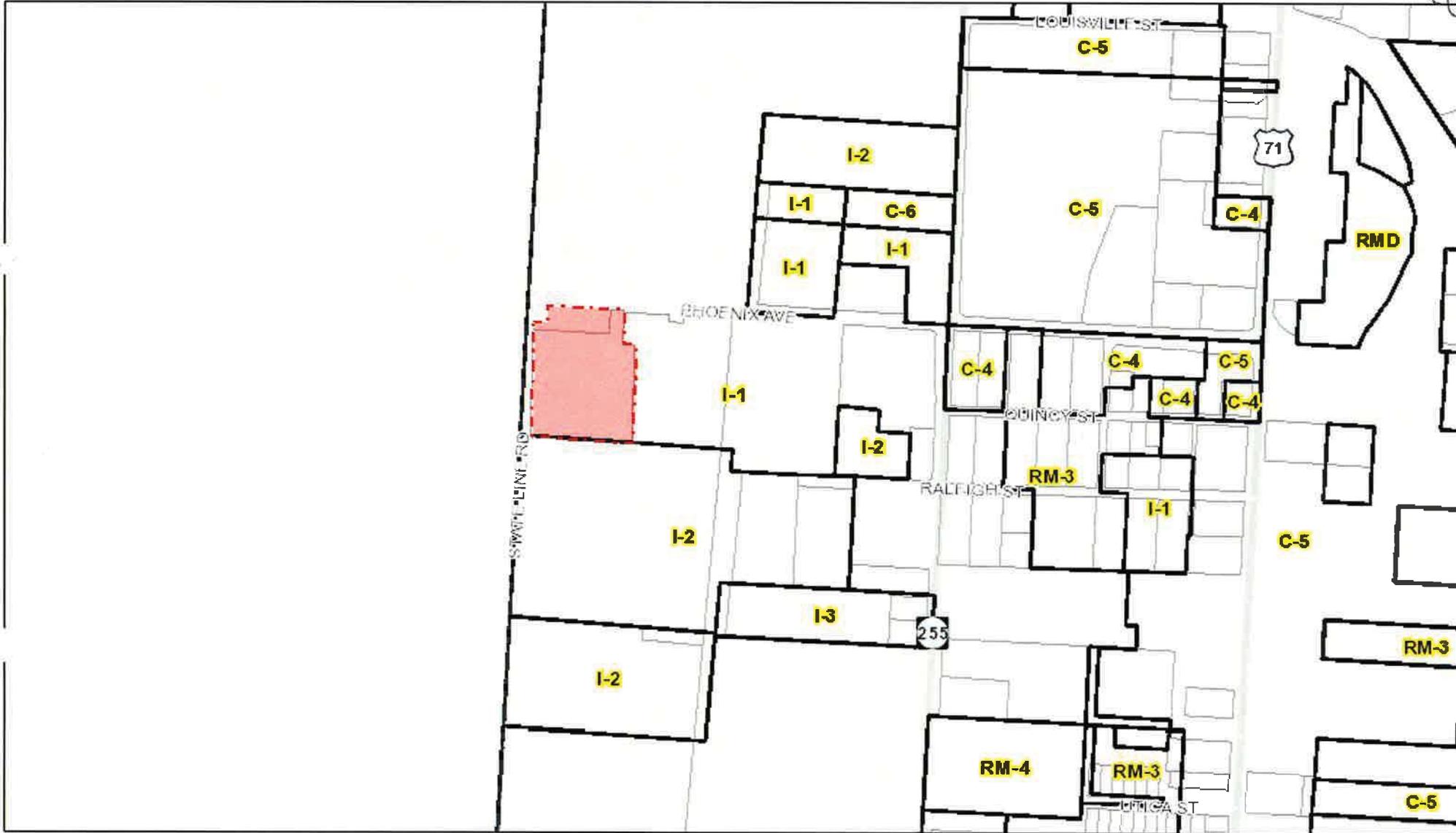
By Telephone:

Ron Brixey at 479-646-6394, ext. 1

2E

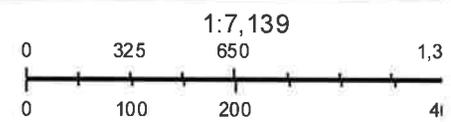
# Rezoning #12-6-16: From Industrial Light (I-1) to Industrial Moderate (I-2) by extension 400 Phoenix Avenue

2/2



May 24, 2016

-  Fort Smith City Limits
-  Zoning
-  Subdivisions

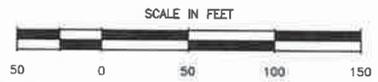




VICINITY MAP  
SCALE: 1" = 800'

- LEGEND**
- EXISTING FENCE: -X-X-X-
  - EXISTING BUILDING: [Hatched pattern]
  - PROPOSED BUILDING: [Dotted pattern]
  - BUILDING SETBACK LINE: - - - - -
  - EXISTING WATERLINE: -W-W-
  - EXISTING SEWERLINE: -S-S-
  - FIRE HYDRANT: [Circle with cross]
  - TELEPOD: [Square]
  - MANHOLE: [Circle]
  - WATER METER: [Square]
  - WATER VALVE: [Circle]
  - CENTERLINE STREET: [Double line]
  - EASEMENT LINE: [Dashed line]
  - OVERHEAD POWERLINE: -ZZ- -ZZ-
  - CURB: [Solid line]
  - STORM SEWER: [Dashed line with circles]
  - DITCH LINE: [Dashed line]
  - CONCRETE: [Dotted pattern]
  - ASPHALT PAVEMENT: [Hatched pattern]
  - GRAVEL: [Stippled pattern]

BASIS OF BEARING: Grid North as determined by Gps Observation and Fort Smith GIS Monumentation



PROPERTY ADDRESS: 400 PHOENIX AVENUE  
FLOOD ZONE STATEMENT  
THE PROPERTY IS LOCATED IN ZONE "X", BEING OUTSIDE THE 500 YEAR FLOOD ZONE, AS GRAPHICALLY DEPICTED ON F.I.R.M. MAP NO. 05131C0110F, REVISED MARCH 2, 2012.

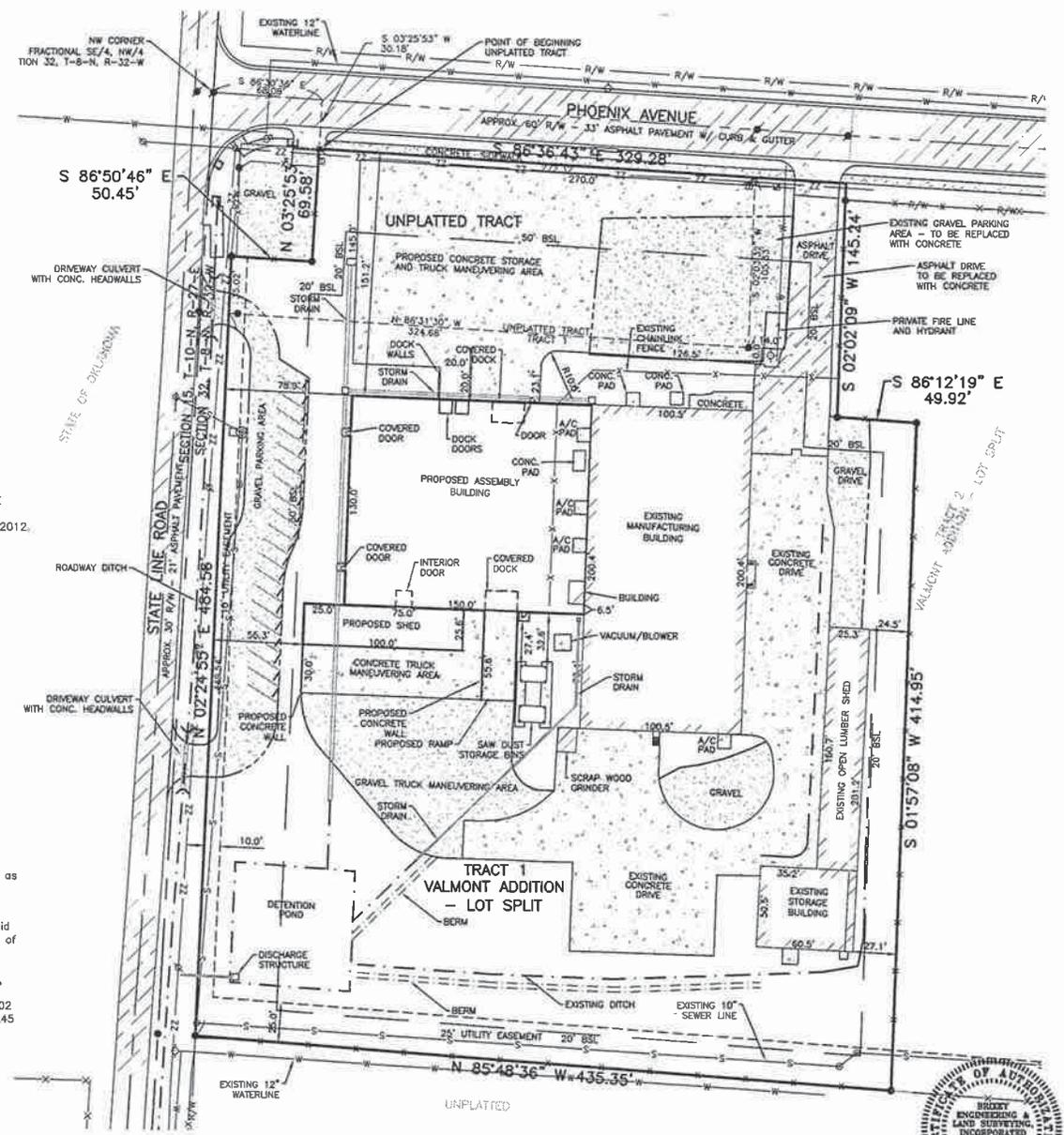
OWNER & DEVELOPER  
WILLIAM B. LOWORN III LIVING TRUST  
P.O. BOX 6565  
FORT SMITH, ARKANSAS 72906  
CURRENT ZONING: I-1  
PROPOSED ZONING: I-2

SURVEYOR'S CERTIFICATE  
I, Ronald N. Brixey, hereby certify that this plot correctly represents a boundary survey of the subject property based upon record data.

PROPERTY DESCRIPTION - PLATTED TRACT:  
Tract 1, Valmont Addition - Lot Split as filed for record on September 21, 1982.

SURVEY DESCRIPTION - UNPLATTED TRACT:  
A Part of the Fractional Southeast Quarter of the Northwest Quarter of Section 32, Township 8 North, Range 32 West, Sebastian County, Arkansas being more particularly described as follows:

Commencing at the Northwest Corner of said SE/4, NW/4; thence S 86°30'36" E, 88.03 feet along the North line of said SE/4, NW/4; thence S 03°25'53" W, 30.18 feet to the Point of Beginning; thence S 86°36'43" E, 272.32 feet; thence S 02°03'32" W, 105.33 feet to a point on the North line of Tract 1, Valmont Addition - Lot Split; thence N 86°31'30" W, 324.68 feet along said North line to a point on the Easterly Right of Way of State Line Road; thence N 02°24'55" E, 35.02 feet along said Right of Way line; thence S 86°50'46" E, 50.45 feet; thence N 03°25'53" E, 69.58 feet to the Point of Beginning, containing 0.70 acres more or less.



# EXHIBIT A

BRIXEY ENGINEERING & LAND SURVEYING, INC. 2016  
Any unannotated use of this drawing or data by others is at the user's risk. Brixey Engineering & Land Surveying, Inc. is not responsible for any errors or omissions, including those resulting from changes in data or conditions, or from any use of this drawing or data by others.

**BRIXEY ENGINEERING & LAND SURVEYING, INC.**  
CONSULTING ENGINEERS -- LAND SURVEYORS  
5223 East Highway 45 P.O. Box 6180 Fort Smith, Arkansas 72906 (479) 648-6394

- LEGEND**
- Computed Point: [Symbol]
  - Set 1/2" Iron Pin: [Symbol]
  - Exst. 1/2" Iron Pin: [Symbol]
  - Set R.R. Spike: [Symbol]
  - Exst. R.R. Spike: [Symbol]
  - Set Nail: [Symbol]
  - Exst. Nail: [Symbol]
  - Exst. Stone: [Symbol]
  - Exst. Monument: [Symbol]
  - Exst. Fence: [Symbol]

Revisions:




**SITE PLAN**  
TRACT 1  
VALMONT ADDITION - LOT SPLIT  
FORT SMITH - ARKANSAS  
Prepared For: Franklin Construction

Date: 05/18/2016  
Drawn By: TMC  
Computed By: DPB  
Job No. 16-0103  
Filed



Hickory Springs Manufacturing  
P. O. Box 128  
Hickory Springs, NC 28603

FSC Properties, LLC  
P. O. Box 664  
Van Buren, AR 72956

Anderson Martin Machine Co.  
P. O. Box 145  
Fort Smith, AR 72902

Arkansas Oklahoma Gas Corp.  
115 North 12<sup>th</sup> Street  
Fort Smith, AR 72901

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
MINUTES  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
JUNE 14, 2016**

On roll call, the following Commissioners were present: Marshall Sharpe, Vicki Newton, Sarah Howe, Josh Carson, Bob Cooper, Jr., Rett Howard, Talicia Richardson, Don Keese and Joshua Kilgore.

Motion was made by Commissioner Howard, seconded by Commissioner Newton and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

**1. Preliminary Plat – Oak Crest Estates – Lots 1-16 – Hawkins-Weir Engineers**

Ms. Brenda Andrews read the staff report indicating that the purpose of this request is to allow for single family dwellings.

Mr. Kyle Salyer representing Hawkins-Weir Engineers?, was present to speak on behalf of this preliminary plat.

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

Chairman Sharpe then called for the vote on the preliminary plat. The plat was approved by a vote of 9 in favor 0 opposed subject to the following:

- The developer agrees to meet all franchise and City utility easement requirements.
- Compliance with the City's Subdivision Design and Improvement Standards Specifications for Public Works Construction.

- 2. Rezoning #12-6-16; A request by Ron Brixey, agent for William B. Lovvorn III Living Trust, William B. Lovvorn, Trustee, for a zone change from Industrial Light (I-1) to Industrial Moderate (I-2) by Extension located at 400 Phoenix Avenue. (companion item to items #3 & #4)**
- 3. A request by Ron Brixey, agent for William B. Lovvorn III Living Trust, William B. Lovvorn, Trustee, for development plan approval for a building addition located at 400 Phoenix Avenue. (companion item to items #2 & #4)**
- 4. Variance #17-6-16; A request by Ron Brixey, agent for William B. Lovvorn III Living Trust, William B. Lovvorn, Trustee, for a variance from the required**

**4. access for an Industrial Moderate (I-2) zone located at 400 Phoenix Avenue. (companion item to items #2 & #3)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to bring the current use of the property into compliance with the zoning requirements and to facilitate an expansion of an existing pallet making business with an approximate 22,000 square foot addition. Ms. Rice noted that the purpose of the variance request is to waive the requirement of a major arterial street classification for the proposed Industrial Moderate zone. Ms. Rice stated that the existing street classification for Phoenix Avenue is major collector.

Mr. Ron Brixey was present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these applications.

**2. Rezoning #12-6-16; A request by Ron Brixey, agent for William B. Lovvorn III Living Trust, William B. Lovvorn, Trustee, for a zone change from Industrial Light (I-1) to Industrial Moderate (I-2) by Extension located at 400 Phoenix Avenue. (companion item to items #3 & #4)**

Chairman Sharpe called for the vote on the rezoning request. The vote was 9 in favor and 0 opposed to approve the rezoning request contingent upon approval of the companion variance application.

**3. A request by Ron Brixey, agent for William B. Lovvorn III Living Trust, William B. Lovvorn, Trustee, for development plan approval for a building addition located at 400 Phoenix Avenue. (companion item to items #2 & #4)**

Chairman Sharpe called for the vote on the development plan. The vote was 9 in favor and 0 opposed to approve the development plan 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.
- All exterior and building lighting shall comply with Section 27-602-5 of the UDO.

**RECESS PLANNING COMMISSION  
CONVENE BOARD OF ZONING ADJUSTMENT**

**4. Variance #17-6-16; A request by Ron Brixey, agent for William B. Lovvorn III Living Trust, William B. Lovvorn, Trustee, for a variance from the required street**

4. **access for an Industrial Moderate (I-2) zone located at 400 Phoenix Avenue. (companion item to items #2 & #3)**

Chairman Sharpe called for the vote on the variance request. The vote was 9 in favor and 0 opposed.

**RECESS BOARD OF ZONING ADJUSTMENT  
RECONVENE PLANNING COMMISSION**

5. **A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a Master Land Use Plan Amendment from Unclassified and Extra Territorial Jurisdiction Commercial Neighborhood to General Commercial located at 11512 Old Highway 71 South. (companion item to items #6, #7 & #8)**
6. **Rezoning #13-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a zone change from Not Zoned (NZ) and Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Commercial Moderate (C-3) by Classification located at 11512 Old Highway 71 South. (companion item to items #5, #7 & #8)**
7. **Conditional Use #8-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a church expansion located at 11512 Old Highway 71 South. (companion item to items #5, #6 & #8)**
8. **Variance #18-6-16; A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a variance from Section 27-602-4 (C) (8)-6 ft. screening fence, wall or landscape buffer adjacent to property zoned for residential purposes located at 11512 Old Highway 71 South. (companion item to items #5, #6 & #7)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to allow for the annexation of 2.68 acres and an expansion of the existing Rye Hill Baptist Church sanctuary addition along with additional parking and landscaping.

Mr. Nick Griffin and Mr. Frank Hug were present to speak on behalf of these requests.

No one was present to speak in opposition to these requests.

Following a discussion by the Commission, Chairman Sharpe called for the vote on these requests.

5. **A request by Nick Griffin, Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of Building Committee for Rye Hill Baptist Church, for a Master Land**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION OF TELECOMMUNICATIONS SERVICES AGREEMENT WITH COX ARKANSAS TELCOM, LLC**

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

The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Master Retail Services Agreement (MSA) # 4401-210-16 between Cox Arkansas Telcom, LLC and the City of Fort Smith providing for the purchase by the City of Fort Smith of telecommunications (voice and data) services provided by Metro Ethernet Fiber, Optical Internet, and Switched Digital/Interconnected iVoIP Voice Services at twenty-seven (27) City-operated locations for a monthly cost of \$18,386.75 with the agreement having a term of thirty-six (36) months.

**THIS RESOLUTION ADOPTED** this \_\_\_\_\_ day of July, 2016.

**APPROVED:**

\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

Approved as to form:



\_\_\_\_\_  
No Publication Required

# Memorandum

R.G.

**To:** Carl Geffken, City Administrator

**From:** Russell Gibson, Director of Information & Technology Services

**Date:** 06/27/2016

**Re:** Telecommunications Services Contract

Carl,

The City of Fort Smith is currently under contract with AT&T for provision of Wide-Area-Network (WAN) and Internet services. This existing, five-year contract expires on November 15, 2016. On April 16, 2016 the City's Information & Technology Services (ITS) Department released a request for proposals (RFP) soliciting responses from qualified providers of these services in anticipation of the expiration of the existing AT&T contracts. For reference, the WAN and Internet services are a component of the City's technology infrastructure that supports critical internal business processes and citizen-facing services. Further, the WAN is a private, physical fiber-optic network (backbone) which provides data and voice connectivity for city facilities and offices. There are a total of 21 individual locations which make up this network including: ITS, Stephens Building, Transit, Sanitation, Convention Center, Kelley Highway Operations Facility, Parks, Police Department and each of the eleven (11) fire stations. In addition to the existing AT&T contract for WAN and Internet services, the City has five contracts with AT&T for Primary Rate Interface (PRI) services. The PRIs provide the basis of the City's existing telephone system. Although not required in the RFP, responding vendors were asked to consider the existence of the PRI technology and their respective pending contract terminations in 06/2017 (1), 07/2017 (1) and 02/2018 (3).

Responses were received from three organizations: AT&T, Cox Communications and Newroads Telecom. All three vendors were selected for on-site interviews and invited to perform a formal presentation related to their respective organization's RFP response. Also, all three vendors did propose additional, value-added services related to the existing PRI technology and provided options to convert the PRI sites to a more efficient and scalable voice technology referred to as "SIP", or Session Initiated Protocol. In this instance, the PRI to SIP migration consists of moving all voice or telephone traffic from a traditional Integrated Services for Digital Network (ISDN) to delivery over an Internet connection.

The RFP evaluation process consisted of five main criteria: (1) Specialized experience and technical competencies related to the type, scale and complexity of the required services; (2) Experience and competence of principal staff and organizational capacity to complete work within stated timeframe; (3) Proposed work plan and methods for completing work; (4) Past performance related to quality of work, timeliness and responsiveness of past customer service and technical support, and ability to meet past budgets/schedules; (5) Overall, 3-year project cost. After considerable diligence and discussion, the RFP Selection Committee collectively and unanimously chose Cox Communications as the proposed vendor considering experience with the type of services required, capacity and capability to perform the work, proposed method of work, past record of performance regarding technical and customer support, and overall, three-year project cost. The Selection Committee believes that Cox Communications, through their established presence in the telecommunications industry, demonstrated commitment to the Fort

Smith region through various charity and community events, and providing local jobs to nearly 100 area residents, will be a valuable business partner to the City of Fort Smith. Attached please find a summary of the proposals from each of the three responding vendors. The total, 3-year proposed project cost with Cox Communications is **\$661,923 (\$18,386.75 per month)** and will provide a single, coterminous contract situation for core technology infrastructure. For comparison, the existing three-year cost for like-services is approximately **\$1,097,424 (\$30,484 per month)** and consists of six separate contracts expiring over staggered periods of time. We are pleased to note that this proposed contract for telecommunications services has the potential for a projected, three-year cost savings of approximately **\$435,501** compared to existing contracts for like-services. In the attached RFP Vendor Response Summary table, please note the following: There will be a required one-time payment in the amount of approximately \$34,159 to AT&T for Early Termination Fee (ETF) of the five existing PRI contracts. This ETF cost, calculated from information provided by AT&T, represents 50% of the remaining PRI contracts value for 2017 and 2018 of approximately \$68,318. The ETF cost has been figured into the RFP Response 3-year Cost Totals as shown in the RFP Vendor Response Summary table.

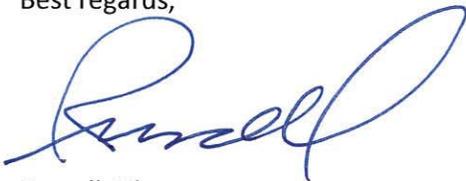
Pursuant to the City's Strategic Technology Plan, this telecommunications project is part of a larger effort underway by the ITS Department to identify opportunities for savings through a rigorous audit of all existing technology services and contracts. Below are two such opportunities we have identified that will provide an immediate impact both in the 2016 and future budget cycles:

1. Audit the City's Microsoft Enterprise Agreement (EA) to eliminate nonessential deployment of software: \$15,000 in approximate BY2016 savings and approximate reduction of \$15,000 yearly for future budget cycles.
2. Terminate or discontinue nonessential telecommunication technologies and services: \$8,000 in credits towards existing telecommunications costs for BY2016 and an approximate reduction of \$96,000 yearly for future budget cycles.

We will continue our efforts and keep Administration apprised of any future opportunities as they are identified.

Please feel free to contact me if you have any questions or would like additional information.

Best regards,



Russell Gibson  
Director, Information & Technology Services

Cc: Jeff Dingman, Deputy City Administrator

## RFP Vendor Response Summary

RFP Response 3-yr Totals for WAN and Internet Services			
VENDOR	Wide Area Network (WAN)	*Internet Service	3-year RFP TOTAL
AT&T	\$594,000.00	\$87,372.00	\$681,372.00
COX	\$510,300.00	\$50,220.00	\$560,520.00
NewRoads	\$537,840.00	\$23,400.00	\$561,240.00

RFP Response 3-yr Totals for Optional PRI to SIP Voice Technology Upgrade, including Long Distance			
VENDOR	SIP Trunking	Long Distance	3-year RFP TOTAL
AT&T	\$44,452.80	\$0.00	\$44,452.80
COX	\$56,880.00	\$18,900.00	\$75,780.00
NewRoads	\$37,926.00	\$24,696.00	\$62,622.00

RFP Response 3-yr Totals including WAN/Internet/SIP Trunking/Long Distance		
VENDOR	3-year RFP TOTAL	
AT&T	\$725,824.80	
COX	\$636,300.00	
NewRoads	\$623,862.00	

**RFP Response 3-yr Totals, ALL services with AT&T ETF cost for PRIs (\$34,159.31) considered		
VENDOR	3-year RFP TOTAL	
AT&T	\$725,824.80	
COX	\$670,459.31	
NewRoads	\$658,021.31	

\*AT&T and Cox both proposed Symmetrical Internet (same speed up/down). Newroads proposed Asymmetrical Internet

\*\*The \$34,159.31 represents an Early Termination Fee (ETF) of 50% for the five (5) existing PRI contracts imposed by AT&T with an approximate remaining value in 2017 & 2018 of \$68,318.62.

Current 3-year cost for like-services	\$1,097,424.00
Final negotiated 3-year MSA cost with Cox Arkansas Telcom	\$661,923.00
Approximate 3-year savings	\$435,501.00

# **Cox Business Master Retail Services Agreement Cover Page**

## **Cox Service Order Contact Information:**

To place orders under this Agreement, please contact Cox at:

Name: James Lashley  
Telephone: 479-717-3626  
E-Mail: james.lashley@cox.com

or such other contact information that Cox may provide to you from time to time.

**THIS MASTER RETAIL SERVICES AGREEMENT** (“Agreement”), is made and entered into this 5<sup>th</sup> day of July, 2016 (“Effective Date”) by and between: 1) Cox Arkansas Telcom d/b/a Cox Business, and Cox Arkansas Telcom, LLC d/b/a Cox Business, (collectively, “Cox”) on behalf of itself and its regulated and franchised affiliates (referred to herein as the “Cox Affiliates”) for the “Cox Market Areas” identified in **Exhibit A** to this Agreement and; (2) City of Fort Smith, Arkansas (“Customer”) having an office at 623 Garrison Ave, Fort Smith AR 72901. Cox and Customer shall be referred to in this Agreement as the “Parties”.

**WHEREAS**, Cox, by and through its franchised and regulated Cox Affiliates is authorized to provide certain commercial Cox services including without limitation, voice, video, data, web hosting, and Internet services described in this Agreement (collectively “Services”) to businesses located in the Cox Market Areas identified in **Exhibit A** to this Agreement; and

**WHEREAS**, Customer has offices and other business locations in certain Cox Market Areas and desires to purchase the Services from Cox under the terms and conditions contained in this Agreement; and

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties mutually agree as follows:

**1. Term.** The term of the Agreement shall begin on the Effective Date and shall continue for an initial term of thirty-six (36) months (“Initial Term”). UPON EXPIRATION OF THE INITIAL TERM, THE AGREEMENT SHALL AUTOMATICALLY RENEW AND CONTINUE IN EFFECT ON A MONTH-TO-MONTH BASIS (“RENEWAL TERMS”) UNTIL TERMINATED BY EITHER PARTY ON THIRTY (30) DAYS PRIOR WRITTEN NOTICE. The Initial Term and Renewal Terms may collectively be referred to as the “Term”. The Term of Service for each Service ordered pursuant to a Service Order (the “Service Order Term”) shall begin upon installation and activation of the Service by Cox and shall continue for the Term set forth in the Service Order. This Agreement shall be deemed to survive termination or expiration for Service Orders Terms that continue beyond the Term of this Agreement, and the terms and conditions in this Agreement shall govern the provision of Services under such Service Orders. After expiration or termination of the Term of this Agreement, Customer shall not be authorized to purchase additional Services under this Agreement.

**2. Use of Service.** Customer shall use the Services in compliance with all applicable laws and ordinances, as well as applicable leases and other contractual agreements between Customer and third parties. Customer shall not resell any portion of the Services to any third party. Customer shall be responsible for any software and content displayed and distributed by Customer or Customer’s web hosting customers, if any. Customer may use the Services for any lawful purpose, provided that such purpose: (i) does not interfere or impair the Cox network or Cox Equipment; (ii) complies with the AUP; and (iii) is in accordance with the terms and conditions of this Agreement. Unless provided otherwise herein, Cox shall use commercially reasonable efforts to maintain the Services in accordance with applicable performance standards. Cox network management needs may require Cox to modify upstream and downstream speeds. Use of the data, Internet, web conferencing/web hosting Services shall be subject to the AUP at <http://ww2.cox.com/aboutus/policies/business-policies.cox>, which is incorporated herein by reference. Cox may change the AUP from time to time during the Term. Customer’s continued use of the Services following an AUP amendment shall constitute acceptance of the revised AUP.

**3. General Terms.** The “General Terms” set forth at <http://www.cox.com/aboutus/policies/business-general-terms.cox> are hereby incorporated into this Agreement by reference. Cox, in its sole discretion, may modify, supplement or remove any of the General Terms from time to time, without additional notice to Customer, and any such changes will be

effective upon Cox publishing such changes on the website listed above. BY EXECUTING THIS AGREEMENT AND/OR USING OR PAYING FOR THE SERVICES, CUSTOMER ACKNOWLEDGES THAT IT HAS READ, UNDERSTOOD, AND AGREED TO BE BOUND BY THE GENERAL TERMS.

**4. Regulated Services.** Regulated Services are subject to additional terms and conditions contained in this Section 4. Regulated Services includes telephone Services, certain private line Services, transport Services, ATM and TLAN Services.

**4.1. Tariffs/Service Guide** If Customer is purchasing any Service that is regulated by the FCC or any State regulatory body (“Regulated Service”), then Customer’s use of such Regulated Service is subject to the regulations of the FCC and the regulatory body of the State in which the Customer location receiving the Regulated Service is located (which regulations are subject to change), as well as the rates, terms, and conditions contained in tariffs on file with State and Federal regulatory authorities. For States where the Regulated Service is de-tariffed, the Regulated Service is provided pursuant to the rates, terms and conditions for the Cox Service Guide for that State (the “SG”), which may be found at <http://ww2.cox.com/business/voice/regulatory.cox> and which terms are incorporated herein by reference. Cox may amend such tariffs and the SG, and the Regulated Service shall be subject to such tariffs, or, if applicable, the SG, as amended. Customer must disclose to Cox if Customer intends to use the Regulated Services with payphone service. The tariffs and the SG contain cancellation or termination fees due in the event of an early cancellation or termination (including partial termination) of a Regulated Service prior to the Term contracted for between the parties. Termination fees include, but are not limited to, nonrecurring charges, fees or charges paid to third parties on behalf of Customer, and the monthly recurring charges for the balance of the Term.

**5. E911 Services.** FOR IMPORTANT INFORMATION ABOUT COX’S 911 PRACTICES, PLEASE REVIEW THE INFORMATION ABOUT E911 SERVICE IN THE GENERAL TERMS AND ON THE WEBSITE <http://ww2.cox.com/business/voice/regulatory.cox>. ONLY THE EMTA WILL HAVE BATTERY BACKUP PROVIDED BY COX. CUSTOMER IS RESPONSIBLE FOR BATTERY BACKUP FOR THE IAD, ESBC, ATA AND ALL CUSTOMER EQUIPMENT. IN THE EVENT OF A POWER OUTAGE, CUSTOMER’S TELEPHONE SERVICE USING AN EMTA WILL CONTINUE TO OPERATE AS USUAL FOR UP TO EIGHT HOURS WITH THE BACKUP BATTERY PROVIDED BY COX. THE DURATION OF SERVICE DURING A POWER OUTAGE USING AN IAD, ATA, AND ESBC WILL DEPEND ON CUSTOMER’S BATTERY BACKUP CHOICE. IF THE EMTA, ATA, ESBC OR IAD THAT SUPPLIES YOUR TELEPHONE SERVICE IS DISCONNECTED OR REMOVED AND/OR THE BATTERY IS NOT CHARGED OR IS DAMAGED, SERVICE, INCLUDING ACCESS TO 911 OR E911, WILL NOT BE AVAILABLE. COX SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY FAILURE TO RECEIVE SERVICE OR FOR THE FAILURE OF ANY 911 OR E911 CALL IF CUSTOMER REMOVES OR DISCONNECTS THE EMTA, ATA, ESBC OR IAD OR IF CUSTOMER FAILS TO CHARGE THE BATTERY FOR SAID DEVICES AT ANY TIME DURING THE TERM OF THIS AGREEMENT. COX USES YOUR TELEPHONE SERVICE ADDRESS TO IDENTIFY YOUR LOCATION FOR E911 SERVICE. IF THE EMTA, ATA ESBC AND/OR IAD INSTALLED IN YOUR BUSINESS IS MOVED, THE E911 DISPATCH MAY NOT RECEIVE YOUR CORRECT ADDRESS. PLEASE NOTIFY COX IF YOU WOULD LIKE TO MOVE OR RELOCATE YOUR TELEPHONE SERVICE. IT CAN TAKE UP TO 2 BUSINESS DAYS FOR YOUR NEW ADDRESS TO BE UPDATED.

## **6. Service Order Process; Installation; Serviceability; and Scope of Agreement**

**6.1 Service Order Process.** To determine the availability of Services and to request Services under this Agreement, Customer shall contact Cox by calling the number set forth above or by sending an e-mail to the email address set forth above. Customer shall identify the Service location, term of service, type of Service requested, desired installation date, and another information reasonably requested by Cox to determine the availability of Service. Upon receipt of Customer's information, Cox shall promptly respond to Customer and either (i) submit to Customer a Service Order form, similar to the Service Order form set forth in Exhibit D, with the Service information including price, term of service, delivery date and other terms and conditions upon which Cox can provide the requested Service, or (ii) respond to Customer declining to provide the requested Service. Service Orders submitted by Cox shall be valid for acceptance by Customer for a period of thirty (30) days and thereafter Cox may refuse to accept such Service Orders. To order Service, Customer shall execute the Service Order submitted by Cox and return a copy to Cox. Upon receipt by Cox of the executed Service Order, the Service Order shall be incorporated into this Agreement.

**6.2 Installation.** If requested by Cox, Customer is responsible for arranging all necessary rights of access for Cox from the public rights of way to Customer's premises, including space for cables, conduits, and equipment as necessary for Cox-authorized personnel to install, repair, inspect, maintain, replace or remove any and all facilities and equipment provided by Cox. Customer shall provide a secured space with electrical power, climate control and protection against fire, vandalism, and other casualty for Cox's equipment. Cox shall use reasonable efforts to make the Services available by the requested service date. Cox shall not be liable for damages for delays in meeting service dates due to install delays or reasons beyond Cox's reasonable control. If Customer delays installation or is not ready to receive Services on the agreed-upon installation date, Cox may begin billing for Services on the date Services would have been installed. If Customer delays installation for more than ninety (90) days after Customer's execution of this Agreement, Cox reserves the right to terminate the applicable Service Order by providing written notice to Customer and Customer shall be liable for Cox's reasonable costs incurred.

**6.3 Serviceability.** All Services under this Agreement shall be subject to the availability of Cox facilities to provide the Services. The Cox Market Areas where Cox is authorized to offer Services are set forth in Exhibit A. While Cox Affiliates may be authorized to provide Services in the Cox Market Area(s), the Cox network and facilities may not extend to all locations within the Cox Market Areas. Cox shall have no obligation to provide Services if Customer's premises are not serviceable by the Cox network or are located outside the Cox Market Area. Cox shall be solely responsible for determining whether Customer's location is serviceable. If Cox determines that Customer's location is not serviceable under Cox's normal installation guidelines, Cox may terminate the applicable Service Order.

**6.4 Scope of Agreement.** This Agreement is for Cox to provide Services. This Agreement is not for Cox to perform any construction, alteration, demolition, installation, repair or maintenance work of any kind paid for in whole or in part out of public funds. This Agreement is also not for Cox to perform any maintenance work on Customer's facilities or equipment. Any construction, alteration, demolition, installation, repair or maintenance work that Cox may perform in connection with or related to this Agreement will be solely to expand or maintain Cox's own facilities to provide Services to Customer and/or to Cox customers, at Cox's option. All Cox facilities, including without limitation any such newly constructed facilities will be and remain the sole property of Cox. Customer shall have no ownership over, control of, or exclusive rights to use, such Cox facilities. Unless otherwise expressly agreed to in this Agreement or a Service Order, Cox does not charge Customer in whole or in part for any construction, alteration, demolition, installation, repair or maintenance work performed by Cox. However, this clarification does not reduce or waive Customer's responsibility for, or Cox's rights with

respect to, any damage caused by Customer, its employees, or agents, to facilities or equipment installed or provided by Cox, in accordance with this Agreement and applicable law.

**7. Ownership of Equipment.** This Agreement shall not, and shall not be deemed to, convey to Customer, title or ownership rights to any of the equipment or network facilities used by Cox to deliver the Services to Customer. All equipment, network and transmission facilities used by Cox to provide the Services under this Agreement (the “Cox Equipment”) is the sole and exclusive property of Cox. For any Cox equipment installed at Customer’s premises, Customer is responsible for damage to Cox Equipment. Customer shall use the Cox Equipment only for the purpose of receiving the Services. Customer shall not make any connections to the Cox Equipment which are not expressly authorized in writing by Cox or permit tampering, altering or repair of the Cox Equipment by any person other than Cox’s authorized personnel. Cox reserves the right to substitute, change, or rearrange Cox Equipment used to provide the Services so long as the quality or type of Service is not impaired or degraded.

**8. Pricing.** Customer may order Services from Cox at the prices set forth in **Exhibit B**. Cox may, in writing, revise the prices for Services set forth in **Exhibit B** at any time by delivering to Customer a revised **Exhibit B**. The revised **Exhibit B** shall apply prospectively to Customer Service Orders submitted after Customer’s receipt of the revised **Exhibit B**. Upon notice to Customer, Cox may change the rates for video Services periodically during the Term and during any Service Order Term. Cox may change the rates for telephone Service subject to a Cox tariff or SG periodically during the Term and during any Service Order Term. Taxes, fees and surcharges are also subject to change from time to time. Customer’s payment for Service after notice of a rate increase will be deemed to be Customer’s acceptance of the new rate. If Customer and Cox enters into a Service Order with a bundle Service offering (e.g. Internet, Local and Long Distance Services in one package) with a package discount, and Customer terminates one of the bundled Services in the bundle, Cox reserves the right to raise the rates of the remaining Service offerings in that Service Order to the then current unbundled price for such Service.

**9. Payment.** Customer shall pay Cox all monthly recurring charges (“MRCs”), all usage charges for Services, and all non-recurring charges (“NRCs”), if any, by the due date on the invoice. Any amount not received by the due date shown on the applicable invoice will be subject to interest or a late charge no greater than the maximum rate allowed by law. If Cox terminates this Agreement due to Customer’s breach, or if Customer fails to pay any amounts when due and fails to cure such non-payment upon receipt of written notice of non-payment from Cox, Customer will be deemed to have terminated this Agreement and will be obligated to pay the termination fee described in this Agreement. If applicable to the Service, Customer shall pay sales, use, gross receipts, and excise taxes, access fees and all other fees, universal service fund assessments, 911 fees, franchise fees, bypass or other local, State and Federal taxes or charges, and deposits, imposed on the use of the Services. Taxes will be separately stated on Customer’s invoice. No interest will be paid on deposits unless required by law.

**10. Maintenance.** Cox shall use commercially reasonable efforts to perform maintenance work on Cox Equipment that will not, in most circumstances, result in interruptions or degradation of Service. All maintenance will be performed in a workmanlike manner consistent with industry standards. Cox shall have no responsibility for the maintenance or repair of facilities and equipment it does not furnish. If Cox’s maintenance of Cox Equipment is of the type that could reasonably be expected to result in interruption, loss or degradation of Service, Cox shall make reasonable efforts to notify Customer in writing via facsimile, telephone call, or e-mail at least twenty-four (24) hours before such maintenance. Cox may perform periodic maintenance of Cox Equipment between Midnight and 6:00 a.m. local time of the location where the maintenance is being performed, and schedule major system maintenance of Cox Equipment at a time mutually agreed upon by Customer and Cox. Customer agrees to grant Cox access to Cox Equipment between the hours of 12:00 A.M. and 6:00 A.M. local time for periodic maintenance.

**11. Representations and Warranties.** Customer represents and warrants to Cox as follows: (i) Customer is authorized to perform the obligations of Customer under this Agreement; (ii) by entering into this Agreement with Cox, Customer shall not be in violation of any agreement it has with a third-party; and (iii) Customer is a duly organized entity in the State described in the first paragraph of this Agreement and qualified and authorized to do business therein. Cox represents and warrants to Customer as follows: (i) the applicable Cox Affiliates are duly authorized to provide the Services in the Cox Market Areas set forth in **Exhibit A**; (ii) by entering into this Agreement with Customer, Cox shall not be in violation of any agreement it has with a third-party relating to the provision of Services in the Cox Market Areas; and (iii) Cox is a duly organized entity in the State of Delaware.

**12. Viruses.** Software or content obtained from the use of any Service(s) may contain viruses or other harmful features and Customer is solely responsible for protecting its network, equipment and software through the use of firewalls, anti-virus, and other security devices. Through the use of any Service, Customer may obtain or discover content that is offensive or illegal and Customer assumes the risk and is solely responsible for its access to such content. Cox may disclose Customer information to law enforcement or to any Cox Affiliate. Cox may delete any Internet traffic or e-mail that contains a virus. If Customer operates a wireless local access network in connection with the Services, Customer is solely responsible for the security of its network.

**13. Privacy.** Use of the Cox Service(s) is subject to Cox's privacy policy posted at [http://www.cox.com/policy/#Online\\_Privacy\\_Policy](http://www.cox.com/policy/#Online_Privacy_Policy).

**14. Termination.** In addition to the termination rights provided at the end of the Initial Term or Renewal Term, and as otherwise provided in this Agreement, this Agreement and/or any Service Order may be terminated in the event that either party Defaults as defined in Section 21 below, if such Default is not cured within the applicable cure period provided for below. In addition, Cox may terminate this Agreement and/or any Service Orders without liability if there is signal interference with any Cox Service and Cox cannot resolve the inference by using commercially reasonable efforts.

**15. Early Termination Fee.** If Customer terminates a Service Order before the expiration of the applicable Service Order Term (except for (i) a termination by Customer following a Cox Default beyond notice and cure periods or (ii) a termination by Customer pursuant to the occurrence of a Chronic Outage under a Service Level Agreement), or if Cox terminates a Service Order, or this Agreement, as a result of a Customer breach or Default beyond notice and cure periods, Customer shall be liable for a Termination Fee in the amount of One Hundred Percent (100%) of the MRC applicable to the terminated Service(s) multiplied by the number of months remaining in the Service Order Term of the applicable Service Order(s). This provision survives the termination of this Agreement. Customer may terminate this Agreement without penalty due to loss of required government funding upon at least thirty (30) days written notice to Cox. Prior to terminating services due to loss of funding, the Customer must have taken all actions necessary to obtain adequate appropriations and/or funding and despite those best efforts, funding is not available. The Customer may only terminate those services in which funding is lost, and the loss of funding for some services shall not render the whole contract subject to termination. Services may not be terminated without penalty for loss of funding caused by the negligence or mistake of the Customer.

**16. Force Majeure.** In no event shall either party have any claim or right against the other party for any failure of performance by such other party if such failure of performance is caused by, or the result of, causes beyond the reasonable control of such other party. Hazardous materials or conditions encountered during the installation, removal or provisioning of Service shall be deemed a Force Majeure event.

**17. Confidentiality.** Each Party shall take such reasonable measures to prevent the unauthorized disclosure to third parties of confidential information in this Agreement as it would take to prevent disclosure of its own proprietary or confidential information. If the Parties executed a Nondisclosure Agreement or Confidentiality Agreement (“NDA”), this Agreement shall be deemed confidential information subject to such NDA. A Party may disclose confidential information pursuant to a valid court order or subpoena or other lawful request.

**18. Indemnification.** RESERVED.

**18.1 Infringement Indemnity.** Except as otherwise provided in this Agreement, Cox shall indemnify, defend, protect and hold Customer, its officers, directors, employees, and users, harmless from any and all liabilities, judgments, claims, losses, obligations, damages, penalties, actions, or other proceedings, suits, costs, fees, expenses and disbursements, whether by judgment or settlement, (including without limitation reasonable attorneys’ fees) (collectively, “Infringement Claim”) arising out of, relating to or resulting from allegations that any of the Services provided by Cox infringes the Intellectual Property Rights of any person or entity. If Customer receives notice of any Infringement Claims, Customer shall give Cox written notice of the Infringement Claim within ten (10) days after receipt thereof, and provide reasonable cooperation for the defense of the Infringement Claim. Customer may not settle or compromise the Infringement Claim without Cox’s prior written approval. For purpose of this Agreement, “Intellectual Property Rights” shall mean any patent, copyright, trademark, trade dress, and trade name, related registrations and applications for registration, and trade secrets, moral rights and goodwill. If the Service is held to infringe Intellectual Property Rights (or a third party claims that the Services infringes Intellectual Property Rights), Cox may, at its sole expense elect promptly to do any of the following (i) procure for Customer the right to continue using the Services under this Agreement; (ii) modify the applicable Service so it is no longer infringing; or (iii) replace the applicable Service with non-infringing products or services that are functionally equivalent or superior in performance. The foregoing indemnity shall not apply to Infringement Claims which arise due to the use of the Services by Customer or its users. The foregoing indemnity shall not apply to Infringement Claims which arise due to (1) materials or content transmitted, accessed or received by Customer, Companies, or Company End Users through the use of the Services, or (2) the use of the Service by Customer, Companies, or Company End Users (a) in violation of, or in connection with a violation of, this Agreement (including any Cox policies referenced herein) or applicable laws, rules or regulations or (b) in combination with any other product or service not supplied by Cox or required by Cox in writing (if the Services do not infringe such Intellectual Property Rights in the absence of such combination).

**19. Limitation of Liability.** The Parties acknowledge that during the Term of this Agreement, the Services may experience temporary interruptions or unavailability of the Services for use by Customer. The Parties further acknowledge and agree that the Limitation of Liability contained herein and the Indemnities contained in Section 18 are a material inducement for Cox to enter into this Agreement and provide the Services at the price and under the terms and conditions of this Agreement. Accordingly, to the extent that Services are temporarily unavailable, interrupted, degraded, or otherwise incur an outage or Service Interruption as defined in the Service Level Agreement (“SLA”) (if any) contained in **Exhibit C** to this Agreement, Customer’s sole and exclusive remedy shall be the Credit Allowances or the termination right, as the case may be, provided in the SLA. **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, RELIANCE, PUNITIVE OR ENHANCED DAMAGES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, OR BUSINESS HARM) ARISING OUT OF OR RELATING TO THE SERVICES OR THE PERFORMANCE OR NONPERFORMANCE UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ANY APPLICABLE SLA CREDITS, COX**

**AND/OR ITS AGENTS SHALL NOT BE LIABLE FOR DAMAGES FOR FAILURE TO FURNISH OR INTERRUPTION OF ANY SERVICES, NOR SHALL COX OR ITS AGENTS BE RESPONSIBLE FOR FAILURE OR ERRORS IN SIGNAL TRANSMISSION, LOST DATA, FILES OR SOFTWARE DAMAGE REGARDLESS OF THE CAUSE. COX SHALL NOT BE LIABLE FOR DAMAGE TO PROPERTY OR FOR INJURY TO ANY PERSON ARISING FROM THE INSTALLATION OR REMOVAL OF EQUIPMENT UNLESS CAUSED BY THE NEGLIGENCE OF COX.**

**20. DISCLAIMER OF WARRANTIES. EXCEPT AS PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER AGREEMENTS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATING TO THE SERVICES. SERVICES PROVIDED ARE A BEST EFFORTS SERVICE AND COX DOES NOT WARRANT THAT THE SERVICES, EQUIPMENT OR SOFTWARE SHALL BE ERROR-FREE OR WITHOUT INTERRUPTION. INTERNET AND WIFI SPEEDS WILL VARY. COX MAKES NO WARRANTY AS TO TRANSMISSION OR UPSTREAM OR DOWNSTREAM SPEEDS OF THE NETWORK.**

**21. Default.** If either Party fails to perform any material term, provision, covenant, condition, agreement, or obligation under this Agreement or any Service Order, and fails to cure such breach within thirty (30) days after receiving written notice of the breach from the other Party, or within ten (10) days after receiving written notice of the breach from the other Party in the case of late payment of any amounts due hereunder, such Party shall be deemed in “Default” under this Agreement. In this event, the non-Defaulting Party shall be entitled to pursue any and all remedies available at law or in equity but subject to the limitations contained in this Agreement. If any non-monetary Default cannot be cured within the cure period described above in this Default provision, an event of Default does not occur if the Defaulting Party commences to cure the Default within the cure period and diligently completes the cure as soon as reasonably practicable, but in any event within sixty (60) days after receiving the Default notice.

**22. Relationship of the Parties.** The relationship created between the parties by virtue of this Agreement shall be solely that of vendor-purchaser as independent contractors and that no agency, joint venture, or joint business relationship shall be deemed created hereunder. There are no third party beneficiaries to this Agreement.

**23. Regulatory Authority.** This Agreement and applicable Service Orders may be subject to filing with the regulatory authority with jurisdiction over the Services. If this Agreement is required to be filed, Customer shall execute such additional forms as are reasonably necessary to permit Cox to make an appropriate filing. In some states, certain Services Orders may not be effective until approved by such regulatory authority. If this Agreement, Service Orders, and/or the related filing documents are not approved by the applicable regulatory authority, Cox may terminate this Agreement or Service Order, as applicable. This Agreement and the obligations of the parties shall be subject to modification to comply with all applicable laws, regulations, court rulings, administrative orders, and State Commission rules, as required.

**24. E-Rate Customers.** If Customer is an educational institution, library or other entity that qualifies as an applicant seeking reimbursement under the Federal Universal Service Fund Schools and Libraries Program (collectively, “E-Rate Customers”), the E-Rate provisions of the General Terms will apply, in addition to all other terms and conditions of this Agreement.

**25. Public Performance.** If Customer engages in a public performance of any copyrighted material contained in any of the Services, Customer, and not Cox, shall be responsible for obtaining any public performing licenses at Customer's expense. The Video Service that Cox provides under this Agreement does not include a public performance license.

**26. Entire Agreement, Waiver, and Amendment.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior agreements between Customer and Cox concerning the subject matter hereof. No failure or delay by a party to exercise any right it may have by reason of the default of the other party operates as a waiver of default and any waiver is effective only if in writing. A party's specific waiver is not a waiver by that party of any earlier, concurrent, or later breach or default. This Agreement may not be modified or amended except by a written instrument signed by Customer and Cox. This Agreement shall be governed by the laws of the state of where the Services are delivered without regard to choice of law principles. Certain provisions of this Agreement by their nature survive expiration or termination for the purpose of enforcing the party's respective rights hereunder.

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Agreement as provided below:

**COX:**

COX ARKANSAS TELCOM, LLC ON BEHALF OF ITSELF AND THE COX AFFILIATES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**CUSTOMER:**

CITY OF FORT SMITH, ARKANSAS

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**COX MARKET AREAS**

Cox Services may be available in the following generally described Cox Market Areas:

Arkansas

- Alma
- Barling
- Bonanza
- Cedarville
- Chester
- Fort Smith
- Greenwood
- Hackett
- Kibler
- Mountainburg
- Van Buren
- Arkoma, OK
- Pocola, OK
- Roland, OK

**EXHIBIT B  
SERVICE PRICING**

**Voice Services**

Voice Manager™			
	Basic	\$18.00	per month
Long Distance			
	20,000	\$525.00	per month
	40,000	\$1,000.00	per month
	50,000	\$1,200.00	per month
SIP			
	1.5Mb port	\$100.00	per month
	3.0Mb port	\$150.00	per month
	5.0Mb port	\$200.00	per month
	10Mb port	\$300.00	per month
	Trunk	\$9.50	per trunk per month
	DID 100 block	\$5.00	per month
Intrada/West E-911 service			
	DID	\$0.15	per DID
	Installation	\$1,500.00	one-time set up fee

**Data Services**

Metro E - Fiber		
	10Mb	\$570.00
	100Mb	\$600.00
	1Gb	\$1,125.00
	2Gb	\$1,600.00
	3Gb	\$1,925.00
	4Gb	\$1,995.00
	5Gb	\$2,200.00
	10Gb	\$2,950.00
Cox Optical Internet		
	5Mb	\$475.00
	10Mb	\$625.00
	20Mb	\$750.00
	30Mb	\$825.00
	40Mb	\$925.00
	50Mb	\$1,000.00
	100Mb	\$1,395.00
	200Mb	\$2,325.00
	300Mb	\$2,695.00
	400Mb	\$2,905.00
	500Mb	\$3,285.00
	1Gb	\$4,695.00
Cox Business Internet		
	5x1	\$68.95
	10x2	\$104.95
	25x5	\$134.95
	50x10	\$184.95
	100x20	\$254.95
	200x20	\$334.95

**EXHIBIT C**  
**SERVICE LEVEL AGREEMENTS**

**Cox Switched Digital/Interconnected VoIP (iVoIP) Voice Services**  
**Service Level Agreement**

**I. Scope.** This Service Level Agreement (“SLA”) is incorporated into the Commercial Services Agreement (“Agreement”) by and between Cox Arkansas Telcom, LLC, d/b/a Cox Business (“Cox”) and the undersigned Customer. Cox shall endeavor to meet the performance standards and service levels set forth in this SLA with respect to the Services provided to the undersigned Customer.

Cox Switched Digital/Interconnected VoIP (iVoIP) Voice Services include DS1, Primary Rate Interface ISDN, Session Initiation Protocol, and IP Centrex products.

**A. Network Availability.** The Cox network shall be available for use by Customer with the Services provided under the Agreement at least 99.9% of the available time (“Switch Availability”) if provided on fiber or 99.5% if provided on Coax. This parameter is calculated by dividing the number of minutes that the Services are available for Customer’s use by the total number of minutes in any consecutive twelve (12) month period and multiplying by 100. In calculating Network Availability, the reasons or causes set forth in Section A3 of this SLA shall not be included in determining whether Cox has met the applicable performance standard for Network Availability. For example, if the Services experience an outage for One (1) day due to a Force Majeure (flood) event, and otherwise experience no other outage or Service Interruption during the applicable month, Cox will be deemed to have met the Network Availability performance standard.

**A.1. Service Interruption.** A Service Interruption or an outage in Services is not a Default under the Agreement, but may entitle Customer to credits as provided in this SLA. A Service Interruption is a loss of Services or a degradation of signal to the Customer that adversely affects the ability of Customer to use the Services. A Service Interruption period begins when Customer makes a Trouble Report (as defined below) to Cox’s Network Operations Center (NOC) under the methods and procedures set forth in Section II of this SLA and ends when Cox restores the Services to Customer.

**A.2. Service Interruption Credits for Network Availability.** A credit for Service Interruption is only available on Service Agreements with a term of one year or longer and is effective as of the first day of the second month after installation. A Credit Allowance will be given in any month during the term of the Agreement when there is a Service Interruption that qualifies for a credit allowance. The Credit Allowances will be calculated only with respect to the affected Services and not all charges under the Agreement. The credits listed below will not exceed the MRC of the affected Service. Customer may receive Service Interruption credits for a maximum of four months in any 12 month period. The amount of the Credit Allowances shall be as follows:

Fiber Transport

<i>Services Interruption Length</i>	<i>Credit</i>
< 30 minutes, continuous	None
30 minutes to 1 hour, continuous	1/30 of monthly recurring charge (MRC) due for the applicable month
> 1 hour, continuous	1/30 of MRC due for the applicable month for each day or portion thereof

Coax Transport

<i>Services Interruption Length</i>	<i>Credit</i>
> 4 hours, continuous	1/30 of the MRC due for the applicable month for each day or portion thereof

Type II Service

<i>Services Interruption Length</i>	<i>Credit</i>
< 4 hours, continuous	None
> 4 hours, continuous	1/30 of MRC due for the applicable month for each day or portion thereof

Cox Business shall provide Credit Allowances no later than 60 days from date of Service Interruption.

**A.3. Exceptions to Credit Allowance.** Credit Allowances shall not be provided for Service Interruptions: (i) caused by Customer, its employees, agents or subcontractors; (ii) due to failure of power or other equipment provided by Customer or the public utility company supplying power to Cox or Customer; (iii) during any period in which Cox is not allowed access to the premises of Customer to access Cox equipment; (iv) due to scheduled maintenance and repair; (v) caused by or due to violations of the Cox ACC Local Exchange Service Tariff, Section 2.5.6; (vi) caused by a loss of service or failure of the Customer's internal wiring or other customer equipment; or (vii) due to Force Majeure events. For purposes of this SLA, Force Majeure shall mean (i) third party cable cuts, acts of God, fire, flood, or other natural disaster; (ii) laws, orders, rules, regulations, directions, or actions of governmental authorities having jurisdiction over the Services; (iii) any civil or military action including national emergencies, riots, war, civil insurrections or terrorist attacks; (iv) taking by condemnation or eminent domain of a party's facilities or equipment; or (v) delays in obtaining permit or other approvals from governmental authorities for construction or Services provisioning. Credit Allowances for Service Interruptions shall not be provided if: (i) Customer is in breach of its Agreement with Cox; (ii) Customer has a past due balance with Cox under the Agreement; or (iii) Customer is otherwise not in good financial standing with Cox. In no event shall Customer receive more than one month's MRC as credit for Service Interruptions or outages in any thirty (30) day period regardless of the number of Service Interruptions or outages.

**A.4. Type II Maintenance.** If Service is provided over Type II facilities, Cox will use reasonable efforts to notify Customer of Type II Carrier scheduled maintenance. Because Cox cannot control such maintenance windows, Type II facility maintenance may occur at times that are not always convenient to Customer. Except as provided in this SLA, Cox will not be liable to Customer for outages.

**A.5. Major Outage.** If two (2) times during a thirty (30) consecutive day period, the Services to the Customer experience a Service Interruption for a period greater than twelve (12) consecutive hours, ("Major Outage") other than as a result of the causes set forth in Section I.A.4 and I.A.5 above, Customer may terminate this Agreement without charge or payment of any termination charges otherwise provided in the Agreement; provided Customer complies with the notification process described in this Section I.A.5. Within thirty (30) days of the occurrence of the 2<sup>nd</sup> Major Outage, Customer shall notify Cox in writing of its election to terminate this Agreement and this Agreement shall terminate upon Cox's receipt of such notice. If Customer fails to notify Cox within thirty (30) days of the 2<sup>nd</sup> Major Outage, of its intent to terminate, then Customer shall be deemed to have waived its right to terminate this Agreement under this Section I.A.5 until the occurrence of a subsequent Major Outage, if any. Upon termination under this Section I.A.5, neither party shall have any further rights, obligations, or liabilities to the other party, except those accrued through the termination date, and that expressly survive termination of this Agreement. If Service is provided over Type II facilities, a Major Outage is defined as 6 or more outages over any calendar month or more than 48 aggregate hours of outages other than as a result of the causes set forth in Section I.A.3 and I.A.4 above. For Type II Services, Customer must notify Cox, in writing, within forty five (45) days of their intention to terminate the Service.

**II. Trouble Reports.** Cox shall maintain a twenty-four (24) hour, seven (7) day a week point-of-contact for Customers to report Service troubles, outages, or Service Interruptions. Customer shall call Trouble Reports to 877-897-2475. A "Trouble Report" means any report made by Customer relating to the Services or the equipment provided by Cox. In the event Cox receives a Trouble Report from Customer, Cox shall respond to the Trouble Report within the following time frames as described below:

**A. Service Response and Resolution.** In the event Cox receives a Trouble Report from Customer, Cox will initiate action to clear the trouble within 30 minutes. If the Trouble Report is the result of an electronic component failure, the maximum restoration time is 4 hours. If the Trouble Report is the result of a coax or fiber optic cable failure, the maximum restoration time is 8 hours. For Type II Services, Service Response and Resolution will be subject to the SLAs provided by the Type II Carrier.

**A.1. Trouble Report Service Level.** Cox will endeavor to achieve at least 95% Trouble Reports Cured Timely per calendar month. This parameter is calculated by dividing the total number of Trouble Reports from Customer within a month that are cured by Cox within the windows set forth above by the total number of Trouble Reports received by Cox from Customer in the month and multiplying by 100. If Cox fails to meet the 95% Trouble Cure Report standard in any month during the term of the Agreement, Customer shall be entitled to One (1) month's MRC for any affected Service. This standard shall not apply to Trouble Reports connected to or due to the following: (i) caused by Customer, its employees, agents or subcontractors; (ii) due to failure of power or other equipment provided by Customer or the public utility company supplying power to Cox or Customer; (iii) during any period in which Cox is not allowed access to the premises of Customer to access Cox Equipment; (iv) caused by fiber optic cable cuts on the Customer's property which are not the fault of Cox; (v) caused by a loss of service or failure of the Customer's internal wiring or other customer equipment; or (vi) due to Force Majeure events.

### **III. Service Installation Intervals.**

**A. Service Installation and Availability.** Cox shall endeavor to install provision and make the Services available for Customer's use within ten (10) business days of the Committed Service Date set forth in the Customer Service Agreement. Service

availability shall mean that Cox has completed its obligations to install the Cox equipment and facilities set forth in the Agreement necessary to provide Customer the Services.

**A.1. Installation Credit.** Cox shall provide Customer with an Installation Delay Credit if the Services are not available for Customer’s use within ten (10) business days of the Committed Service Date. In this event, Customer will be entitled to an Installation Delay Credit of an amount equal to the nonrecurring charge (NRC) or one month’s MRC of that portion of the Service which was unavailable, whichever is less. Because Cox does not directly control the installation of Type II Services, no Credit Allowance will be issued/allowed for installation delays for Type II Services.

**A.2. Exceptions to Installation Delay Credits.** Installation Delay Credits shall not be provided for Installation Delays (i) caused by or requested by Customer, its employees, agents or subcontractors; (ii) due to inability of Cox to access Customer’s premises due to restrictions by Customer’s landlord or property owner; (iii) due to the public utility company restricting Cox’s access to necessary conduits or wiring in Customer’s building or property; or (iv) due to Force Majeure events.

Unless otherwise expressly agreed in writing by an authorized Cox Business representative, the service levels and outage credits set forth in this Service Level Agreement constitute customers’ sole and exclusive remedy with respect to any interruption, degradation, or cessation of Service and supersedes any and all prior agreements, promises, understandings, statements, representations or warranties of any kind charges.

## Cox Optical Internet Service Level Agreement

**I. Scope.** This Service Level Agreement (“SLA”) is incorporated into the Commercial Services Agreement or Master Services Agreement (“Agreement”) by and between \_\_\_\_\_ d/b/a Cox Business (“Cox”) and the Customer identified therein. Cox shall endeavor to meet the performance objectives and service levels set forth in this SLA with respect to the Cox Optical Internet (“COI”) services (“Services”) provided to the Customer. To qualify for any credits below, Customer must call in to request a credit within thirty (30) calendar days of the applicable event.

**A. Network and Service Availability.** Network Availability, as it relates to the Services, is defined by Cox as the ability to transmit data from the Cox demarc at the Customer location to a RDC on the Cox IP backbone. Network Availability does not mean the Customer will be able to reach any site or user on the Internet, nor does it mean any site or user on the Internet can reach the Customer, as there are many factors, outside of Cox’s control, that can affect an end-to-end connection. The Services shall be available for use by Customer as provided under the Agreement for at least ninety-nine and ninety-nine one-hundredths percent (99.99%) of the time with respect to the on-net portion of the circuit (“Service Availability”). Service Availability with respect to the portion of Services or circuits obtained by Cox from third party carriers, commonly known as “Type II” Service or circuits shall be ninety-nine and nine-tenths percent (99.9%). This parameter is calculated by dividing the number of minutes that the Services are available for Customer’s use by the total number of minutes in any calendar month and multiplying by one hundred (100). Unavailability of the Services due to the reasons or causes set forth in Section IV of this SLA shall not be included in determining whether Cox has met the applicable performance standard for Service Availability. For example, if the Services experience an outage for one (1) day due to a Force Majeure event, and otherwise experience no other outage or Service Interruption during the applicable month, Cox will be deemed to have met the Service Availability performance standard.

**1. Service Interruption.** A Service Interruption or an outage in Services is not a Default under the Agreement, but may entitle Customer to credits as provided in this SLA in the event the Service Availability parameter has not been met. A Service Interruption is a loss of signal to the Customer that results in a disruption of Service. A Service Interruption period begins when Customer makes a Trouble Report to Cox’s Network Operations Center (“NOC”) under the methods and procedures set forth in Section II of this SLA and ends when Cox restores the Services to Customer.

**2. Service Interruption Credits.** A Credit Allowance will be given in any month during the term of the Agreement when there is a Service Interruption that qualifies for a credit allowance. The amount of the Credit Allowance, as a percentage of the monthly recurring charge (“MRC”) for COI Services, shall be as follows:

<i>Services Interruption Length</i>	<i>Credit</i>
≥ 30 min. to < 4 hours	5% of MRC
≥ 4 hours to < 8 hours	10% of MRC
≥ 8 hours to < 16 hours	15% of MRC
≥ 16 hours to < 24 hours	20% of MRC
≥ 24 hours	25% of MRC

Service Interruptions due to the reasons or causes set forth in Section IV of this SLA shall not be included in determining whether Cox has met the applicable performance standard.

**B. Network Latency.** Network Latency, as it relates to Services, is defined by Cox as the round-trip delay for a packet to travel between two Regional Data Centers (“RDCs”) on the Cox IP backbone, averaged on a monthly basis across all RDCs and IP peering locations on the Cox IP backbone network. The average monthly round-trip delay is measured in milliseconds. The Cox Network Latency Service Level is fifty (50) milliseconds or less. Network Latency due to the reasons or causes set forth in Section IV of this SLA shall not be included in determining whether Cox has met the applicable performance standard for Network Latency. Network performance statistics and methodology related to the Cox Network Latency Service Level are posted at the following location:

[http://online.coxbusiness.com/svpn/cbs\\_stats/](http://online.coxbusiness.com/svpn/cbs_stats/).

**1. Network Latency Credit.** If the Cox Network Latency Service Level is greater than fifty (50) Milliseconds in a calendar month, the credit allowance shall consist of 10% off the MRC for COI Services for the applicable month.

**C. Data Delivery.** Data Delivery Rate, as it relates to Services, is defined by Cox as the percentage of packets delivered during a transmission between two RDCs on the Cox IP backbone, averaged on a monthly basis across all RDCs and IP peering locations on the Cox IP backbone network. The average monthly packet delivery is measured in percentage of packets delivered per 100 and shall be ninety-nine and nine-tenths percent (99.9%) or greater, averaged on a monthly basis. Non-delivery of packets due to the reasons or causes set forth in Section IV of this SLA shall not be included in determining whether Cox has met the applicable performance standard for Data Delivery.

Network performance statistics and methodology related to the Cox Network Data Delivery Rate Service Level are posted at the following location:

[http://online.coxbusiness.com/svpn/cbs\\_stats/](http://online.coxbusiness.com/svpn/cbs_stats/).

**1. Data Delivery Credit.** If the Data Delivery Rate in a calendar month is less than ninety-nine and nine-tenths percent (99.9%), the credit allowance shall consist of 10% off the MRC for COI Services for the applicable month.

**D. Chronic Outage.** If three (3) times during a thirty (30) consecutive day period, the Services to the Customer experience a Service Interruption for a period greater than eight (8) consecutive hours, (“Chronic Outage”) other than as a result of the causes set forth in Section IV, Customer may terminate affected circuit(s) without charge or payment of any termination charges otherwise provided in the Agreement; provided Customer complies with the notification process described in this Section I(D). Within thirty (30) days of the occurrence of the 3<sup>rd</sup> Chronic Outage, Customer shall notify Cox in writing of its election to terminate the circuit(s) and the circuit(s) shall be terminated upon Cox's receipt of such notice. If Customer fails to notify Cox within thirty (30) days of the 3<sup>rd</sup> Chronic Outage, of its intent to terminate the circuit(s), then Customer shall be deemed to have waived its right to terminate the circuit(s) under this Section I(D) until the occurrence of a subsequent Chronic Outage, if any. Upon termination under this Section I(D), neither party shall have any further rights, obligations, or liabilities to the other party with respect to such circuit(s), except those accrued through the termination date, and that expressly survive termination of this Agreement.

**II. Trouble Reports.** Cox shall maintain a twenty- four (24) hour, seven (7) day a week point-of-contact for Customers to report Service troubles, outages or Service Interruptions. Customer shall call Trouble Reports to the telephone number provided by Customer’s local market sales representative. A “Trouble Report” means any report made by Customer relating to the Services or the equipment provided by Cox.

**A. Service Response and Repair.** In the event Cox receives a Trouble Report from Customer, Cox will initiate action to clear the trouble within thirty (30) minutes. If the Trouble Report is the result of an electronic component failure, the maximum restoration time is four (4) hours. If the Trouble Report is the result of a fiber optic cable failure, the maximum restoration time is eight (8) hours.

### **III. Service Installation Intervals.**

**A. Service Installation and Availability.** Cox shall install, provision and make the Services available for Customer’s use within ten (10) business days of the installation date communicated by Cox, to the Customer, at the time of contract signing.

**1. Installation Credit.** Cox shall provide Customer with an Installation Delay Credit if the Services are not available for Customer’s use within ten (10) business days of the Committed Service Date communicated by Cox to Customer. In this event, the credit allowance shall consist of 100% off the standard nonrecurring charge (“NRC”) billed for COI installation. This Installation Delay Credit shall apply only to Cox standard NRCs and shall not apply to construction or other non-standard charges billed to Customer that are associated with providing Services to Customer.

**2. Exceptions to Installation Delay Credits.** Installation Delay Credits shall not be provided for Installation Delays (i) caused by or requested by Customer, its employees, agents or subcontractors; (ii) due to inability of Cox to access Customer’s premises due to restrictions by Customer’s landlord or property owner; (iii) due to the public utility company restricting Cox’s access to necessary conduits or wiring in Customer’s building or property; or (iv) due to Force Majeure events.

**IV. Exceptions to Credit Allowance.** Credit Allowances shall not be provided for failure to meet SLAs for Service Availability, Network Latency, Data Delivery, Service Interruptions, or Service Repair: (i) caused by Customer, its employees, agents or subcontractors; (ii) due to failure of power or other equipment provided by Customer or the public utility company supplying power to Cox or Customer; (iii) during any period in which Cox is not allowed access to the premises of Customer to access Cox equipment; (iv) due to scheduled maintenance and repair; (v) caused by or due to violations of the Cox Acceptable Use Policy (data customers); (vi) caused by a loss of service or failure of the Customer's internal wiring or other Customer equipment; or (vii) due to Force Majeure events. For purposes of this SLA, Force Majeure shall mean (i) third party cable cuts, acts of God, fire, flood, or other natural disaster; (ii) laws, orders, rules, regulations, directions, or actions of governmental authorities having jurisdiction over the Services; (iii) any civil or military action including national emergencies, riots, war, civil insurrections or terrorist attacks; (iv) taking by condemnation or eminent domain of a party's facilities or equipment; (v) strikes or labor disputes; (vi) fuel or energy shortages or (vii) delays in obtaining permits or other approvals from governmental authorities for construction or Services provisioning.

**V. Limitations.** With respect to all credits under this SLA, no credits shall be issued if: (i) Customer is in breach of its Agreement with Cox; (ii) Customer has a past due balance with Cox under the Agreement; or (iii) Customer is otherwise not in good financial standing with Cox. In addition, in any calendar month, Customer's combined credits for Network Latency and Data Delivery shall not exceed ten percent (10%) of the MRC for COI Services. Furthermore, in any calendar month, customer's combined credits for Network Latency, Data Delivery, or Service Interruptions will be no more than one (1) full MRC for COI Service. All credits are exclusive of any applicable taxes or fees charged to the Customer or collected by Cox. All claims for credit allowances are subject to review and verification by Cox. Cox reserves the right to change or modify the program rules and regulations at any time without notice.

## **Metro Ethernet - Fiber**

### **Service Level Agreement**

**I. Scope.** This Service Level Agreement ("SLA") is incorporated into the Commercial Services Agreement or Master Services Agreement ("Agreement") by and between \_\_\_\_\_ d/b/a Cox Business ("Cox") and the Customer identified therein. Cox shall endeavor to meet the performance standards and service levels set forth in this SLA with respect to the Cox Ethernet Services ("Services") provided to the Customer. To qualify for any credits below, Customer must call in to Cox to request a credit within thirty (30) calendar days of the applicable event.

**A. Service Availability.** The Services are delivered via an Ethernet User Network Interface ("Port") and associated Ethernet Virtual Connection(s) ("EVC"). Service Availability is defined by Cox as the ability to send or receive Ethernet Service Frames at a given Port via an associated EVC(s). A Port and associated EVC(s) shall be available for use by Customer with the Services provided under the Agreement at least ninety-nine and ninety-nine one-hundredths percent (99.99%) of the time with respect to the on-net portion of the circuit ("Service Availability"). Service Availability with respect to the portion of Services or circuits obtained by Cox from third party carriers, commonly known as "Type II" Service or circuits shall be ninety-nine and nine-tenths percent (99.9%). This parameter is calculated by dividing the number of minutes a Port and associated EVC(s) is available for Customer's use by the total number of minutes in any calendar month and multiplying by one hundred (100). Unavailability of the Services due to the reasons or causes set forth in Section IV of this SLA shall not be included in determining whether Cox has met the applicable performance standard for Service Availability. For example, if a Port and associated EVC(s) experiences an outage for one (1) day due to a Force Majeure event, and otherwise experiences no other outage or Service Interruption during the applicable month, Cox will be deemed to have met the Service Availability performance standard.

**1. Service Interruption.** A Service Interruption or an outage in Services is not a Default under the Agreement, but may entitle Customer to credits as provided in this SLA in the event the Service Availability parameter has not been met. A Service Interruption is an interruption of a Port ("Affected Port") or failure of an associated EVC(s) ("Affected EVC") that results in the total disruption of the Services delivered over the Affected Port and Affected EVC ("Outage"). A Service Interruption period begins when Customer makes a Trouble Report (as defined below) to Cox's Network Operations Center ("NOC") under the methods and procedures set forth in Section II of this SLA and ends when Cox restores the Services to Customer.

**2. Service Interruption Credits.** A Credit Allowance will be applicable in any month during the term of the Agreement when there is a Service Interruption that qualifies for a credit allowance. The Credit Allowance shall be the applicable credit, identified in the table below, of the monthly recurring charges ("MRC") associated with the Affected Port and EVCs. The Credit Allowance will not include credits for any Ports or associated EVC(s) determined to be in good working order. The amount of the Credit Allowance shall be as follows:

## Cox Ethernet Services - Standard

### Metro Ethernet -- Fiber

<i>Services Interruption Length</i>	<i>Credit</i>
≥ 30 min. to < 4 hours	5% of MRC
≥ 4 hours to < 8 hours	10% of MRC
≥ 8 hours to < 16 hours	15% of MRC
≥ 16 hours to < 24 hours	20% of MRC
≥ 24 hours	25% of MRC

**B. Ethernet Frame Delay.** Ethernet Frame Delay (latency), as it relates to the Services, is defined by Cox as the time elapsed from when the first bit of an Ethernet Service Frame (“ESF”) enters the ingress User Network Interface (“UNI”) to when the last bit of the same frame leaves the egress UNI. Ethernet Frame Delay shall be ten (10) milliseconds or less, averaged on a monthly basis. The Ethernet Frame Delay performance objective is applicable to ESFs that traverse a single Cox Metro Ethernet Network (up to 150 miles) and are designated as “Real Time Class of Service” traffic per the Cox Metro Ethernet Service specifications. The ESFs must also be “in-profile” (conform to the performance attributes of the Services) at both the ingress and egress UNIs of any given EVC. The measurement of Ethernet Frame Delay excludes any off-net portion of the Service.

**C. Ethernet Frame Delivery Ratio.** Ethernet Frame Delivery Ratio, as it relates to the Services, is defined by Cox as the percentage of Ethernet Service Frames that arrive at an ingress UNI and are successfully delivered to an egress UNI. Ethernet Frame Delivery Ratio shall be at least ninety-nine and nine-tenths percent (99.9%), averaged on a monthly basis. Ethernet Frame Delivery Ratio performance objective is applicable to ESFs that traverse a single Cox Metro Ethernet Network (up to 150 miles) and are designated as “Real Time Class of Service” traffic per the Cox Metro Ethernet Service specifications. The ESFs must also be “in-profile” (conform to the performance attributes of the Services) at both the ingress and egress UNIs of any given EVC. The measurement of Ethernet Frame Delay excludes any off-net portion of the Service.

**D. Ethernet Frame Delay Variation.** Ethernet Frame Delay Variation (jitter), as it relates to the Services, is defined by Cox as the variation in the delay between a pair of consecutive Ethernet Service Frames. Ethernet Frame Delay Variation shall be 1 millisecond or less, averaged on a monthly basis. Ethernet Frame Delay Variation performance objective is applicable to ESFs that traverse a single Cox Metro Ethernet Network (up to 150 miles) and are designated as “Real Time Class of Service” traffic per the Cox Metro Ethernet Service specifications. The ESFs must also be “in-profile” (conform to the performance attributes of the Services) at both the ingress and egress UNIs of any given EVC. The measurement of Ethernet Frame Delay excludes any off-net portion of the Service.

**E. Chronic Outage.** If three (3) times during a thirty (30) consecutive day period, a Port or associated EVC(s) experiences a Service Interruption for a period greater than eight (8) consecutive hours, (“Chronic Outage”) other than as a result of the causes set forth in Section IV below, Customer may terminate the Affected Port and Affected EVC(s) without charge or payment of any termination charges otherwise provided in the Agreement; provided Customer complies with the notification process described in this Section 3. Within thirty (30) days of the occurrence of the 3<sup>rd</sup> Chronic Outage, Customer shall notify Cox in writing of its election to terminate the Affected Port and Affected EVC(s) and the Affected Port/Affected EVC(s) shall terminate upon Cox's receipt of such notice. If Customer fails to notify Cox within thirty (30) days of the 3<sup>rd</sup> Chronic Outage, of its intent to terminate, then Customer shall be deemed to have waived its right to terminate the Affected Port and Affected EVC(s) under this Section 3 until the occurrence of a subsequent Chronic Outage, if any. Upon termination under this Section 3, neither party shall have any further rights, obligations, or liabilities to the other party, except those accrued through the termination date, and that expressly survive termination of this Agreement.

**II. Trouble Reports.** Cox shall maintain a twenty-four (24) hour, seven (7) day a week point-of-contact for Customers to report Service troubles, outages or Service Interruptions. Customer shall call Trouble Reports to the telephone number provided by Customer's local market sales representative. A “Trouble Report” means any report made by Customer relating to the Services or the equipment provided by Cox.

**A. Service Response and Resolution.** In the event Cox receives a Trouble Report from Customer, Cox will initiate action to clear the trouble within thirty (30) minutes. If the Trouble Report is the result of an electronic component failure, the maximum restoration time is four (4) hours. If the Trouble Report is the result of a fiber optic cable failure, the maximum restoration time is eight (8) hours.

### III. Service Installation Intervals.

**A. Service Installation and Availability.** Cox shall install, provision and make available the Services for Customer's use within ten (10) business days of the Committed Service Date communicated by Cox to Customer. Service availability shall mean that Cox has completed its obligations to install the Cox equipment and facilities set forth in the Agreement necessary to provide Customer the Services.

**1. Installation Credit.** Cox shall provide Customer with an Installation Delay Credit if the Services are not available for Customer's use within ten (10) business days of the installation date communicated by Cox, to the Customer, at the time of contract signing. In this event, the credit allowance shall consist of one hundred percent (100%) off the standard nonrecurring charge (“NRC”) billed of that portion of the Service which was unavailable. This Installation Delay Credit shall apply only to Cox standard NRCs and shall not apply to construction or other non-standard charges billed to Customer that are associated with providing Services to Customer.

2. **Exceptions to Installation Delay Credits.** Installation Delay Credits shall not be provided for Installation Delays (i) caused by or requested by Customer, its employees, agents or subcontractors; (ii) due to inability of Cox to access Customer's premises due to restrictions by Customer's landlord or property owner; (iii) due to the public utility company restricting Cox's access to necessary conduits or wiring in Customer's building or property; or (iv) due to Force Majeure events.

IV. **Exceptions to Credit Allowance.** Credit Allowances shall not be provided for any failures to meet the SLAs specified herein: (i) caused by Customer, its employees, agents or subcontractors; (ii) due to failure of power or other equipment provided by Customer or the public utility company supplying power to Cox or Customer; (iii) during any period in which Cox is not allowed access to the premises of Customer to access Cox equipment; (iv) due to scheduled maintenance and repair; (v) caused by or due to violations of the Cox Acceptable Use Policy (data customers); (vi) caused by a loss of service or failure of the Customer's internal wiring or other customer equipment; or (vii) due to Force Majeure events. For purposes of this SLA, Force Majeure shall mean (i) third party cable cuts, acts of God, fire, flood, or other natural disaster; (ii) laws, orders, rules, regulations, directions, or actions of governmental authorities having jurisdiction over the Services; (iii) any civil or military action including national emergencies, riots, war, civil insurrections or terrorist attacks; (iv) taking by condemnation or eminent domain of a party's facilities or equipment; (v) strikes or labor disputes; (vi) fuel or energy shortages; or (vii) delays in obtaining permits or other approvals from governmental authorities for construction or Services provisioning.

V. **Limitations.** With respect to all credits under this SLA, no credits shall be issued if: (i) Customer is in breach of its Agreement with Cox; (ii) Customer has a past due balance with Cox under the Agreement; or (iii) Customer is otherwise not in good financial standing with Cox. In addition, in any calendar month, customer's combined credits for Service Interruptions will be no more than one MRC for Cox Ethernet Service. All credits are exclusive of any applicable taxes or fees charged to the Customer or collected by Cox. All claims for credit allowances must be initiated by the Customer and are subject to review and verification by Cox. Cox reserves the right to change or modify the program rules and regulations at any time without notice.

**EXHIBIT D**  
**Sample Service Order**



**Business<sup>SM</sup> SERVICE ORDER FOR MASTER RETAIL SERVICES AGREEMENT**

Customer Account Number:	System Address
Order Form Date:	

Customer Information	Authorized Customer Representative Information
Legal Company Name:	Name:
Street Address:	Phone:
City/State/Zip:	Fax:
<b>Service Location:</b> (if different from above)	2ndContact Number:
Street Address:	E-mail Address :
City/State/Zip:	Requested Installation Date:

Service Description	Quantity	Service Order Term	Service Charges	
			Monthly Recurring Charge	Non Recurring Charge
Equipment Description	Quantity	Unit Price	Installation Fees	Total Equipment

**Special Terms and Conditions**

This Service Order is attached to and incorporated into the Master Retail Services Agreement between Cox and Customer (the "Agreement"). The Services described in this Service Order are subject to the Terms and Conditions contained in the Agreement. To the extent of any conflict between the terms and conditions in this Service Order and the Agreement, the Service Order shall control. By signing this Service Order, you represent that you are the authorized Customer representative and the information above is true and correct. The prices above do not include applicable taxes, fees, assessments or surcharges which are additional and may change. Cox may terminate this Service Order without liability at any time prior to installation of Services or if Cox determines that Customer's location is not reasonably serviceable according to Cox's standard practices. Each party may use electronic signature to sign this Service Order, provided the electronic signature method used by Customer is acceptable to Cox. "Acceptance" of this Service Order by Cox shall occur upon the earlier of (i) Cox's countersignature of this Service Order or (ii) Cox's installation of the Service described above at Customer's location. If Customer cancels this Service Order prior to installation by Cox of the Services described above, Customer shall be liable for Cox's costs incurred. I acknowledge that I have read and understand the 911 disclosures in the Agreement and in the General Terms.

**Customer**

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Cox**

Signature: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**EXHIBIT D**  
**Alternative Service Order**

The parties may utilize a purchase order issued by the Customer and mutually agreed to in writing by the parties with the following format and language:

City of Fort Smith ITS

Request for Connectivity

The following information describes the work requested. If you need assistance, Please call Carla Cravens at 479-788-8901

Order #: \_\_\_\_\_  
Date: \_\_\_\_\_  
Dept. #: \_\_\_\_\_

MSA # 4401-210-16

Location: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Site Requirements: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Purchase Order is attached to and incorporated into the Master Retail Services Agreement, dated July 5th 2016, between Cox Arkansas Telcom, LLC and the City of Fort Smith, Arkansas (the "Agreement"). The Services described in this Purchase Order are subject to the terms and conditions contained in the Agreement. To the extent of any conflict between the terms and conditions in this Purchase Order and the Agreement, the Agreement shall control. The prices above do not include applicable taxes, fees, assessments or surcharges which are additional and may change. "Acceptance" of this Purchase Order by Cox shall occur upon Cox's installation of the Service described above at Customer's location. If Customer cancels this Purchase Order prior to installation by Cox of the Services described above, Customer shall be liable for Cox's costs incurred.

## SERVICE ORDER FORM



### SERVICE ORDER FORM MASTER RETAIL SERVICES AGREEMENT

Customer Account Number:	System Address
Federal Tax ID Number:	
Contract Number:	

Customer Information	Authorized Customer Representative Information
Legal Company Name: City of Fort Smith	Name: Russell Gibson
Service Street Address: 623 Garrison Ave	Business Phone Number: 479-788-8919
City/State/Zip: Fort Smith AR 72901	Business Fax Number:
<b>Service Location: Various – See Below</b>	Additional Contact Number (optional):
(if different from above)	E-mail Address (optional):
<b>Street Address:</b>	
<b>City/State/Zip:</b>	Installation Date:

Cox shall provide the following Services and equipment and Customer agrees to pay the fees and charges set forth below:

(Customer Initials)

Service Description	Quantity	Term	Total Service Charges	
			Monthly Recurring /Access Charge	Non Recurring/One-time Activation and Set-up Fees
<b>801 Carnall Ave., Fort Smith</b>				
Metro E – 1Gb UNI Intrastate	1	36	\$1,125.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
Cox Optical Internet 100Mb	1	36	\$1,395.00	\$0.00
3Mb SIP Trunk Group Port	1	36	\$150.00	\$0.00
2-way Trunk Channel	24	36	\$228.00	\$0.00
DID 100 Block	4	36	\$20.00	\$0.00
10,000 Minute Pack	1	36	\$310.00	\$0.00
PS/ALI Service	1600	36	\$240.00	\$1500.00
<b>200 N 5<sup>th</sup> St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>1127 N Greenwood Ave., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>2020 N 6<sup>th</sup> St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>2128 Towson Ave., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00

<b>4123 Spradling Ave., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>3124 Massard Rd., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>5411 Euper Lane, Fort Smith AR</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>2318 Phoenix Ave. Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>1500 Cavanaugh Rd, Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>4401 Burrough Rd., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>8900 Massard Rd., Fort Smith</b>				
Metro E – 1Gb UNI Intrastate	1	36	\$1,125.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
3Mb SIP Trunk Group Port	1	36	\$150.00	\$0.00
2-way Trunk Channel	24	36	\$228.00	\$0.00
DID 100 Block	4	36	\$20.00	\$0.00
20,000 Minute Pack Bill With	1	36	\$0.00	\$0.00
<b>623 Garrison Ave., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>6821 Jenny Lind Rd, Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>3900 Kelley Hwy, Fort Smith</b>				
Metro E – 1Gb UNI Intrastate	1	36	\$1,125.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>2 North B St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00

<b>3301 S M St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>5900 Commerce Rd, Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>901 S B St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>7300 Zero St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	\$0.00
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
<b>8400 S Zero St., Fort Smith</b>				
Metro E – 100Mb UNI Intrastate	1	36	\$600.00	
Metro E – EVC Intrastate	1	36	\$0.00	\$0.00
3Mb SIP Trunk Group Port	1	36	\$150.00	\$0.00
2-way Trunk Channel	24	36	\$228.00	\$0.00
DID 100 Block	4	36	\$20.00	\$0.00
20,000 Minute Pack Bill With	1	36	\$0.00	\$0.00
<b>100 S. 10<sup>th</sup> St., Fort Smith</b>				
3Mb SIP Trunk Group Port	1	36	\$150.00	\$0.00
2-way Trunk Channel	24	36	\$228.00	\$0.00
DID 100 Block	4	36	\$20.00	\$0.00
20,000 Minute Pack Bill With	1	36	\$0.00	\$0.00
<b>2425 Pine Hollow, Van Buren</b>				
CBI 25	1	36	\$129.95	\$0.00
Modem Rental	1	36	\$5.00	\$0.00
<b>1601 N 9<sup>th</sup> Terrace, Barling</b>				
CBI 25	1	36	\$129.95	\$0.00
Modem Rental	1	36	\$5.00	\$0.00
<b>1400 S Greenwood, Fort Smith</b>				
CBI 25	1	36	\$129.95	\$0.00
Modem Rental	1	36	\$5.00	\$0.00
<b>1901 N Greenwood Ave, Fort Smith</b>				
CBI 25	1	36	\$129.95	\$0.00
Modem Rental	1	36	\$5.00	\$0.00
<b>3540 Old Greenwood Rd, Fort Smith</b>				
CBI 25	1	36	\$129.95	\$0.00
Modem Rental	1	36	\$5.00	\$0.00

**Special Terms and Conditions**

This Service Order is attached to and incorporated into the Master Retail Services Agreement between Cox and Customer (the "Agreement"). The Services described in this Service Order are subject to the Terms and Conditions contained in the Agreement. To the extent of any conflict between the terms and conditions in this Service Order and the Agreement, the Service Order shall control. By signing this Service Order, you represent that you are the authorized Customer representative and the information above is true and correct. The prices above do not include applicable taxes, fees, assessments or surcharges which are additional and may change. Cox may terminate this Service Order without liability at any time prior to installation of Services or if Cox determines that Customer's location is not reasonably serviceable according to Cox's standard practices. Each party may use electronic signature to sign this Service Order, provided the electronic signature method used by Customer is acceptable to Cox. "Acceptance" of this Service Order by Cox shall occur upon the earlier of (i) Cox's countersignature of this Service Order or (ii) Cox's installation of the Service described above at Customer's location. If Customer cancels this Service Order prior to installation by Cox of the Services described above, Customer shall be liable for Cox's costs incurred. I acknowledge that I have read and understand the 911 disclosures in the Agreement and in the General Terms.

Customer – City of Fort Smith

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

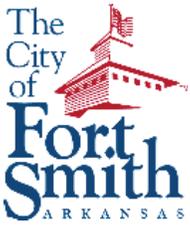
CoxCom, LLC

Cox Arkansas Telcom, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## LEGAL ADVERTISEMENT & NOTICE

### REQUEST FOR PROPOSALS RFP NO. 4401-210-16

#### DATA SERVICES

#### CITY OF FORT SMITH, ARKANSAS

The City of Fort Smith, Arkansas ("City") is accepting Requests for Proposals from qualified providers ("Provider") of data services.

The Provider is asked to assemble their recommended proposals based on the objectives provided. The City will determine which Provider and solution best meets those objectives.

Sealed Requests for Proposals shall be received by the Purchasing Manager of the City of Fort Smith until 2:00 p.m., CDT, May 13<sup>th</sup>, 2016, at 623 Garrison Avenue, Suite 522 in Fort Smith, Arkansas.

All proposals shall be submitted in accordance with the Request for Proposals which is available on the City's website at [www.fortsmithar.gov/purchasing](http://www.fortsmithar.gov/purchasing) or it may be obtained during normal business hours (8:00 a.m. to 5:00 p.m.) from:

**Purchasing Department  
City of Fort Smith  
623 Garrison Avenue, Room 522  
Fort Smith, AR 72902  
(479) 784-2268**

[purchasing@fortsmithar.gov](mailto:purchasing@fortsmithar.gov)

*The City of Fort Smith, Arkansas is an Equal Opportunity/Affirmative Action Employer.*

**CITY OF FORT SMITH  
REQUEST FOR PROPOSALS**

**I. REQUEST FOR PROPOSALS**

- A. Requests for Proposals (“RFP”) are being accepted by the City of Fort Smith (“City”) from qualified Providers (“Provider”) of data services. It is the intent of the City to solicit proposals for Wide Area Network (WAN) and Internet Access to serve approximately 26 City locations throughout a 100+ square mile area. The City currently is under a contract with AT&T for WAN and Internet services that expires 11/15/2016.

The Provider is asked to assemble their recommended proposals based on the objectives provided below. The City will determine which Provider solution best meets its objectives and a complete/turnkey solution.

The data services subject to this RFP are based on an existing private fiber-optic network between the City’s Network Operations Center (NOC) and 26 individual and geographically disparate City sites. Each site should have scalable bandwidth offerings from 10Mbps, 100Mbps, 1Gbps, to 10Gbps.

The City is also under existing contracts with AT&T for PRI-based voice communications (dial tone) services. There are five existing contracts expiring: June, 2017 (1); July, 2017 (1); and February, 2018 (3). Prior to expiration of the February, 2018 contract, in a project separate from this RFP, the City may solicit proposals for voice communication services utilizing SIP Trunking technology. Providers are encouraged to consider this future need when responding to this RFP as allowed in Section V, Additional Services.

- B. All proposals shall be submitted in accordance with the RFP which is available on the City’s website at [www.fortsmithar.gov/purchasing](http://www.fortsmithar.gov/purchasing) or it may be obtained during normal business hours (8:00 a.m. to 5:00 p.m.) from the Purchasing Department at 623 Garrison Avenue, Suite 522, Fort Smith, Arkansas 72901.

**II. BACKGROUND INFORMATION**

Fort Smith is located in western Arkansas on the border of Oklahoma and is the second largest city in the state. The City was incorporated in 1842 and is the county seat for Sebastian County. Fort Smith is 159 miles west of Little Rock and 145 miles southeast of Tulsa, Oklahoma. The City serves as the central focus for a six-county economic and trade region in the west central area of Arkansas and the east central area of Oklahoma. The City encompasses 68 square miles and has a population approximating 87,215.

Since 1967, the City has operated as a City Administrator form of government. The Mayor and the Board of Directors are elected to staggered, four-year terms. The Board of Directors is charged with setting policy and enacting laws for the City. The City Administrator is appointed by the Board of Directors and serves as the chief executive officer for the City.

The City currently employs 917 full time employees that provide a full range of services including public safety, construction and maintenance of streets and other infrastructure, parks and recreational activities, water and sewer services, solid waste collection and disposal, public transportation, and administrative services.

**III. TERM OF CONTRACT**

The contract resulting from this RFP shall commence upon the date of contract execution by both parties and extend for a period of three (3) years.

**IV. SCOPE OF SERVICES**

The scope of work for this RFP shall include but not be limited to the following:

1. Obtain proposals for data services to provide WAN and Internet services in the most cost-effective and efficient manner possible;
2. Contract with a SINGLE provider for the required data services;
3. Obtain pricing for three year contracts for all services, with contract terms beginning upon the termination of the existing AT&T contracts for services.

**V. ADDITIONAL SERVICES**

The City may consider any additional services beyond the stated Scope of Services in Section IV proposed by the Provider that provide added value or savings to the City. The Provider shall have the right to charge the City additional fees for such additional services that may be requested and/or accepted by the City. All agreements as to the additional services and additional fees to be paid by the City to the Provider shall be approved by the City Administrator and/or the City Finance Director.

**VI. LOBBYING PROHIBITED**

As to any matter relating to this request for proposals, Provider or anyone representing a Provider are advised that they are prohibited from contacting or lobbying the Mayor, City Administrator, any members of the Board of Directors, City staff, Selection Committee, or any other person authorized on behalf of the City related or involved with this request for proposals. For purposes of clarification, a Provider's representative shall include, but not be limited to an employee, partner, officer, director, consultant, lobbyist, or any actual or potential sub firm or consultant of the Provider. All oral or written inquiries are to be directed to the Purchasing Department as directed in this RFP. Any violation of this condition may result in rejection and/or disqualification of the respondent.

The "No Lobbying Condition" is in effect from the date of issuance and shall terminate at the time the City signs final award contract(s) for this RFP, rejects all quotations, or otherwise takes action which ends the solicitation process.

**VII. SUBMITTAL INFORMATION**

Provider shall submit one (1) original, five (5) copies and one (1) copy in electronic PDF format of the quotation response in a sealed envelope, marked in the lower left-hand corner with the company's name, RFQ number, title, due date and time.

**Responses shall be submitted to:**

City of Fort Smith  
Purchasing Department  
623 Garrison Avenue, Suite 522  
Fort Smith, AR 72901

All information must be typed or legibly written in ink, and must be signed in blue ink by an officer or employee having authority to bind the company or firm.

**VIII. QUESTIONS/CLARIFICATION**

All questions regarding this RFP shall be submitted in writing and must be received no later than 5:00 p.m. CDT, April 27, 2016.

Questions shall be submitted by email to: [rgibson@fortsmithar.gov](mailto:rgibson@fortsmithar.gov) with the subject titled, "RFP 4401-210-16 Questions"

**IX. REFERENCES**

Provide a list of at least five clients with data services needs similar to the City, which may include governmental entities, financial institutions, school districts, and/or businesses. Describe your firm's specific experiences providing services to each of those clients. Describe any issues or problems that have impacted any of the client accounts described in this section. Identify ways in which you added unique value or problem solving to any of the client accounts. Provide contact information to enable the City to contact those accounts as references.

**X. INQUIRIES AND ADDENDUMS**

Any interpretation or changes to the scope or meaning of this RFP will be by written addendum. Any addendum issued for this RFP will be posted on the City's Purchasing website at: [www.fortsmithar.gov/purchasing](http://www.fortsmithar.gov/purchasing). It is the responsibility of any interested Provider to ensure that all addendum(s) are received. The City will not be responsible for any addendum(s) issued that the respondent did not receive. In order to ensure receipt of an addendum, any Provider interested in submitting a response shall notify the Purchasing Department of their intent by submitting an email to: [purchasing@fortsmithar.gov](mailto:purchasing@fortsmithar.gov). Those Providers will receive an automatic notification when an addendum has been issued. Addendum(s) will form an integral part of the proposal and shall modify and become part of the RFP document. A signed copy of the addendum shall be submitted with the final response.

Questions that substantially clarify, alter, or change this RFP will be provided in writing within twenty four (24) hours to all Providers that have expressed an interest or intentions of submitting a response. No addendums shall be issued after April 29, 2016.

**XI. LEGAL REQUIREMENTS**

Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the Provider will in no way be a cause for relief from responsibility.

The obligations of the City under this award are subject to the availability of funds lawfully appropriated for its purpose.

**XII. EEO STATEMENT**

Equal Opportunity: The City believes in equal opportunity practices, which conform to both the spirit and the letter of all laws against discrimination, and is committed to nondiscrimination because of race, creed, color, sex, age, or national origin.

**XIII. CONFLICT OF INTEREST**

The award hereunder is subject to provisions of State Statutes and City Ordinance. All Providers must disclose with their response the name of any officer, director, or agent who is also an employee of the City. Further, all respondents must disclose the name of any City employee who owns, directly or indirectly, interest of ten percent (10%) or more in the Provider's organization or any of its branches.

**XIV. NON-COLLUSION**

No premiums, rebates or gratuities are permitted; either with, prior to or after provision of services. Any such violation may result in award cancellation and discontinuation of services, removal from Provider list, and/or disbarment or suspension from doing business with the City.

**XV. PREPARATION COSTS**

Neither the City nor its representatives shall be liable for any expenses incurred in connection with the preparation of a response to this RFP.

**XVI. BANKRUPTCY/INSOLVENCY**

At the time of submittal of quotation, Provider shall not be in the process of or engaged in any type of proceedings in insolvency or bankruptcy, either voluntary or involuntary or receivership proceedings.

**XVII. PUBLIC RECORDS**

Submission of a response deems permission to make inquiries concerning the Provider and its officers and to any persons or firms deemed appropriate by the City. Any proprietary information that the Provider does not want disclosed to the public shall be so identified on each page in which it is found. Data or information so identified will be used by the City solely for the purpose of evaluation and contract negotiations. The City will use its best efforts to protect propriety information; however, a very liberal State of Arkansas FOI Law may inhibit the City's ultimate ability to protect such information.

**XVIII. INDEMNIFICATION**

Provider agrees to protect, defend, reimburse, indemnify and hold the City, its agents, employees and elected officers and each of them free and harmless at all times from and against any and all claims, liability, expenses, losses, suits, costs, fines and damages (including attorney fees) and causes of action of every kind and character against or from the City by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or incident to or in connection with Provider's performance under this Agreement, Provider's acts, omissions or operations hereunder, or the performance, non-performance or purported performances of the Provider and any breach of the terms of this Agreement; provided however, the Provider shall not be responsible to the City for damages resulting out of bodily injury or damages to property which Provider can establish as being attributable to the sole negligence of the City, its respective agents, servants, employees or officers.

This indemnification shall include, but not be limited to, suits, actions, or claims brought because of any injuries or damage sustained by any person or property on account of the Provider's operations in connection with the Contract; or on account of or in consequence of any neglect in constructing the work; or because of any act or omission by the Provider; or because of any claims or amounts recovered for any infringement of patent, trademark or copyright; or from any claims or amounts arising or recovered under the firm under this contract; as is considered necessary by the City, may be retained for the use of the City, or in case no money is due, their surety shall be held until such suits, actions, or claims for injuries or damages, as aforesaid, shall have been steered and suitable evidence to the effect furnished to the City.

**XIX. INDEPENDENT FIRM RELATIONSHIP**

The successful Provider is and shall be, in the performance of all work, services and activities under the contract, an independent firm and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to the contract shall at all times, and in all places, be subject to the Provider's sole direction, supervision and control.

**XX. RFP EVALUATION PROCESS**

The RFP's submitted will not be publicly opened. The names of Providers will be posted on the City's website by the end of the business day, May 13, 2016.

A Selection Committee will convene, review and evaluate all RFP's submitted based on the requirements set forth in the RFP and to ascertain which proposal best meets the needs of the City. **Please note that proposals will be evaluated on content and not bulk.**

Evaluation consideration will include but not be limited to the following **(100 maximum points)**:

1. **Qualifications in relation to specific project to be performed:** Information reflecting qualifications of the Provider. Indicated specialized experience and technical competencies of the Provider in connection with the **type, scale** and **complexity** of the service(s) required. Subcontractors, if used, must be listed with information on their organization. **(0-15 possible points)**
2. **Experience, competence, and capacity for performance:** Information reflecting the names, titles, and qualifications (including experience and technical competence) of the major personnel assigned to this specific project. Provide detailed breakdown of the subcontractor's staff to be used and how they are to be used to supplement your staff. This section of the evaluation criteria includes the amount of work presently underway of your firm; please present this in submittal. **(0-15 possible points)**
3. **Proposed method of performing work:** A proposed work plan (description of how the project would be conducted as well as other facts concerning approach to scope you wish to present) indicating methods and schedules for accomplishing each phase of work. Include with this the amount of work presently underway. The Provider's ability and commitment to complete the project in the timeframe outlined by the City will also be taken into consideration. **(0-30 possible points)**
4. **Past performance:** Previous evaluations shall be considered a significant factor. If previous evaluations with the City are not available, the Provider's past performance records with the City and others will be used, including quality of work, timely performance, diligence, ability to meet past budgets/schedules, and any other pertinent information. Provider will provide a list of similar jobs performed and person whom the City can contact for information. **(0-20 possible points)**

5. **Price:** Complete pricing to the City for all services described herein. **(0-20 possible points)**

*BEST VALUE: The Fee Proposal is important; however, it will not be the determining factor in the selection process. It is not the intent of the City to limit innovative solutions by dollar constraints, but rather to determine which proposal has the potential of providing the best value for the services required including any additional services permitted in Section V.*

The Committee reserves the right to interview any or all Providers and to require a formal presentation with the key people who will administer and be assigned to work on the contract before recommendation of award. This interview is to be based upon the written proposal received.

The Purchasing Department will prepare and submit an agenda item for Board approval; the Board will award or reject any or all proposal(s).

#### **XXI. RESERVATION OF RIGHTS**

This RFP does not commit the City to award or contract, nor to pay any costs incurred, in the preparation and submission of proposals in anticipation of a contract. The City reserves the right to reject any or all submittals received as a result of this request, to negotiate with all qualified sources, or to cancel all or part of the RFP.

### **CITY OF FORT SMITH REQUEST FOR PROPOSALS**

#### **RESPONSE FORMAT AND PREPARATION INSTRUCTIONS**

To speed and simplify the evaluation process and to assure that each receives the same orderly consideration, all submittals must follow the format described in this section. Providers are encouraged to submit concise and clear responses to the RFP. Providers interested in submitting their qualifications shall hereby provide one (1) original and five (5) copies of your RFP and one (1) copy in electronic PDF format.

The City reserves the right to eliminate from further consideration any response which is deemed to be substantially or materially unresponsive to the RFP information contained in this section. The intent of the City is that all responses follow the same format in order to evaluate each response fairly.

Begin each section and subsection described herein on a separate page. Number the pages in each section consecutively. Each page shall have the name of the Respondent clearly identified.

- a) **Title Page:** Show the name of the Provider, address, telephone number, name of contact person, date, and subject: RFP 4401-210-16
- b) **Table of Contents:** Include a clear identification of the material by section and by page number.
- c) **Letter of Interest:** Name, address, brief history of firm and Provider's interest in the proposed project. Briefly state the Provider's understanding of the work to be done and make a positive commitment to perform the work. Give the name of the person(s) who will be authorized to make representation for the Provider, their titles, addresses and telephone numbers. Describe the perceived strengths to carry out the project.
- d) **Project Team Organization:** Provide an organizational chart indicating the relationship between the Provider's key personnel and their titles. Submit professional qualifications of staff to be assigned to these projects. Include resumes of personnel to be assigned to similar projects.

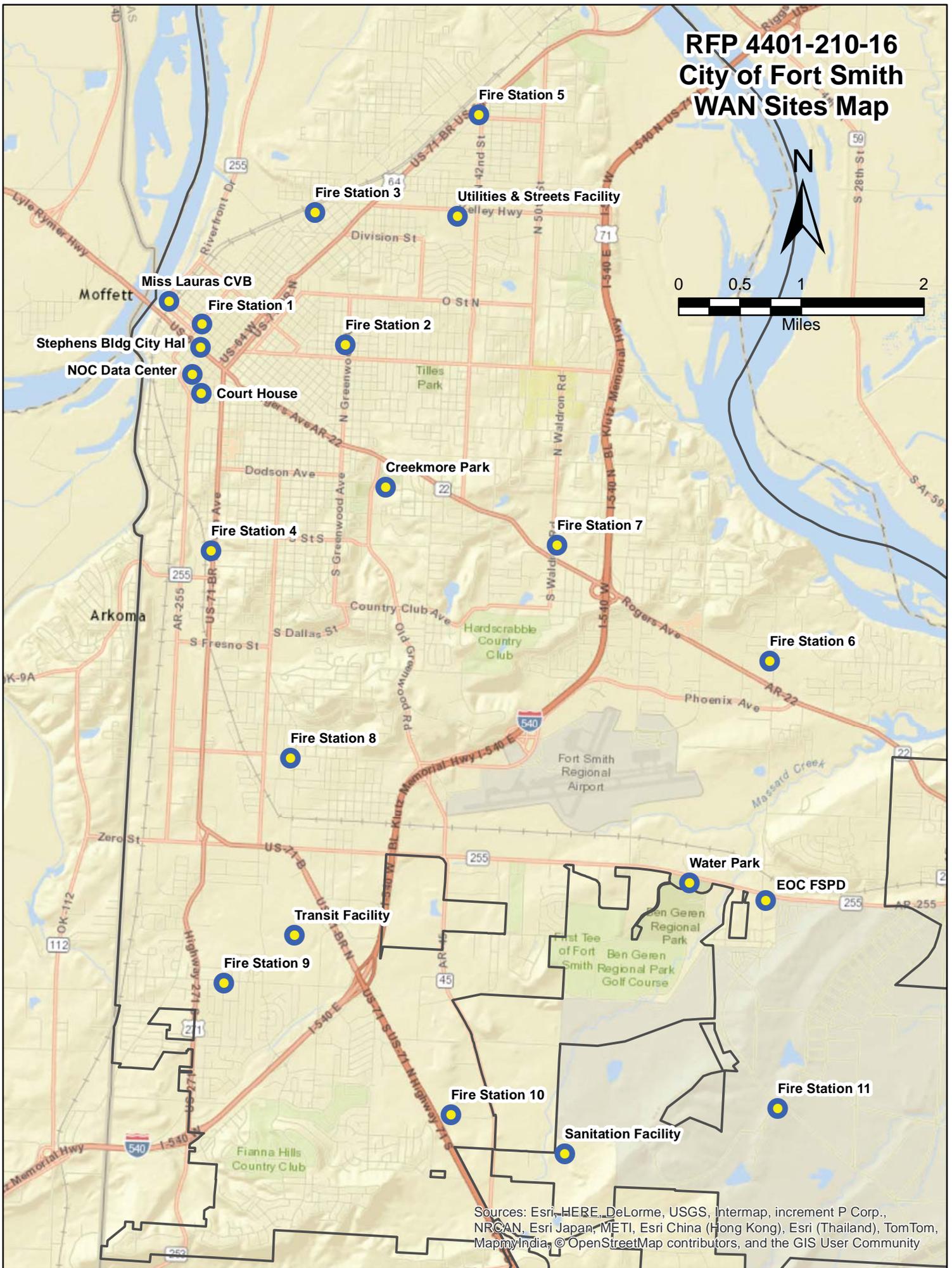
- e) **Specialized and Past Experiences:** Provide information regarding your past experience in providing the services requested in this RFP including information pertaining to customer satisfaction.
- f) **Work Narrative:** A written narrative describing the method or manner in which the Provider proposes to satisfy requirements of this RFP in the most cost-effective and beneficial manner. Diagrams depicting the proposed network solution are permitted and encouraged.
- g) **Schedule:** Provider will provide a schedule for the completion of the scope of the specified project and any additional services as permitted in Section V.
- h) **Additional Background:** All Providers are invited to include a maximum of two pages of information not included above which may be useful and applicable to this project, i.e. new technology, awards of customer service/distinction, etc.
- i) **Liability Insurance:** After contract award, the awarded Provider shall furnish a certificate of insurance showing that insurance policies are carried in amounts acceptable to the City. Forms of insurance shall be, Comprehensive General Liability and Property Damage Insurance, Workman's Compensation, and Automobile coverage. Such insurance shall be kept in full force and in effect until all work has been satisfactorily completed and accepted by the City.
- j) **Copy of Standard Contract:** All Providers shall provide a copy of a draft or standard contract utilized in business dealings similar in nature to the services requested in this RFP.
- k) **Instructions on submitting Appendix A :**
  - i. Step 1: Obtain the Appendix A documents in Excel format by emailing: [rgibson@fortsmithar.gov](mailto:rgibson@fortsmithar.gov)
  - ii. Step 2: Fill out and complete all items requested in Appendix A
  - iii. Step 3: Print the completed Appendix A (entire Excel workbook) with responses completed
  - iv. Step 4: Sign and/or initial (in blue ink) in all areas required
  - v. Step 5: Submit entire Appendix A (completed, initialed and signed) with Proposal hard copies, total of 5 sets.
  - vi. Step 6: Save completed Excel file and submit completed Excel file with electronic documents to be included with the sealed package containing the PDF of the proposal.

**TENTATIVE PROJECT TIMELINE**

DATE	TIME	DESCRIPTION
Saturday, April 16, 2016 and Sunday, April 17, 2016	N/A	Advertisement for RFP
April 27, 2016	2:00pm, CDT	Deadline for Questions/Clarifications
Friday, May 13, 2016	2:00pm, CDT	Deadline to submit RFP
Tuesday., May 17, 2016	TBD	Selection Committee meeting to short list Providers for interviews
Wed., May 18, 2016	TBD	Notify short-listed Providers for interview

Tues., May 24, 2016	TBD	Interview short-listed Providers
Friday, June 3, 2016	TBD	Contract negotiations finalized and contracts signed by Provider
Friday, June 17, 2016	2:00pm, CDT	<b>Deadline for packet to be turned in to City Clerk's Office for the June 21<sup>st</sup> BOD meeting</b>
Tuesday, June 21, 2016	6:00pm, CDT	<b>Fort Smith Board of Director's Meeting to approve contract</b>
Wed., June 22, 2016	N/A	Notice of Award issued to Provider
Friday, June 24, 2016	Noon, CDT	Bonds and Insurance due from Provider
Friday, June 24, 2016	4:00pm, CDT	<b>Notice to Proceed issued to Provider</b>
Sunday, October 16, 2016	End of Day	Deadline for all items to be completed and functioning by Provider
Tues, November 15, 2016	End of Day	City's current contracts for WAN and Internet services expire

# RFP 4401-210-16 City of Fort Smith WAN Sites Map



Document Path: X:\GIS\Municipal\General\ITS\_Facilities.mxd

Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

## WAN Sites included in RFP

<u>Location Name:</u>	<u>Address:</u>	<u>Required Speed:</u>	<u>Bandwidth Quoted:</u>
Data Center	801 Carnall Ave. Ft. Smith, AR 72901	1Gbps	
Fire Sta. #1	200 N 5 St. Ft. Smith, AR 72901	100Mbps	
Fire Sta. #2	1127 N Greenwood Ave Ft. Smith, AR 72901	100Mbps	
Fire Sta. #3	2020 N 6 St Ft. Smith, Ar 72904	100Mbps	
Fire Sta. #4	2128 Towson Ave Ft Smith, AR 72901	100Mbps	
Fire Sta. #5	4123 Spradling Ave. Ft. Smith, AR 72904	100Mbps	
Fire Sta. #6	3124 Massard Rd Ft. Smith, AR 72903	100Mbps	
Fire Sta. #7	5411 Euper Lane Ft. Smith, AR 72903	100Mbps	
Fire Sta. #8	2318 Phoenix Ave. Ft. Smith, AR 72901	100Mbps	
Fire Sta. #9	1500 Cavanaugh Rd Ft. Smith, AR 72908	100Mbps	
Fire Sta. #10	4401 Burrough Rd Ft. Smith, AR 72916	100Mbps	
Fire Sta. #11	8900 Massard Road Fort Smith, AR 72903	1Gbps	
Stephens Bldg.	623 Garrison Ave. Ft. Smith, AR 72901	100Mbps	
Transit	6821 Jenny Lind Rd Ft Smith, AR 72908	100Mbps	
Maintenance Facility	3900 Kelley Hwy Ft. Smith, AR 72904	1Gbps	
Miss Laura's	2 North B Street Ft. Smith, AR 72901	100Mbps	
Creekmore Park	3301 S M Street Ft Smith, AR 72903	100Mbps	
Sanitation	5900 Commerce Rd Ft. Smith, AR 72916	100Mbps	
Court House	901 S B Street Suite 103 Ft Smith, AR 72901	100Mbps	
Water Park	7300 Zero Street Fort Smith, AR 72903 / 16	100Mbps	
EOC	8400 S. Zero Street Fort Smith, AR 72903	100Mbps	

## Internet links included in RFP

<u>Location Name:</u>	<u>Address:</u>	<u>Current Speed:</u>	<u>Bandwidth Quoted:</u>
ITS Data Center	801 Carnall Ave. Ft. Smith, AR 72901	20/20Mbps	
Firestation #11	8900 Massard Road Fort Smith, AR 72903	0	

## Other circuits for consideration (alternate technologies may be considered)

### Internet Links

<u>Location Name:</u>	<u>Address:</u>
FSFD	100 S. 10th Street Fort Smith, AR 72901
EOC	8400 S. Zero Street Fort Smith, AR 72903

### P2P T-1 Sites

<u>Location Name:</u>	<u>Address:</u>
P Street Plant	13 North P. Street, Fort Smith, AR
Lee Creek Plant	2425 Pine Hollow, Van Buren, AR
River Park	121 Clayton Expressway, Fort Smith, AR
Barling Water Plant	1601 North 9th Terrace, Barling, AR
Creekmore Maint.	3300 Rogers, Fort Smith, AR
Oak Cemetery	1400 South Greenwood, Fort Smith, AR

### T-1 PRI Sites

<u>Location Name:</u>	<u>Address:</u>
ITS Data Center	801 Carnall Ave. Ft. Smith, AR 72901
EOC	8400 S. Zero Street Fort Smith, AR 72903
Stephens Bldg.	623 Garrison Ave. Ft. Smith, AR 72901
Maintenance Facility	3900 Kelley Hwy Ft. Smith, AR 72904
Convention Center	800 Rogers Ave, Fort Smith, AR 72901

### WAN Bandwidth Increments

<u>Bandwidth</u>	<u>Monthly MRC:</u>
10 Gbps	
5 Gbps (if available)	
4 Gbps (if available)	
3 Gbps (if available)	
2 Gbps (if available)	
1 Gbps	
100 Mbps	

10 Mbps	
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Authorized Representative Signature

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Date

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING AN AMENDMENT TO AN AGREEMENT WITH THE RIVER VALLEY SPORTS COMPLEX ALTERING THE LANGUAGE OF THE DRAW SCHEDULE

WHEREAS, the City of Fort Smith and the River Valley Sports Complex (the "Seller") entered into an Agreement Regarding Construction and Purchase of River Valley Sports Complex for the development of a tournament quality eight-field sports complex on city-owned real property in the Chaffee Crossing area of Fort Smith, such Agreement being effective March 4, 2014 and authorized by Resolution No. R-20-14; and

WHEREAS, such Agreement was modified in May, 2015 as authorized by Resolution No. R-96-15, and was again modified in April, 2016 as authorized by Resolution No. R-53-16; and

WHEREAS, such Agreement sets forth specific performance milestones for the disbursement of a maximum of \$1.6 million from the City to the Seller; and

WHEREAS, the City and the Seller have agreed to amend the disbursement schedule in order to achieve efficiencies in time and expense in order to meet the established completion date of July 31, 2016.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

Section 1. Section 7 of the disbursement schedule enumerated in the Amended Agreement authorized by Resolution No. R-96-15 is amended to authorize disbursement of \$150,000 upon completion of infield playing surfaces and topsoil installation work on all eight fields.

Section 2. Section 8 of the disbursement schedule enumerated in the Amended Agreement authorized by Resolution No. R-96-15 is amended to authorize disbursement of \$150,000 upon completion of playing surfaces, including installation of all irrigation and sod, on all eight fields.

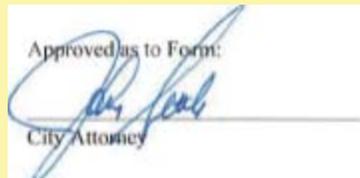
Section 3. All other provisions of the Amended Agreement remain in full force and effect as adopted and subsequently amended.

This Resolution adopted this \_\_\_\_\_ day of July, 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk



# Memo



To: Carl Geffken, City Administrator  
 From: Jeff Dingman, Deputy City Administrator  
 Date: 7/1/2016  
 Re: River Valley Sports Complex – Draw schedule request

Included on the board's July 5 regular meeting agenda for consideration is a resolution amending specific elements of the draw/payment schedule in the city's agreement with the River Valley Sports Complex (RVSC) for the construction of an eight-field softball/baseball complex on city property at Chaffee Crossing.

The project was originally authorized in March, 2014 via Resolution No. R-20-14 and committed a maximum of \$1.6 million to the project. A subsequent amendment was approved in May, 2015 via Resolution No. R-96-15 modifying the draw schedule and date of completion, with no additional funds. A third amendment to the completion date was approved in April, 2016 via Resolution No. R-53-16.

This requested amendment does not alter the total obligation of \$1.6 million, and it does not alter the estimated completion date. Specifically, it addresses Sections 7 & 8 of the Amended Agreement, which read as follows:

Section 7. Upon completion of one four-field complex, including all playing surfaces and irrigation, the city shall make a payment to the Seller in the amount of \$150,000.

Section 8. Upon completion of the second four-field complex, including all playing surfaces and irrigation, the City shall make payment to the Seller in the amount of \$150,000.

The RVSC has indicated that, in hindsight, these provisions are inefficient in terms of building all eight fields at the same time. They have requested modification so that they would receive one draw of \$150,000 upon completion of infield surfaces and topsoil work on all eight fields (which is nearing completion). The subsequent request then would be to receive the second draw of \$150,000 upon completion of all irrigation and sod work on the playing surfaces of all eight fields.

The reasoning for the request is for efficiency in scheduling the contractors, particularly the dirt, irrigation, and sod contractors. It is much more efficient to have the contractors mobilize one time on all eight fields, than to have them all focus on four fields, and then re-mobilize for the second four fields.

Mr. Reinert, Mr. Geffken, and I have reviewed the request and have no objection to modification of Sections 7 & 8 of the draw schedule as requested. All other provisions of the agreement will remain the same. A resolution authorizing such is attached for the board's consideration.

A representative from RVSC will be in attendance at the July 5 meeting to address any questions. In the meantime, please feel free to contact me.

ATTN: Jeff Dingman 784-2430 fax

Jeff-

In order to help us reach our completion date and goal, we would like to request a slight modification in the draw schedule. In the amended agreement, the schedule shows payment for 4 fields complete with irrigation and playing surface and payment of \$150,000 on completion (Section 7) as well as the second 4 field complex (Section 8) for an additional \$150,000.

Our request would be to modify that as follows:

\*When all the infield surfaces and topsoil is set on all 8 fields, payment would be released for \$150,000.

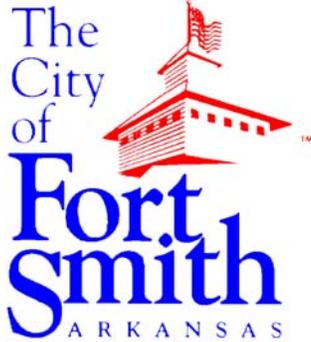
\*When irrigation and playing surface is complete on all 8 fields, payment would be released for \$150,000.

Same amount of money and scope of work, but this process lets us move all the dirt in, and then have an assembly line production of irrigation crew and sod layers there to complete their scopes without having to re-mobilize.

Your consideration would be appreciated, and we would be happy to answer any questions. There are 4-5 trades working out there at any given time, and we are working hard to meet our completion date.

Thank you,

Lee Webb/Jake Files



Mayor – Sandy Sanders

City Administrator – Carl Geffken

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 ~ SUMMARY**

**Fort Smith Board of Directors**

**REGULAR MEETING**

**July 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**

Director Don Hutchings

**ROLL CALL**

- All present
- Mayor Sandy Sanders presiding

**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)*

Information available by viewing rebroadcast of the meeting on the City Access Channel 214, the City website or <http://www.ustream.tv/channel/city-of-fort-smith-board-ofdirectors-meetings>

**APPROVE MINUTES OF THE JUNE 21, 2016 REGULAR MEETING**

**APPROVED** as written

**ITEMS OF BUSINESS:**

1. Items regarding annexation and land use of 11512 Old Highway 71 South:
  - A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas  
*(Rye Hill Baptist Church, 11512 Old Highway 71 South)*  
**APPROVED** 7 in favor, 0 opposed / Ordinance No. 38-16

B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Unclassified / Extraterritorial Jurisdiction Commercial Neighborhood to General Commercial / Rezoning: from not zoned (NZ) / Extraterritorial Open-1 (ETJ O-1) to Commercial Moderate (C-3) by classification located at 11512 Old Highway 71 South*)

**APPROVED** 7 in favor, 0 opposed as revised to correct a typographical error within the ordinance (Highway 271 South to Highway 71 South) / Ordinance No. 39-16

2. Ordinance rezoning identified property and amending the zoning map (*from Industrial Light (I-1) to Industrial Moderate (I-2) by extension located at 400 Phoenix Avenue*)

**APPROVED** 7 in favor, 0 opposed / Ordinance No. 40-16

3. Resolution authorizing execution of telecommunications services agreement with Cox Arkansas Telcom, LLC (\$18,386.75 / *Information & Technology Department / Budgeted – Communications 4401-210*)

**APPROVED** 6 in favor, 0 opposed, 1 abstention (Settle) / Resolution No. R-99-16

4. Resolution authorizing an amendment to an agreement with River Valley Sports Complex altering the language of the draw schedule

**APPROVED** 6 in favor, 0 opposed, 1 abstention (Catsavis) / Resolution No. R-100-16

#### **OFFICIALS FORUM ~ presentation of information requiring no official action**

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

➤ Mayor

➤ Directors

➤ City Administrator

Information available by viewing rebroadcast of the meeting on the City Access Channel 214, the City website or <http://www.ustream.tv/channel/city-of-fort-smith-board-ofdirectors-meetings>

#### **ADJOURN**

6:22 p.m.

## MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ JULY 5, 2016 ~ 6:00 P.M.

### FORT SMITH PUBLIC SCHOOLS SERVICE CENTER

The meeting was called to order by Mayor Sandy Sanders, presiding. Invocation was given by Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, Mike Lorenz, George Catsavis, Tracy Pennartz, Kevin Settle and Don Hutchings. The Mayor declared a quorum present.

Mayor Sanders inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

The minutes of the June 21, 2016 regular meeting was presented for approval. Lau, seconded by Lorenz, moved approval of the minutes as written. The members all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board, the Vice-Mayor communicated that five (5) minutes per side would be granted for controversial items with three (3) minutes for rebuttal per side, and two (2) minutes for comments only.

Item No. 1 consisted of the following items regarding annexation and land use of 11512 Old Highway 71 South:

- A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (*Rye Hill Baptist Church, 11512 Old Highway 71 South*)
- B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Unclassified / Extraterritorial Jurisdiction Commercial Neighborhood to General Commercial / Rezoning: from not zoned (NZ) / Extraterritorial Open-1 (ETJ O-1) to Commercial Moderate (C-3) by classification located at 11512 Old Highway 71 South*)

***July 5, 2016 Regular Meeting***

Director of Development Services Wally Bailey briefed the Board on the items advising Item No. 1A is per the petition of Joshua T. Carson, agent for Rye Hill Baptist Church. The purpose of the petition is to annex 2.68 acres currently located in Sebastian County, but is contiguous to the existing Rye Hill Baptist Church campus, which is located within the corporate limits of the city of Fort Smith. As required by law, the petition was first presented to the Sebastian County Assessor and County Clerk to verify the identity of the petitioner; verify there are no property owners included in the petition that do not wish to be included in the petition; verify the property is contiguous with the city of Fort Smith; and, verify that there are no enclaves created by the proposed annexation. All of the aforementioned were verified; therefore, County Judge David Hudson issued an order recommending the annexation be considered by the City of Fort Smith. The petition was also required to include a schedule of services that will be extended to the area within three (3) years after the date the annexation becomes final. The City of Fort Smith currently already provides such services to the proposed annexation area; therefore, such is not an issue. Upon approval, provided no appeal is filed in the Circuit Court within thirty (30) days, the annexation will become effective thirty (30) days after adoption of the proposed ordinance.

Per the Fort Smith Municipal Code, an annexation ordinance presented to the Board for consideration must be accompanied by a rezoning and Master Land Use Plan amendment; therefore, Item No. 1B is per the request of Nick Griffin of Mickle-Wagner-Coleman, agent for Ronnie Keener, Chairman of the Building Committee for Rye Hill Baptist Church. The purpose of the amendments is associated with the annexation of 2.68

***July 5, 2016 Regular Meeting***

acres and accommodates the proposed expansion of the existing Rye Hill Baptist Church sanctuary addition, additional parking and landscaping. The Planning Commission held a public hearing on June 14, 2016 with no individual present to speak in opposition. The Planning Commission approved the Master Land Use Plan amendment subject to the submitted development plan and Board of Directors' approval of the associated annexation by a vote of eight (8) in favor, zero (0) opposed and one (1) abstention. The Planning Commission also approved the rezoning request subject to an approved conditional use application and Board of Directors' approval of the association annexation, by a vote of eight (8) in favor, zero (0) opposed and one (1) abstention.

The proposed ordinance previously distributed to the Board contained a typographical error on page 2 whereby the address was incorrectly noted as 11512 Old Highway 271 South. The ordinance has been revised to correct the address to 11512 Old Highway 71 South; therefore, the motion to adopt Item No. 1B should include "*as revised*" to reflect said correction.

Hutchings, seconded by Pennartz, moved adoption of Item No. 1A. 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. There being no Director wishing to comment and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 38-16.

Catsavis, seconded by Hutchings, moved adoption of Item No. 1B as revised to correct the address on page 2 from 11512 Old Highway 271 South to 11512 Old Highway

***July 5, 2016 Regular Meeting***

71 South. The motion also 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. There being no Director wishing to comment and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 39-16.

Item No. 2 was an ordinance rezoning identified property and amending the zoning map (*from Industrial Light (I-1) to Industrial Moderate (I-2) by extension located at 400 Phoenix Avenue*).

Mr. Bailey briefed the Board on the item advising such is per the request of Ron Brixey, agent for William Lovvorn. The purpose of the rezoning request is to bring the current use of the property into compliance with existing zoning requirements and to facilitate expansion of an existing pallet-making business with an approximate 22,000 square feet addition. The Planning Commission held a public hearing on June 14, 2016 with no individual present to speak in opposition. The Planning Commission approved the rezoning request by a vote of nine (9) in favor and zero (0) opposed.

Lau, seconded by Settle, moved adoption of the ordinance. 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. There being no Director wishing to comment and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 40-16.

Item No. 3 was a resolution authorizing execution of telecommunications services

**July 5, 2016 Regular Meeting**

agreement with Cox Arkansas Telcom, LLC (\$18,386.75 / Information & Technology Department / Budgeted - Communications 4401-210).

Director of Information and Technology Russell Gibson briefed the Board on the item advising the City is currently under contract with AT&T for provision of Wide-Area-Network (WAN) and Internet services. The existing, five (5) year contract expires on November 15, 2016. On April 16, 2016 the City's Information & Technology Services (ITS) Department released a request for proposals (RFP) soliciting responses from qualified providers of these services in anticipation of the expiration of the existing AT&T contracts. Three (3) responses were received, i.e. AT&T, Cox Communications and Newroads Telecom. All three (3) vendors were selected for on-site interviews and invited to perform a formal presentation related to their respective organization's RFP response. Upon approval, the proposed contract for telecommunications services has the potential for a projected, three (3) year cost savings of approximately \$435,501 compared to existing contracts for like-services.

Pennartz, seconded by Good, moved adoption of the resolution.

Director Pennartz complimented the ITS Department for the manner in which the savings was conveyed to the Board and communicated much appreciation for their diligence in pursuing savings and efficiency of taxpayer dollars.

The motion remaining on the floor, the members all voted affirmatively with the exception of Director Settle, who abstained, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-99-16.

**July 5, 2016 Regular Meeting**

Item No. 4 was a resolution authorizing an amendment to an agreement with River Valley Sports Complex altering the language of the draw schedule.

City Administrator Carl Geffken advised the item was requested by the River Valley Sports Complex (RVSC). The proposed amendment specifically addresses Sections 7 & 8 of the Amended Agreement, which currently read as follows:

Section 7. Upon completion of one four-field complex, including all playing surfaces and irrigation, the city shall make a payment to the Seller in the amount of \$150,000.

Section 8. Upon completion of the second four-field complex, including all playing surfaces and irrigation, the City shall make payment to the Seller in the amount of \$150,000.

The RVSC has indicated that, in hindsight, the above provisions are inefficient in terms of building all eight (8) fields at the same time. The requested modification is to allow RVSC to receive one (1) draw of \$150,000 upon completion of infield surfaces and topsoil work on all eight (8) fields, which are nearing completion. The subsequent request then would be to receive the second draw of \$150,000 upon completion of all irrigation and sod work on the playing surfaces of all eight (8) fields. The overall purpose is for efficiency in scheduling the contractors, particularly the dirt, irrigation, and sod contractors. The proposed amendment does not alter the total obligation of \$1.6 million from the City and it does not alter the estimated completion date; therefore, staff maintains no objection to the request.

Lorenz, seconded by Settle, moved adoption of the resolution.

Director Catsavis expressed concern with the item and requested confirmation \$1.6 million included the dirt work to be completed by the Army National Guard (Guard). If not,

***July 5, 2016 Regular Meeting***

since the Guard did not get to complete the dirt work, he inquired how the RVSC will make up the difference. He further questioned if the previously authorized amount included completion of the parking lot.

Mr. Lee Webb of RVSC confirmed the \$1.6 million included the cost for dirt work that the Guard could not accomplish in their allotted time to be on site. As noted, the Guard did not get to complete the amount of dirt work anticipated; however, the RVSC maintained enough funds from other less-than-anticipated expenses to cover the cost of the uncompleted dirt work. With regard to the parking lot, due to the number of large trucks still utilizing the area to complete other phases of the project, construction will not be initiated until no large trucks will be in the area. Regardless, such is the *“only hang up”* to complete the project with the originally allotted funds; however, he currently anticipates enough funding will remain to complete construction of the parking lot.

Director Pennartz questioned the anticipated date of completion and when games are expected to commence.

Mr. Lee advised the anticipated date of completion is July 31<sup>st</sup> citing the top soil should be placed on the infields this week, and construction of the fences should be initiated and completed the following week. The complex is expected to be play-ready this fall, but anticipates games will commence next spring.

The motion remaining on the floor, the members all voted affirmatively with the exception of Director Catsavis, who abstained. The Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-100-16.

Mayor Sanders opened the Officials Forum with the following wishing to comment:

## **July 5, 2016 Regular Meeting**

▶ Mayor Sanders

- Re:
1. Extended much appreciation to all who attended the Mayor's 4<sup>th</sup> of July Celebration, as well as all those involved in coordinating the event.
  2. Reminded all of the Annual Mayor's Prayer Breakfast scheduled for 6:15 a.m., Friday, July 15<sup>th</sup> at the Executive Hotel.
  3. Announced the Municipal Primary Election for City Director candidates in Ward 4 will be held on Tuesday, August 9, 2016.
  4. Extended congratulations to Mars Petcare, who has recently converted to a "zero landfill" participant, citing everything used at the facility is now recycled. Due to such, the City has lost a landfill customer; however, such will extend the life of the landfill, which will benefit the city of Fort Smith in the long-run.
  5. Announced the monthly Town Hall meeting will be held immediately following adjournment.

▶ Director Hutchings

Re: Conveyed much appreciation to Mayor Sanders for the Mayor's 4<sup>th</sup> of July Celebration.

▶ Director Settle

- Re:
1. Extended a "Happy 19<sup>th</sup> Anniversary" to his wife, Teri.
  2. Conveyed much gratitude to the Mayor and Board, as well as all those who attended, for their attendance at Exide Technologies (his employer) groundbreaking ceremony recently held on June 28<sup>th</sup>.

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- ▶ Director Pennartz

Re: Advised of a recent “*big bang*” in the vicinity of her front yard, which prompted her to go outside and determine the cause of such. She soon met Sam, a City of Fort Smith Utility Department employee, who provided a detailed explanation of the project. Due to such, she provided a “*shout out*” to Sam in appreciation for his time and effort to carefully explain the work being performed.

- ▶ Administrator Geffken

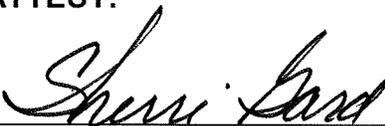
Re: Reiterated much appreciation to the Mayor for the Mayor’s 4<sup>th</sup> of July Celebration citing “*the fireworks were wonderful*” and it was “*great to see the number of people*” in attendance.

There being no further business to come before the Board, Lau moved that the meeting adjourn. The motion was seconded by Pennartz and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 6:22 p.m.

**APPROVED:**

  
\_\_\_\_\_  
**VICE-MAYOR**

**ATTEST:**

  
\_\_\_\_\_  
**CITY CLERK**