



FAYETTEVILLE CITY COUNCIL
AGENDA
NOVEMBER 18, 2013
7:00 P.M.
Council Chamber

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 APPROVAL OF AGENDA

5.0 PUBLIC FORUM

6.0 CONSENT

6.1 Contract with Department of the Army, Fort Bragg Garrison, to provide custodial services for the Airborne Special Operations Museum (ASOM)
Presenter(s): Kristoff Bauer, Deputy City Manager

6.2 Budget Ordinance Amendment 2014-4 (Advertising Grant for the Christmas in the Park Event)

6.3 Call for a Special Meeting on Monday, December 2, 2013 @ 7 p.m., and cancel the Work Session scheduled for Monday, December 2, 2013 @ 5:00 p.m.

6.4 P13-37F. The rezoning of property from OI – Office and Institutional, and LC Limited Commercial to LC/CZ – Community Commercial Conditional Zoning or to a more restrictive district, located at 1907 Murchison Road, and being the property of Spurgeon D Watson.

6.5 Certification of Results from the Cumberland County Board of Elections for the November 5, 2013 Municipal Election for Mayor, City Council Districts 1, 2, 3, 4, 5, 6, 7, 8, and 9.

6.6 Approve Meeting Minutes:

October 28, 2013 - Discussion of Agenda Items

6.7 Amended Noise Ordinance

6.8 Bid Recommendation - Annexation Phase V-Project VI, Area 15-Arran Hills Subdivision

6.9 Request for Legal Representation of City Employee

7.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

7.1 Amendment to Article 30-5 to modify standards for pedestrian pathways in parking lots.

Presenter(s): Karen S. Hilton, AICP, Manager, Planning and Zoning

7.2 Amendment to City Code Chapter 30 to modify zero lot line standards and allow it in additional zoning districts

Presenter(s): Karen S. Hilton, AICP, Manager, Planning and Zoning

7.3 P13-35F. The rezoning of property from AR – Agricultural Residential and SF-10 – Single Family Residential to OI – Office and Institutional or to a more restrictive district, for property located at 7733 and 7729

Hazelwood Avenue and being the property of Barbara Donovan, Janis Patterson & Michael Kravo (formally Gillis Development Corporation).

Presenter(s): Craig Harmon, AICP, CZO - Senior Planner

7.4 P13-36F. The issuing of a Special Use Permit for Towing and Recovery on property located at 1234 Gillespie Street and being the property of Johnny Parker (Deacon Properties).

Presenter(s): Craig Harmon, AICP, CZO - Senior Planner

7.5 Case # P13-39F. The initial zoning to CC – Community Commercial district, located at 1551 Jim Johnson Road, and being the property of Jeremy Stanley and Richard King.

Presenter(s): Craig M. Harmon, AICP, CZO - Senior Planner

7.6 Public Hearing to Consider Request to Annex the Stanley and King Property-1551 Jim Johnson Road

Presenter(s): David Nash, AICP, Senior Planner

7.7 Transit Service Changes

Presenter(s): Randy Hume, Transit Director

8.0 OTHER ITEMS OF BUSINESS

8.1 Contract Award for Connect Program (Advanced Metering Infrastructure

Program)

Presenter(s): Steven K. Blanchard, PWC General Manager/CEO

8.2 Policy of the City Council Regarding Payment of Assessments

Presenter(s): Kristoff Bauer, Deputy City Manager

8.3 PWC - Phase 5 Annexation Area 11WS

Presenter(s): Steven K. Blanchard, PWC General Manager/CEO

8.4 PWC - Phase 5 Annexation Area 9 (Bedford Road/Roundtree Drive)

Presenter(s): Steven K. Blanchard, PWC General Manager/CEO

8.5 PWC - Phase 5 Annexation Areas 10 and 11

Presenter(s): Steven K. Blanchard, PWC General Manager/CEO

8.6 PWC Governance Resolution Update

Presenter(s): Theodore L. Voorhees, City Manager

8.7 Fayetteville's Community Conversation

Presenter(s): Ron McElrath, Director Human Relations

8.8 Parks and Recreation - Outdoor Adoption Program/Gateways

Presenter(s): Michael Gibson, Parks, Recreation and Maintenance Director

8.9 Uninhabitable Structures Demolition Recommendations

512 Fair Street

606 Matthews Street

1900 Slater Avenue

Presenter(s): Scott Shuford, Development Services Director

8.10 Report on the Federal Advocacy Program

Presenter(s): Russ Rogerson, The Fayetteville Regional Chamber,
Rebecca Rogers-Carter, The City of Fayetteville, Sally Shutt,
Cumberland County

9.0 ADMINISTRATIVE REPORTS

9.1 Monthly Statement of Taxes for October 2013

10.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a non-public hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

COUNCIL MEETING WILL BE AIRED

November 18 - 7:00 p.m. FAY TV 7

COUNCIL MEETING WILL BE rebroadcast various times during the week on FayTV7.

Notice Under the Americans with Disabilities Act (ADA): The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the Office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.

CITY COUNCIL ACTION MEMO

TO:

FROM:

DATE: November 18, 2013

RE:

THE QUESTION:

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

ISSUES:

BUDGET IMPACT:

OPTIONS:

RECOMMENDED ACTION:

CITY COUNCIL ACTION MEMO

TO: Mayor & City Council
FROM: Kristoff Bauer, Deputy Manager
DATE: November 18, 2013
RE: **Contract with Department of the Army, Fort Bragg Garrison, to provide custodial services for the Airborne Special Operations Museum (ASOM)**

THE QUESTION:

Should the Council authorize the City Manager to execute a contract with Fort Bragg to provide custodial services for the ASOM and pass the attached budget ordinance consistent therewith.

RELATIONSHIP TO STRATEGIC PLAN:

This effort is consistent with two goals and one Target for Action: Supporting the ASOM operations is consistent with the City's goal to "...be a highly desirable place to live, work and recreate with thriving neighborhoods and high quality of life for all citizens." It also serves the following goal and Target for Action: "The City of Fayetteville will develop and maintain strong and active community connections. (TFA) Develop partnerships."

BACKGROUND:

The Airborne and Special Operations Museum (ASOM) used to be open to the public for six days a week. That schedule was reduced to one day a week in response to sequestration driven budget reductions. The City, Cumberland County, Fort Bragg Garrison command, and ASOM foundation have been working for a number of months to identify solutions that would allow ASOM to return to the previous six day operational schedule.

The custodial contract that serves the ASOM is a significant operational cost. New NDAA Section 331 legislation, presented to Council at a recent work session, makes it possible for cities to partner with bases to provide basic support services.

It has been difficult, however, to terminate the existing service contract which was awarded as part of a contract set aside program. The annual cost of that service approaches \$300,000. Authority to terminate this contract has been received.

ISSUES:

The parties have negotiated a contract for the City to provide custodial service to ASOM in exchange for the commitment to return the museum to its previous six day a week operation schedule. The Army has agreed to pay the City up to \$60,000 per year for this service. The City has the ability to provide the required services through supplementing the hours of existing staff assigned to facilities in the area and can initiate service delivery on short notice. City's cost for meeting the Army's scope of service is estimated to be below the \$60,000 contractual amount.

The Army is still working on identifying the payment accounts and mechanism. As a result, the actual contract is not yet available. Staff is requesting Council authorization for the City Manager to execute the contract upon completion. The service contract will be for a five year term and will include non-appropriation clauses to the benefit of both parties; that is if funding is not authorized by either Congress (for the Army) or the City Council then the contract will be terminated.

Council's authorization to proceed will allow the ASOM to return to a regular schedule within days of the Army's resolution of its financial transaction issues.

BUDGET IMPACT:

The attached budget ordinance appropriates \$60,000 in revenue to the General Fund to support the cost of providing this service. The final payment schedule has not been established, but it is unlikely that the full \$60,000 contract amount will be received in FY 14. The City's cost for six to

seven months of FY 14 performance will also be less than the contract amount, but the full appropriation is required in order to allow the finance officer to execute the statutorily required "pre-audit" authorization.

OPTIONS:

1. Pass the attached budget ordinance amendment and authorize the City Manager to execute a contract with the Army consistent herewith
2. Defer action and request additional information

RECOMMENDED ACTION:

Staff recommends that Council pass Budget Ordinance Amendment Change 2014-5 (attached) and authorize the City Manager to execute a contract with the Department of the Army for custodial services at the ASOM.

ATTACHMENTS:

ASOM Budget Amendment

2013-2014 BUDGET ORDINANCE AMENDMENT
CHANGE 2014-5

BE IT ORDAINED BY THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA:

That the City of Fayetteville Budget Ordinance adopted June 24, 2013 is hereby amended as follows:

Section 1. It is estimated that the following revenues and other financing sources will be available during the fiscal year beginning July 1, 2013, and ending June 30, 2014, to meet the appropriations listed in Section 2.

<u>Item</u>	<u>Listed As *</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Functional Revenues	\$ 6,963,010	\$ 60,000	\$ 7,023,010
All Other General Fund Revenues	146,657,707		146,657,707
Total Estimated General Fund Revenues and Other Financing Sources	<u>\$ 153,620,717</u>	<u>\$ 60,000</u>	<u>\$ 153,680,717</u>

Section 2. The following amounts are hereby appropriated for the operations of the City Government and its activities for the fiscal year beginning July 1, 2013, and ending June 30, 2014, according to the following schedules:

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Operations	\$ 88,493,464	\$ 60,000	\$ 88,553,464
All Other General Fund Appropriations	65,127,253		\$ 65,127,253
Total Estimated General Fund Expenditures	<u>\$ 153,620,717</u>	<u>\$ 60,000</u>	<u>\$ 153,680,717</u>

* Reflects presumed adoption of Budget Ordinance Amendment 2014-4 also presented for Council consideration on November 18, 2013.

Adopted this 18th day of November, 2013.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members Of Council
FROM: Lisa Smith, Chief Financial Officer
DATE: November 18, 2013
RE: **Budget Ordinance Amendment 2014-4 (Advertising Grant for the Christmas in the Park Event)**

THE QUESTION:

Budget Ordinance Amendment 2014-4 will appropriate a \$15,000 grant, awarded by the Cumberland County Tourism Development Authority, to advertise the Christmas in the Park event.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: The City of Fayetteville will be a highly desirable place to live, work and recreate with thriving neighborhoods and a high quality of life for all citizens.

BACKGROUND:

Christmas in the Park is an annual event staged by the Parks and Recreation Department at Arnette Park. The event will begin on December 6, 2013 and end on December 22, 2013. There will be food vendors, train rides, Santa, arts and crafts, a fire pit, and entertainment each night. There is also a half-mile walking trail filled with the sights and sounds of Christmas. The Cumberland County Tourism Development Authority has awarded the City \$15,000 to be used to advertise this event.

ISSUES:

None

BUDGET IMPACT:

As discussed above.

OPTIONS:

1. Adopt Budget Ordinance Amendment 2014-4.
2. Do not adopt Budget Ordinance Amendment 2014-4.

RECOMMENDED ACTION:

Staff recommends Council move to adopt Budget Ordinance Amendment 2014-4 as presented.

ATTACHMENTS:

Budget Ordinance Amendment 2014-4

2013-2014 BUDGET ORDINANCE AMENDMENT
CHANGE 2014-4

BE IT ORDAINED BY THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA:

That the City of Fayetteville Budget Ordinance adopted June 24, 2013 is hereby amended as follows:

Section 1. It is estimated that the following revenues and other financing sources will be available during the fiscal year beginning July 1, 2013, and ending June 30, 2014, to meet the appropriations listed in Section 2.

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Intergovernmental Revenues	\$ 57,137,581	\$ 15,000	\$ 57,152,581
All Other General Fund Revenues	96,468,136		96,468,136
Total Estimated General Fund	<u>\$ 153,605,717</u>	<u>\$ 15,000</u>	<u>\$ 153,620,717</u>
Revenues and Other Financing Sources			

Section 2. The following amounts are hereby appropriated for the operations of the City Government and its activities for the fiscal year beginning July 1, 2013, and ending June 30, 2014, according to the following schedules:

<u>Item</u>	<u>Listed As</u>	<u>Revision</u>	<u>Revised Amount</u>
<u>Schedule A: General Fund</u>			
Operations	\$ 88,478,464	\$ 15,000	\$ 88,493,464
All Other General Fund Appropriations	65,127,253		\$ 65,127,253
Total Estimated General Fund Expenditures	<u>\$ 153,605,717</u>	<u>\$ 15,000</u>	<u>\$ 153,620,717</u>

Adopted this 18th day of November, 2013.

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Pamela Megill, City Clerk
DATE: November 18, 2013
RE: **Call for a Special Meeting on Monday, December 2, 2013 @ 7 p.m., and cancel the Work Session scheduled for Monday, December 2, 2013 @ 5:00 p.m.**

THE QUESTION:

Shall the City Council call for a Special meeting to be held at 7:00 p.m. on Monday, December 2, 2013 for the purposes of holding the Inauguration, and cancel the Work Session meeting scheduled for Monday, December 2, 2013 @ 5:00 p.m.?

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

For the month of December the following changes to the 2013 City Council meeting dates calendar are recommended:

The Inauguration is planned to take place on Monday, December 2, 2013 at 7 :00 p.m. in the Seabrook Auditorium located on the Fayetteville State University campus. In order to accommodate this event Council will need to cancel the Work Session scheduled for Monday, December 2, 2013 at 5:00 p.m. and call for a Special Meeting (Inauguration) to be held on Monday, December 2, 2013 at the Seabrook Auditorium, Fayetteville State University campus at 7:00 p.m.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

RECOMMENDED ACTION:

Staff recommends Council move to cancel the Work Session scheduled for Monday, December 2, 2013 @ 5:00 p.m., and call for a Special Meeting (Inauguration) to be held at 7:00 p.m. on Monday, December 2, 2013 at the Seabrook Auditorium, Fayetteville State University campus.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Craig Harmon, AICP, CZO - Senior Planner
DATE: November 18, 2013
RE: **P13-37F. The rezoning of property from OI – Office and Institutional, and LC Limited Commercial to LC/CZ – Community Commercial Conditional Zoning or to a more restrictive district, located at 1907 Murchison Road, and being the property of Spurgeon D Watson.**

THE QUESTION:

Request to rezone property to LC/CZ.

RELATIONSHIP TO STRATEGIC PLAN:

Growth and development

BACKGROUND:

Applicant: Spurgeon D Watson
Requested Action: LC & OI to LC/CZ
Property Address: 1907 Murchison Road
Council District: 4
Status of Property: Vacant.
Size: 1.1 acres +/-
Adjoining Land Use & Zoning:
North - LC Commercial
South - LC Commercial & OI office undeveloped
West – SF-6 Single family residential
East – LC Commercial & MR-5 developed residential & commercial
Letters Mailed: 98
Land Use Plan: Medium Density Residential & Heavy Commercial

ISSUES:

Currently this property is split zoned, OI - Office and Institutional, and LC - Limited Commercial. In July of 2012, the City Council denied a rezoning request to make this entire property LC. At that time the owners were hoping to sell the property for the development of a gas station/convenience store. The owners are now reapplying for a more specific use. Their application is to rezone to a conditional LC district. This conditional rezoning would be specific to allowing a Family Dollar brand store to be built on the property. Attached to this report as part of the applicant's conditions of approval, please find a copy of the proposed site plan. While the Land Use Plan calls for commercial and residential development on the property, the property is already zoned for commercial and office use.

The Zoning Commission held a public hearing regarding this case on October 8th. Two speakers spoke in favor of this issue and none in opposition. The Commission voted 5-0 to recommend approval.

Conditions offered by the applicant.

1. The site would be limited to a general retail establishment - Family Dollar.
2. The basic layout and type of use would be as shown on the attached site plan.
3. Conditions required by the UDO and TRC.
4. Buffering along west and south edges of the property to protect the residential neighborhood.

The Zoning Commission and staff recommend Approval of the proposed rezoning based on:

1. This is an appropriate redevelopment of a blighted area of the City.
2. This property is currently not deep enough to sustain a viable medium sized retail

establishment. Rezoning the OI portion of this property will give the developer that needed depth.

3. This proposal could become the catalyst for additional growth in this area.

4. The conditions offered by the owner.

BUDGET IMPACT:

This action would result in an increase in City services that will be offset by the revenue the City will collect in property taxes.

OPTIONS:

1) Approval of the rezoning to LC/CZ with conditions listed above (Recommended).

2) Approval of the rezoning to LC/CZ with additional conditions.

3) Denial of the initial zoning.

RECOMMENDED ACTION:

The Zoning Commission and Staff Recommend: That the City Council move to APPROVE Case P13-37F rezoning the subject property to LC/CZ - Limited Commercial Conditional Zoning District as presented by staff.

ATTACHMENTS:

Zoning Map

Current Land Use Plan

Land Use Plan Map

Conditional Stie Plan

Zoning Map with Site Plan

Site Photo 1

Site Photo 2

ZONING COMMISSION
CASE NO. P13-37F



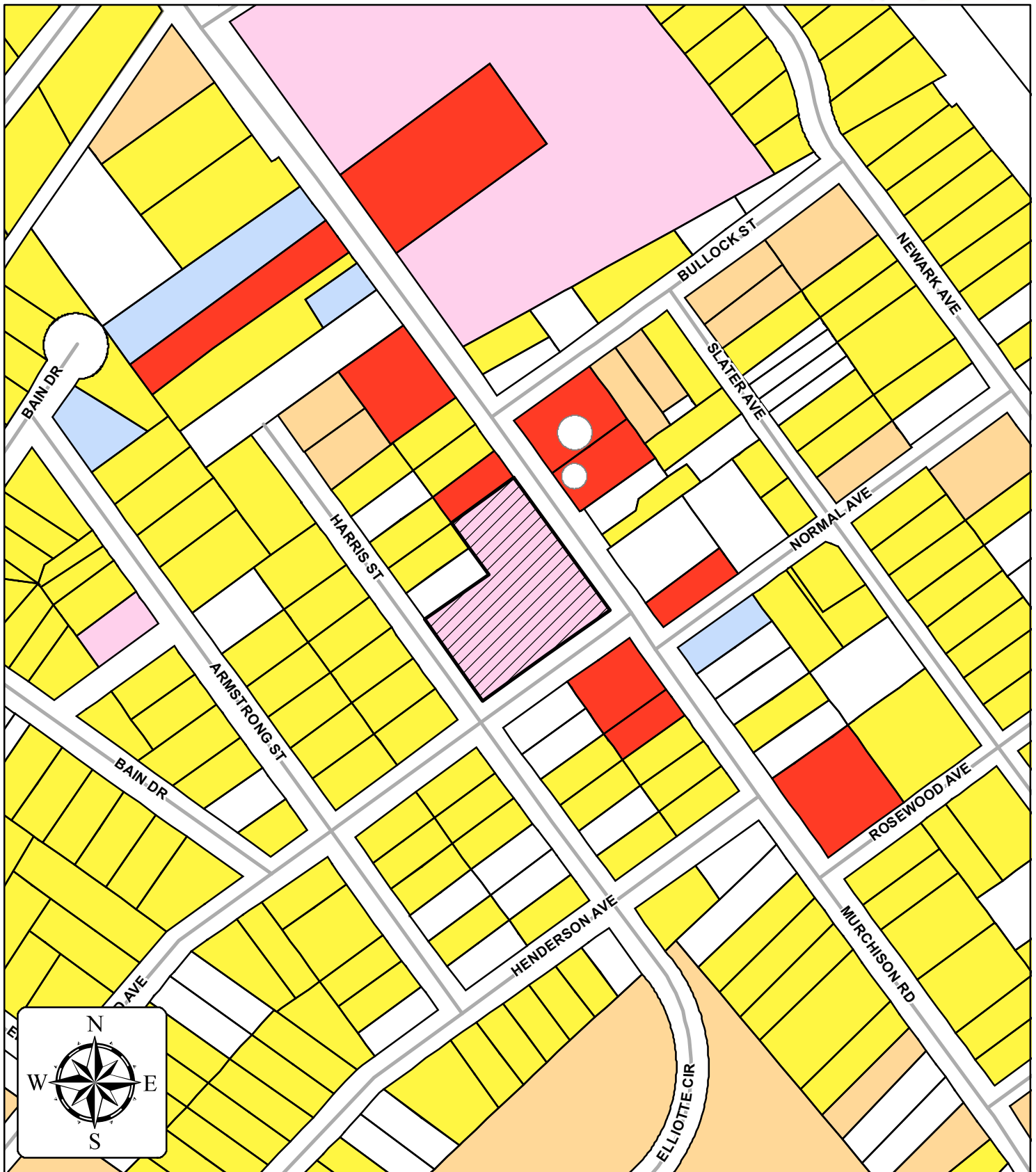
Request: OI & LC to LC/CZ
Location: 1907 Murchison Road

Zoning Commission: 10/8/2013 **Recommendation:** _____
City Council: _____ **Final Action:** _____

Letters are being sent to all property owners within the circle, the subject property is shown in the hatched pattern.

Current Land Use

P13-37F

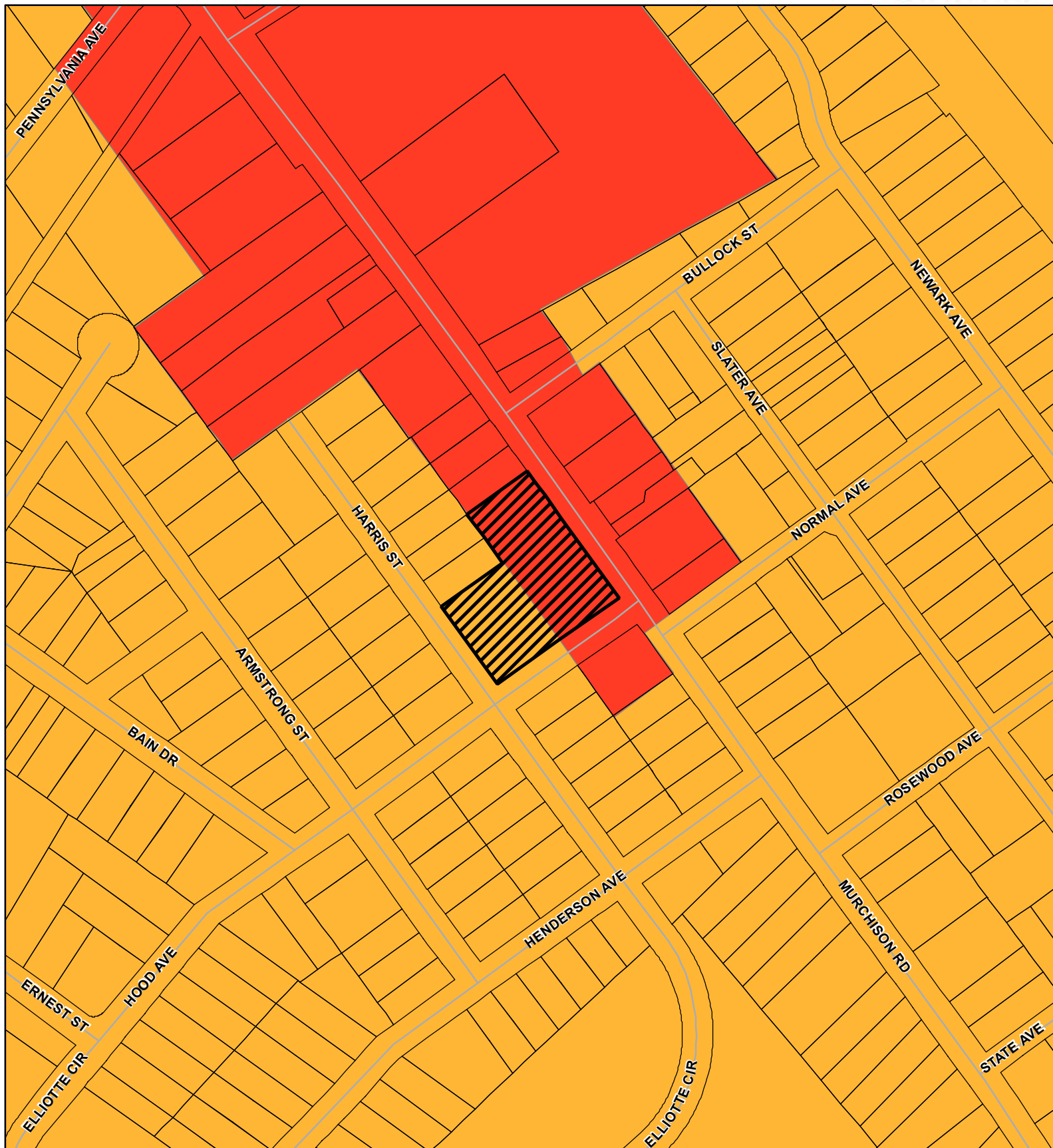


Legend

Existing Landuse	Common Area	Group Quarters	Industrial	Multi-Family	Open Space	Communications-Utilities	Vacant Commercial
Single Family Detached	Commercial	Golf Course	Institutional	Mobile Home	Parking	Under Construction	Not Verified
Single Family Attached	Cemetery	Government Office	Lake	Mobile Home Park	Predominantly Vacant	Vacant Land	Null PIN

Land Use Plan

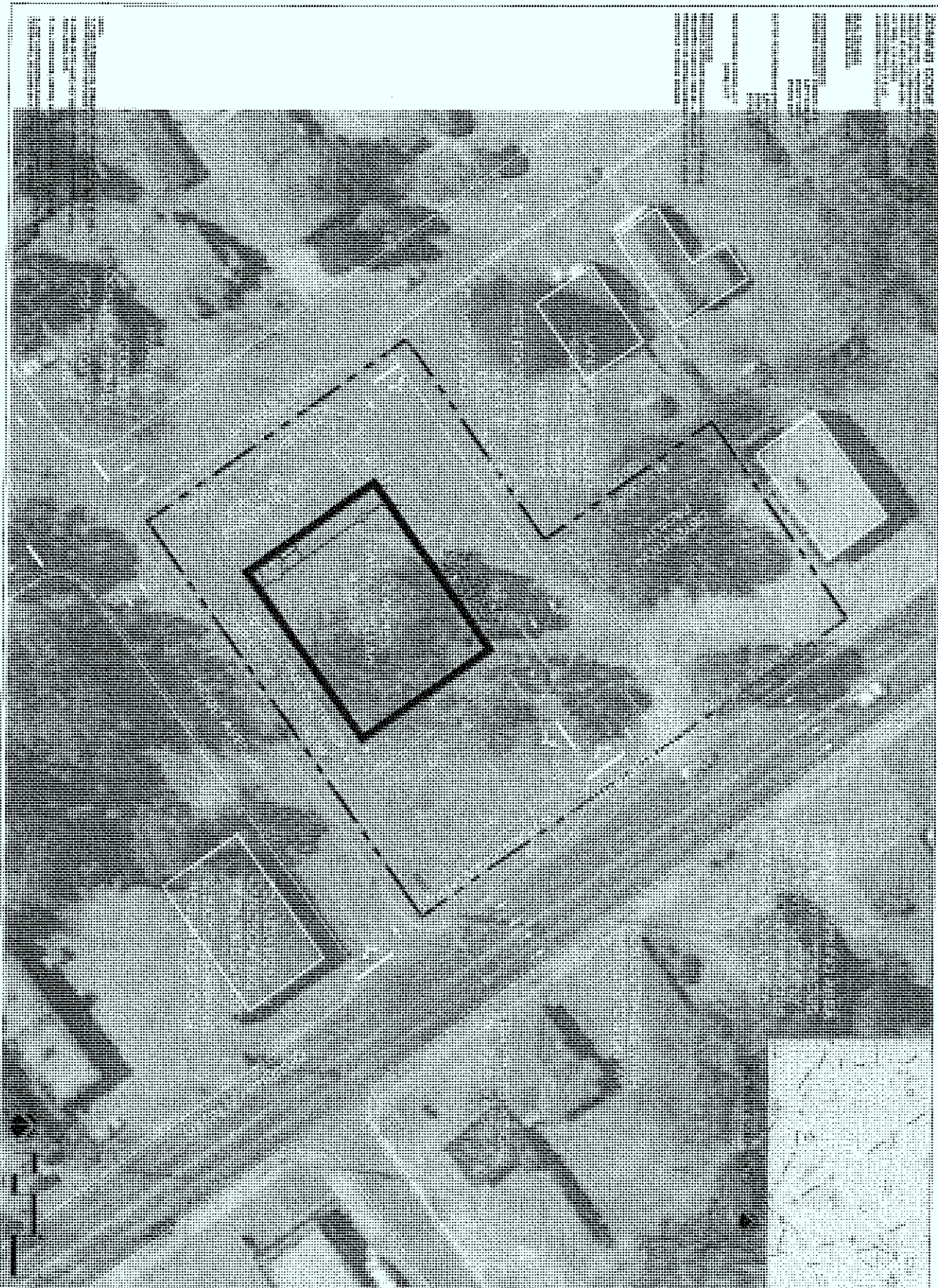
Case No. P13-37F



Legend

Academic Training-Fort Bragg	Farmland	Historical District-Fort Bragg	Neighborhood Activity Node	Policy Directed Light Commercial
Activity Node	Governmental	Light Commercial	Office & Institutional	Policy Directed Office & Institutional
Airfield Operations-Fort Bragg	Heavy Commercial	Light Industrial	One Acre Residential Lots	Range & Training-Fort Bragg
Community Activity Node	Heavy Industrial	Low Density Residential	Open Space	Redevelop/Holding-Fort Bragg
Downtown	High Density Residential	Medium Density Residential	Policy Directed Heavy Commercial	Suburban Density Residential

6431



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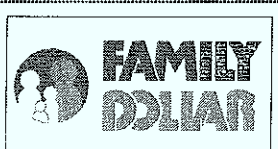
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Drawn By: JMB
 Checked By: JMB
 Date: 05-17-2012
 Project Number: 6-4-4-2

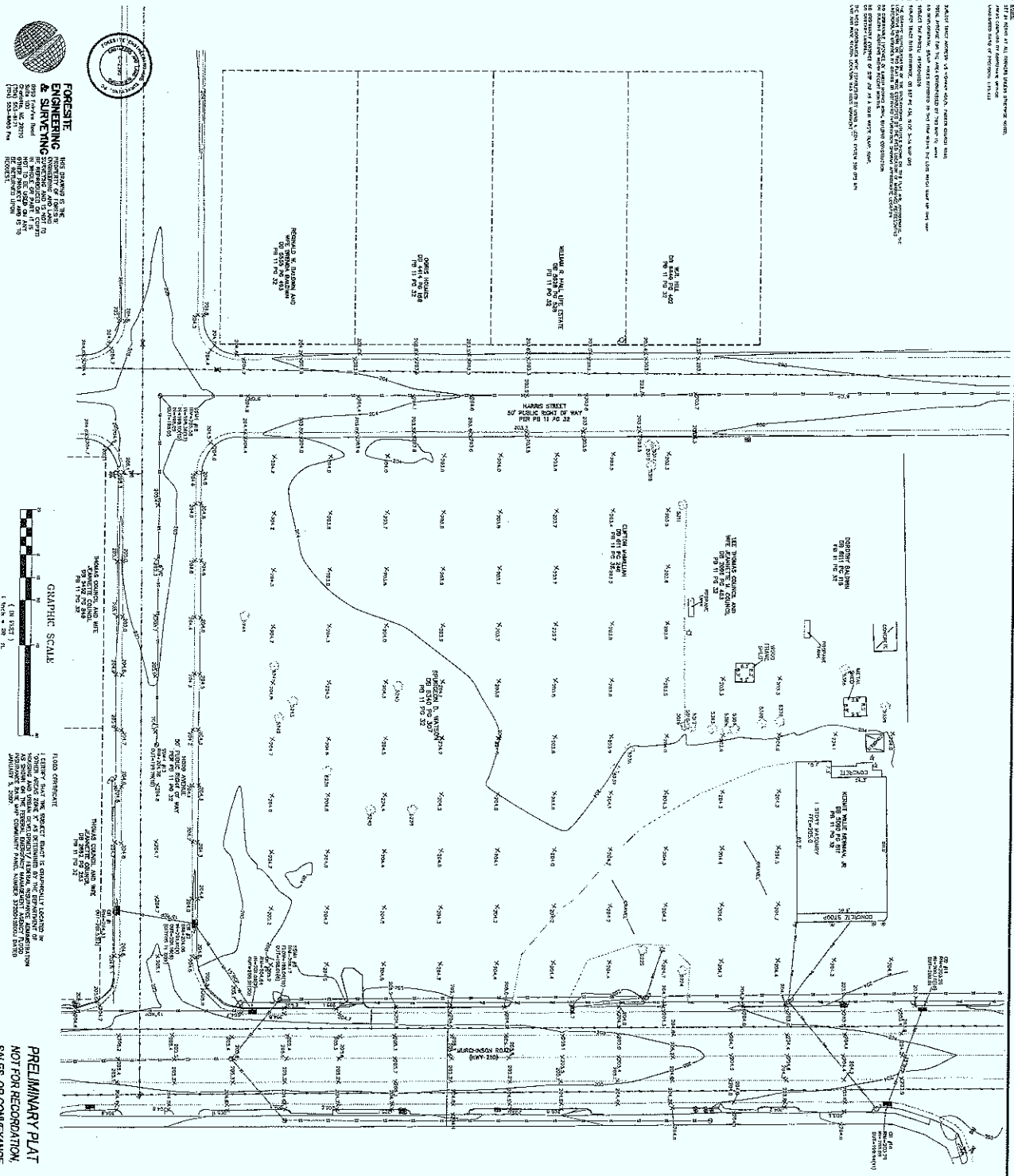
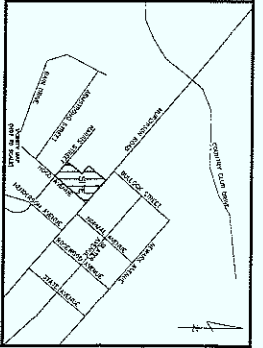
FAMILY DOLLAR
 MURCHISON ROAD & HOOD AVENUE
 FAYETTEVILLE, NORTH CAROLINA

PRELIMINARY SITE PLAN

REVISIONS	
△	



THE DUBAN GROUP
 BUILDING VALUES

[illegible][illegible][illegible]



MR-5

MR-5

OI

LC

SF-6

OI

MR-5

MR-5

6-4-5-1





ED JEHOVAH
H CHRISTIAN
MINISTRY
11 Harris Street
Pastor:
etty Johnson

VAL
APPLEWHITE
"Putting Fayetteville First"
FOR MAYOR

As New York City Council
Charlotte
Robinson
for
City Council District 9

Perkins
DRY CLEANING

oy

FISHING
PIER
RESTAURANT

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Pamela Megill, City Clerk
DATE: November 18, 2013
RE: **Certification of Results from the Cumberland County Board of Elections for the November 5, 2013 Municipal Election for Mayor, City Council Districts 1, 2, 3, 4, 5, 6, 7, 8, and 9.**

THE QUESTION:

Does City Council accept the Certification of Results from the Cumberland County Board of Elections for the November 5, 2013 Municipal Election for Mayor, City Council Districts 1, 2, 3, 4, 5, 6, 7, 8 and 9?

RELATIONSHIP TO STRATEGIC PLAN:

Community Unity - Pride in Fayetteville

BACKGROUND:

The Cumberland County Board of Elections having opened, canvassed and judicially determined the original returns of the election in the precincts in this County, held November 5, 2013, certify that the attached Official Primary Results contains the number of legal ballots cast in each precinct for each office named, the name of each person voted for and the number of votes cast for each person for the office named.

A copy of the official Certification of Results will be provided prior to the Council meeting.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

Staff recommends Council move to accept the Certification of Results from the Cumberland County Board of Elections as presented.

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Pamela Megill, City Clerk
DATE: November 18, 2013
RE: **Approve Meeting Minutes:**

October 28, 2013 - Discussion of Agenda Items

THE QUESTION:

Should the City Council approve the draft minutes as the official record of the proceedings and actions of the associated meetings?

RELATIONSHIP TO STRATEGIC PLAN:

Greater Community Unity - Pride in Fayetteville; Objective 2: Goal 5: Better informed citizenry about the City and City government

BACKGROUND:

The Fayetteville City Council conducted meetings on the referenced dates during which they considered items of business as presented in the draft minutes.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

1. Approve the draft minutes as presented.
2. Revise the draft minutes and approve the draft minutes as revised.
3. Do not approve the draft minutes and provide direction to staff.

RECOMMENDED ACTION:

Approve the draft minutes as presented.

ATTACHMENTS:

102813 Discussion of Agenda Items

DRAFT

FAYETTEVILLE CITY COUNCIL
DISCUSSION OF AGENDA ITEMS MEETING MINUTES
ST. AVOLD ROOM
OCTOBER 28, 2013
6:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1) (via telephone); Robert A. Massey, Jr. (District 3); Bobby Hurst (District 5); William J.L. Crisp (District 6); Valencia A. Applewhite (District 7); Wade Fowler (District 8); James W. Arp, Jr. (District 9)

Absent: Council Members Kady-Ann Davy (District 2); Darrell J. Haire (District 4)

Others Present: Theodore Voorhees, City Manager
Kristoff Bauer, Deputy City Manager
Rochelle Small-Toney, Deputy City Manager
Karen McDonald, City Attorney
Rusty Thompson, Engineering and Infrastructure
Director
Members of the Press

Mayor Chavonne called the meeting to order at 6:10 p.m. and advised Pastor Allen McLauchlin of New Life Bible Church would offer the invocation at the regular meeting tonight.

Ms. Karen McDonald, City Attorney, advised that staff would be requesting that Items 7.7 and 7.11 be pulled from the agenda. She explained the reasons and the proposed dates the items would come back to Council for consideration.

Mr. Ted Voorhees, City Manager, requested that Item 8.6 be pulled from the agenda.

Discussion ensued regarding the demolitions on the agenda. Consensus of Council was to have Mr. Scott Shuford, Development Services Director, make presentations on all of the items.

Mr. Rusty Thompson, Engineering and Infrastructure Director, provided background information on one of the public forum speakers.

Mayor Chavonne called attention to Item 6.5 regarding the meeting scheduled in November.

Mr. Ted Voorhees, City Manager, provided an update as it related to correspondence regarding a customer service issue for lease of a downtown building.

There being no further business, the meeting adjourned at 6:40 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

102813

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Patricia C. Bradley, Police Attorney
DATE: November 18, 2013
RE: **Amended Noise Ordinance**

THE QUESTION:

An amendment to the Code of the City of Fayetteville North Carolina, Section 11-7 Noise Ordinance.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government

BACKGROUND:

The Police Department seeks to amend the ordinance to reflect the measurement standards as provided by the American National Standards Institute (ANSI). As a result of changes in technology the equipment previously measuring sound is being modernized with equipment that measures sound in accordance with ANSI standards. The present ordinance specifies equipment that is either obsolete or no longer in use. The ordinance amendment does not reflect specific equipment, but rather focuses on ANSI standards. Therefore, as equipment is modernized, future ordinance amendments will not be required. This ordinance amendment shortens the time frame for noise to be measured from ten minutes to five minutes in order to make the ordinance enforceable and eliminates barking dog enforcement which is now a County function. Appeals to this ordinance are consistent with Fayetteville City Code Section 1-7.

ISSUES:

NONE.

BUDGET IMPACT:

\$1,881 for the purchase of three new noise meters. Already funded and purchased.

OPTIONS:

1. Request additional information.
2. Adopt the amendment to the ordinance with an immediate effective date.

RECOMMENDED ACTION:

Staff recommends that Council move to adopt the ordinance amendment as presented, with an immediate effective date.

ATTACHMENTS:

Draft Amended Noise Ordinance
Amended Noise Ordinance - final
Noise Ordinance Powerpoint

OFFENSES AND MISCELLANEOUS PROVISIONS

NOISE ORDINANCE

Sec. 17-7. Purpose for regulating excessive and unnecessary noise.

(a) It is recognized that excessive and unnecessary noise endangers the physical and emotional health and welfare of the people, interferes with legitimate business and recreational activity, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of life.

(b) It is further recognized that a substantial body of science and technology exists by which excessive sound may be measured and substantially abated. Because the regulation of excessive and unnecessary noise that may jeopardize human health or welfare or substantially degrade the quality of life is well within the purview of the governing body's police powers, it is declared to be the purposes of this section to prevent, prohibit, and provide for the regulation and abatement of excessive and unnecessary noise which may injure the physical and emotional health or welfare of its citizens or degrade the quality of life.

Sec. 17-8. Certain noises and sounds prohibited.

It shall be unlawful, except as expressly permitted in this chapter, to make, cause, or allow the making of any noise or sound which exceeds the limits set forth in sections 17-9 through 17-13.

Sec. 17-9. Terminology and standards regarding noises and sounds.

(a) *Terminology and standards.* All terminology used in the provisions of sections 17-7 through 17-16 not defined in subsection (b) of this section, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

(b) *Definitions:*

Ambient sound means the total noise in a given environment.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

A-weighted sound level meter means an instrument which includes an omnidirectional microphone, an amplifier, an output meter, and frequency weighting network for the measurement of sound. A sound meter that meets these requirements shall be utilized for conducting sound measurements.

Background noise means ambient sound.

Classification of use occupancies. For the purpose of defining the "use occupancy" all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing transient commercial sleeping quarters shall be considered tourist use. All premises containing businesses where sales, professional, or other commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In case of multiple use, the more restrictive use category shall prevail. Hospitals, nursing homes, schools, libraries, and church uses shall be considered residential uses. Any area not otherwise classified shall conform to commercial standards.

Decibel (dB) means a unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

Emergency work means any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

Octave band sound level means the sound pressure level in decibels of the sound within a specific frequency band surrounding a specific center octave frequency (example: frequency band: 355-710 Hz; center octave frequency: 500 Hz), as measured on an octave band sound level meter set for measurement of sound level within that octave band. The level so read is designated dB, followed in parentheses by the center frequency of the octave band (example: 65 dB(500 Hz)).

Octave band sound level meter means an instrument which includes an omnidirectional microphone, an amplifier, an output meter, and octave band filter for octave band sound level measurement.,

Sound pressure level means 20 times the logarithm to the base ten of the ratio of the RMS sound pressure to the reference of 20 micronewtons per square meter.

Weekend means that period of time between 12:00 midnight on Friday to 12:00 midnight on Sunday.

(c) *Measurement of sound.*

(1) *Instrumentation.*

- a. Measurement of A-weighted sound level as provided for in this chapter shall be made with a sound level meter using the "A" weighting scale, in accordance with standards promulgated by the American National Standards Institute.
- b. Octave band measurement of sound level shall be made with a a sound level meter capable of octave band measurement of sound level in

accordance with standards promulgated by the American National Standards Institute.

- (2) *Personnel.* The operator of a sound level meter, but not persons assisting that operator with nontechnical aspects of sound level measurement, must have received special training in sound measurement and must have received training in the use of the sound level meter used. The chief of police of the city shall prescribe minimum training standards for such operators.
- (3) *Measurement procedures.* Sound level measurement, to include A-weighted and octave band measurement, and recording of measurement readings shall be accomplished in accordance with procedures approved by the chief of police of the city. These measurement procedures shall conform to the operating instructions included in the operator's manual for the sound level meter used.

(d) *Background sound.* When the lowest sound level reading of the highest ten percent of readings taken during a measurement period was ten or more decibels higher than the background sound level at the place of measurement shortly before or after the measurement period, as prescribed in section 17-10, it shall be presumed, for the purposes of the enforcement of sections 17-7 through 17-16, that the recorded sound levels in excess of the applicable sound level limit were caused by the source of sound, the activation of which caused the sound level to exceed the background sound level. The period of measurement of background sound level shall be at least one minute and readings shall be taken at five-second intervals. The proof of background sound level shall not be required for enforcement of sections 17-7 through 17-16.

Sec. 17-10. Maximum permissible sound levels by use occupancy.

(a) No person shall operate or cause to be operated any source of sound from any occupancy in such a manner as to create a sound level which exceeds the limits set forth for the use occupancy category in Table 1 or Table 2 of this section for more than twominutes, or ten percent of the sound level measurements taken at five-second intervals during a measurement period of at least five minutes, to be measured at or beyond the property boundary of the land use from which the sound emanates.

Table 1

Sound Levels by Use Occupancy Category

<i>Use Occupancy Category</i>	<i>Time</i>	<i>Sound Level Limit dB(A)</i>
Residential or Public Space	6 a.m.—10 p.m.	60
	10 p.m.—6 a.m.	55
Commercial or Business	6 a.m.—10 p.m.	65
	10 p.m.—6 a.m.	60
Manufacturing, Industrial or Agricultural	At all times	75

Table 2

Maximum Permissible Octave Bank Sound Levels by Use Occupancy Category and Frequency Band and Time of Day

<i>Frequency (Hz)</i>	<i>Residential or Public Space</i>		<i>Commercial or Business</i>	
	<i>6 a.m.—10 p.m.</i>	<i>10 p.m.—6 a.m.</i>	<i>6 a.m.—10 p.m.</i>	<i>10 p.m.—6 a.m.</i>
31	88	72	90	88
63	79	71	85	79
125	69	65	73	69
250	62	57	67	62
500	58	51	61	58
1000	54	45	55	54
2000	50	43	51	51
4000	46	42	49	49
8000	43	41	47	47

(b) Any source of sound which is the subject of a specific exemption or special permit in sections 17-7 through 17-16 shall not be permitted to exceed by more than 15 dB(A) or dB in octave band measurement for all categories those sound levels permitted in Table 1 or Table 2 of this section.

The following are exempt from the provisions of Table 1 of section 17-10:

- (1) Lawn mowers and agricultural equipment during daylight hours (7:00 a.m. to 10:00 p.m.) when operated with all the manufacturers' standard mufflers and noise reducing equipment in use and proper operating condition;
- (2) Nonamplified crowd noises resulting from the activities such as those planned by student, governmental or community groups;
- (3) Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise reducing equipment in use and in proper operating condition;
- (4) Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches;
- (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;

- (6) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with this section. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in this section;
- (7) Noises made by persons having obtained a permit to use the streets;
- (8) All noises coming from the normal operations of aircraft, not including scale model aircraft, and all noises emanating from the Fayetteville Municipal Airport property within the NEF (Noise Exposure Forecast) zones as established by a survey dated April 1977, and maintained in the office of the airport director.

Sec. 17-11. Specific prohibitions.

In addition to the general prohibitions set out in section 17-10 and the maximum permissible sound levels set out in Table 1 of section 17-10, and unless otherwise exempted in section 17-12, the following specific acts, or the causing or permitting thereof, are hereby declared to be unlawful:

- (1) *Radios, television sets, musical instruments and similar devices.* Operating, playing, or permitting the operation or playing of any radio, television, phonograph, musical instrument, electronic device, or similar device which produces or reproduces sound:
 - a. Between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create excessive and unnecessary noise across a residential real property line or within a noise sensitive area; or
 - b. In such a manner as to exceed the levels set forth for the occupancy category set forth in Table 1 of section 17-10.
- (2) *Loudspeakers.* Using or operating for any purpose any loudspeaker, loudspeaker system, amplifiers, or similar device between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays in areas within or adjacent to residential, commercial, or noise sensitive areas, except for any noncommercial public speaking, public assembly, or other activity for which a special permit has been issued by the chief of police.
- (3) *Street sales.* Offering for sale, selling anything or advertising by shouting or outcry within any residential or commercial area or noise sensitive zone of the city except by special permit issued by the chief of police.

- ((5) *Loading and unloading.* Loading and unloading, opening, closing or other handling of boxes, crates, containers, equipment, building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 8:00 a.m. on weekends or holidays in or within 50 yards of residential area or noise sensitive zone.
- (6) *Construction and demolition.* Operating or causing the operation of any tools used in construction, drilling, repair, alteration, or demolition work between the hours of 9:00 p.m. and 6:00 a.m. on weekdays, or between 9:00 p.m. and 8:00 a.m. on weekends or holidays in or within 50 yards of any residential area or noise sensitive zone, except for emergency work by public service utilities or by special permit issued by the chief of police. This section shall not apply to the use of domestic power tools as specified in subsection (11) of this section.
- (7) *Powered model vehicles.* Operating or permitting the operation of powered model vehicles:
- a. Between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends or holidays in or within 100 feet of any residential areas or noise sensitive zone; or
 - b. In such a manner as to exceed the levels set for public space land use, measured at a distance of not closer than 100 feet (30 meters) from any point on the path of a vehicle operating on a public space or public right-of-way.
- (8) *Emergency signaling devices.* The intentional sounding or permitting the sounding outdoors of any fire, burglary, or civil defense alarm, fire, whistle, or similar stationary emergency signaling device, except for emergency shall not occur before 7:00 a.m. or after 7:00 p.m., and any testing shall use the minimum cycle test time appropriate for such devices, in no case to exceed 60 seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device shall not occur more than once in each calendar month. Such testing shall occur only on weekdays and not before 7:00 a.m. or after 10:00 p.m., and shall be exempt from the time limit specified in this subsection. The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, unless such alarm is automatically terminated within 15 minutes of activation, shall be prohibited.
- (9) *Motor boats.* Operating or permitting the operation of any motor boat in any lake, river, stream, canal, bay, or other waterway in such a manner as to cause unnecessary and excessive noise within a residential area or noise sensitive zone, or to exceed 86 dB(A) when measured at least 50 feet from the craft.

- (10) *Noise sensitive zones.* Creating or causing the creation of any sound within any noise sensitive zone so as to exceed the decibels levels set forth for such zone when measured at a distance of at least 25 feet (7.5 meters) from the sound source, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone or the creating or causing the creation of any excessive and unnecessary noise within or adjacent to any noise sensitive zone containing a hospital, nursing home, school, court or other designated area, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone.
- (11) *Domestic power tools.* Operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, or similar tool between 10:00 p.m. and 6:00 a.m. on weekdays, or 10:00 p.m. and 7:00 a.m. on weekends and holidays, unless such equipment is operated inside a building or other structure so that the sound therefrom does not travel across any residential real property line or sensitive zone and exceed the levels set forth in Table 1 of [section 17-10](#). All such equipment shall be properly muffled and maintained in working order so as not to create excessive unnecessary noise.
- (12) *Multifamily dwellings.* Operating or permitting the operation within a multifamily dwelling of any source of sound in a manner so as to exceed 55 dB(A) from 7:00 a.m. to 10:00 p.m. or 45 dB(A) from 10:00 p.m. to 7:00 a.m. on weekdays and 10:00 p.m. to 10:00 a.m. on weekends and holidays, when measured with an adjacent intrabuilding dwelling. These noise limits shall not be exceeded more than ten percent of any measurement, which shall not be less than five minutes. The maximum permissible sound level, when measured in an adjacent intrabuilding area between 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays shall be 50 dB(A).
- (13) *Places of public entertainment.* Operating or permitting to be operated any loudspeaker or other source of sound in any place of public entertainment that exceeds the level shown in Table 3, at any point normally occupied by a customer, without a conspicuous and legible sign stating, "WARNING" SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT.

Table 3

Permissible Noise Exposures

<i>Duration per day Continuous Hours</i>	<i>Noise Level dB(A)</i>
8	90
6	92
4	95
3	97

2	100
1½	102
1	105
½	110
¼ or less	115

- (14) *Refuse collection vehicles.* No person shall collect refuse with a refuse collection vehicle between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends and holidays within a residential area or noise sensitive zone.
- (15) *Recreational motorized vehicles operating off public right-of-way.* No person shall operate or cause to be operated any recreational motorized vehicle or motorcycle that exceeds the limits set forth in Table 1 of [section 17-10](#) off the public right-of-way in any residential or noise sensitive zone. This section shall apply to all motorized vehicles or motorcycles whether or not duly licensed and registered.
- (16) *Morning to evening.* Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise in the city between the hours of 7:00 a.m. and 10:00 p.m. within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained road or public vehicular area, is prohibited.
- (17) *Nighttime.* Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise in the city between the hours of 10:00 p.m. and 7:00 a.m. the following morning within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained highway or public vehicular area, is prohibited.
- (18) *Detrimental noise.* Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited within the city, no matter what the distance of the source of such noise is to any dwelling unit, house, trailer or building occupied by such other person, unless the person in control of such unit, house, trailer or building has given specific consent for such noise to continue.
- (19) *Prohibited acts generally.* The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

- a. *Blowing horns.* The sounding of any horn or signal on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound or the sound of such device for an unnecessary and unreasonable period of time.
- b. *Radios, phonographs, stereo systems, music storage devices etc.* The playing of any radio, phonograph, stereo systems, music storage devices or other musical instrument in such manner or with such volume, as to unreasonably annoy or disturb the quiet, comfort or repose of any person in any dwelling unit, house, trailer, building or other type of residence.
- c. *Pets.* The keeping of any animal or bird, which by causing frequent or long continued noise, shall unreasonably disturb the comfort and repose of any person in the vicinity.
- d. *Use of vehicle.* The use of any automobile, motorcycle or vehicle so loaded, or operated in such manner as to create an unreasonably loud or unnecessary grating, grinding, rattling or other noise.
- e.

Sec. 17-12. Motor vehicle noise.

(a) No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category or motor vehicle shown below. Noise shall be measured at

a distance of at least 25 feet (7.5 meters) from the near side of the nearest lane being monitored and at a height of at least four feet above the immediate surrounding surface.

SOUND PRESSURE LEVEL, dB(A)

	<i>Speed limit 35 mph or less</i>	<i>Speed limit over 35 mph</i>
Motor vehicles with a manufacturer's gross vehicle weight rating (GVW) or gross combination weight rating (GCWR) of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle, except those operated by an interstate motor carrier.		
Such vehicles operated by interstate motor carriers (measured at least 35 feet from the centerline of the traveled lane).	91	95
Any other motor vehicle or any combination of vehicles towed by any motor vehicle.	76	80

(b) This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 17-7 through 17-13 relating to motor vehicle mufflers for noise control.

(c) No person shall operate or cause to be operated any motor vehicle unless the exhaust system of such vehicle is:

- (1) Free from defects which affect sound reduction;
- (2) Equipped with a muffler or other noise dissipative device; and
- (3) Not equipped with any cut-out, bypass or similar device.

Sec. 17-14. Special permits - relief from allowable noise level limits.

Applications for a permit for relief from the maximum allowable noise level limits designated in sections 17-7 through 17-13 may be made in writing to the chief of police or his duly authorized representative. Any permit granted by the chief of police under this chapter must be in writing and shall contain all conditions upon which the permit shall be effective. The chief of police or his duly authorized representative may grant the relief as applied for under the following conditions:

- (1) *General conditions and requirements.* The chief of police may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.

- (2) *Permits for entertainment.* Permits may be granted for the purpose of entertainment under the following conditions:
- a. The function must be open to the public; admission may be charged.
 - b. The function must take place on public property or public vehicular areas of shopping centers in an area zoned CIP as prescribed in chapter 30 of this Code, pursuant to subsection (1) of this section.
 - c. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.
- (3) *Other conditions.* Special permits for nonentertainment special purposes may be issued under the following conditions:
- a.
 - 1. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or
 - 2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and
 - b. If the special purpose be a recurring purpose, that it not recur more often than four times each calendar year; and
 - c.
 - 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or
 - 2. If the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and
 - d. Except in emergency situations, as determined by the chief of police, the special permit may be issued only between 7:00 a.m. and 12:00 p.m. on weekdays; and
 - e. The special permit may be issued for no longer than 15 consecutive days, renewable by further application to the chief of police.
- (4) *Exterior loudspeaker not permitted.* No permit may be issued to permit the use of any loudspeaker or sound amplifying device on the exterior of any building which at any time exceeds the sound level limits in Table 1 of section 17-10 except those used for emergency warnings.

- (5) *Appeal.* Anyone aggrieved by the provisions of this section shall have the right to appeal the decision of the chief of police to an administrative hearing officer in writing within ten days after receipt of the decision of the chief pursuant to section 1-9 of the City of Fayetteville Code of Ordinances. If the decision of the police chief is not appealed, the decision shall be deemed final.
- (6) At the hearing before the administrative hearing officer pursuant to an appeal as requested pursuant to subsection (5) of this section, the hearing officer shall determine whether issuance of the permit would be detrimental to the public health, safety and welfare of the community. If the hearing officer determines that the issuance of the permit would not be detrimental to the public health, safety and welfare, the hearing officer shall specifically authorize the chief of police to issue the permit to the applicant. If the hearing officer determines that the issuance of the permit would be detrimental to the public health, safety and welfare of the community, the hearing officer shall so notify the applicant, and the chief of police shall not issue the permit.

Sec. 17-15.Reserved.

Sec. 17-16. Noise from radios, tape players, loudspeakers, sound amplifiers.

(a) No person shall play, use, or operate, or permit to be played, used, or operated, any radio, tape recorder, cassette player, music storage device, or other machine or device for reproducing sound, if it is located in or on any of the following:

- (1) Any public property, including any public street, highway, building, sidewalk, park, thoroughfare, or public or private parking lot unless such person receives a special event or public assembly permit; or
- (2) Any motor vehicle on a public street, highway, public space or within the motor vehicular area of any public or private parking lot or park;

and if at the same time the sound generated is audible at a distance of 30 feet from the radio, tape recorder, cassette player, music storage device, or other machine or device that is producing the sound.

(b) Possession by a person of any radio, tape recorder, cassette player, music storage device, or other machine or device for reproducing sound as enumerated in subsection (a) of this section, shall be prima facie evidence that such person operates, or those persons operate, the radio, tape recorder, cassette player, music storage device, or other machine or device for reproducing sound.

Sec. 17-17. Enforcement responsibility for control of excessive noise.

(a) *Primary enforcement responsibility.* The chief of police of the city shall have primary enforcement responsibility for sections 17-7 through 17-16 as they relate to stationary sources and as they relate to motor vehicle sources.

(b) *Powers of arrest or citation.* Any police officer shall issue a citation for any violation under this article, except they may arrest for instances when:

- (1) The alleged violator refuses to provide the officer with such person's name and address and any proof thereof as may be reasonably available to the alleged violator; or
- (2) The alleged violator refuses to cease such illegal activity after being issued a citation.

Sec. 17-18. Penalties for violation of sections 17-7 through 17-16.

(a) Any person violating any provision of sections 17-7 through 17-16 shall be subject to a civil penalty in an amount in accordance with the fee schedule as adopted by city council for each offense, and separate offenses shall be deemed committed on each day during or on which a violation occurs or continues. Any subsequent violation within a 12-month period of a first violation after the enactment of this section shall subject the violator to a civil penalty in accordance with the fee schedule as adopted by city council for each subsequent violation. For purposes of determining subsequent violations within a 12-month period, the date of the first violation from and after the enactment of this section shall be the anniversary date from which a new 12-month period shall begin.

The provisions of this city ordinance and any violation may be enforced by one, or all or a combination of the remedies authorized and prescribed by section 1-7 of the City of Fayetteville Code of Ordinances.

OFFENSES AND MISCELLANEOUS PROVISIONS

NOISE ORDINANCE

Sec. 17-7. Purpose for regulating excessive and unnecessary noise.

(a) It is recognized that excessive and unnecessary noise endangers the physical and emotional health and welfare of the people, interferes with legitimate business and recreational activity, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of life.

(b) It is further recognized that a substantial body of science and technology exists by which excessive sound may be measured and substantially abated. Because the regulation of excessive and unnecessary noise that may jeopardize human health or welfare or substantially degrade the quality of life is well within the purview of the governing body's police powers, it is declared to be the purposes of this section to prevent, prohibit, and provide for the regulation and abatement of excessive and unnecessary noise which may injure the physical and emotional health or welfare of its citizens or degrade the quality of life.

Sec. 17-8. Certain noises and sounds prohibited.

It shall be unlawful, except as expressly permitted in this chapter, to make, cause, or allow the making of any noise or sound which exceeds the limits set forth in sections 17-9 through 17-13.

Sec. 17-9. Terminology and standards regarding noises and sounds.

(a) Terminology and standards. All terminology used in the provisions of sections 17-7 through 17-16 not defined in subsection (b) of this section, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body.

(b) Definitions:

Ambient sound means the total noise in a given environment.

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A).

A-weighted sound level meter means an instrument which includes an omnidirectional microphone, an amplifier, an output meter, and frequency weighting network for the measurement of sound. A sound meter that meets these requirements shall be utilized for conducting sound measurements.

Background noise means ambient sound.

Classification of use occupancies. For the purpose of defining the "use occupancy" all premises containing habitually occupied sleeping quarters shall be considered in residential use. All premises containing transient commercial sleeping quarters shall be considered tourist use. All premises containing businesses where sales, professional, or other commercial use is legally permitted shall be considered commercial use. All premises where manufacturing is legally permitted shall be considered manufacturing use. In case of multiple use, the more restrictive use category shall prevail. Hospitals, nursing homes, schools, libraries, and church uses shall be considered residential uses. Any area not otherwise classified shall conform to commercial standards.

Decibel (dB) means a unit for describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micronewtons per square meter.

Emergency work means any work performed for the purposes of preventing or alleviating physical trauma or property damage threatened or caused by an existing or imminent peril.

Octave band sound level means the sound pressure level in decibels of the sound within a specific frequency band surrounding a specific center octave frequency (example: frequency band: 355-710 Hz; center octave frequency: 500 Hz), as measured on an octave band sound level meter set for measurement of sound level within that octave band. The level so read is designated dB, followed in parentheses by the center frequency of the octave band (example: 65 dB(500 Hz)).

Octave band sound level meter means an instrument which includes an omnidirectional microphone, an amplifier, an output meter, and octave band filter for octave band sound level measurement.,

Sound pressure level means 20 times the logarithm to the base ten of the ratio of the RMS sound pressure to the reference of 20 micronewtons per square meter.

Weekend means that period of time between 12:00 midnight on Friday to 12:00 midnight on Sunday.

(c) Measurement of sound.

(1) Instrumentation.

- a. Measurement of A-weighted sound level as provided for in this chapter shall be made with a sound level meter using the "A" weighting scale, in accordance with standards promulgated by the American National Standards Institute.
- b. Octave band measurement of sound level shall be made with a a sound level meter capable of octave band measurement of sound level in

accordance with standards promulgated by the American National Standards Institute.

- (2) Personnel. The operator of a sound level meter, but not persons assisting that operator with nontechnical aspects of sound level measurement, must have received special training in sound measurement and must have received training in the use of the sound level meter used. The chief of police of the city shall prescribe minimum training standards for such operators.
- (3) Measurement procedures. Sound level measurement, to include A-weighted and octave band measurement, and recording of measurement readings shall be accomplished in accordance with procedures approved by the chief of police of the city. These measurement procedures shall conform to the operating instructions included in the operator's manual for the sound level meter used.

(d) Background sound. When the lowest sound level reading of the highest ten percent of readings taken during a measurement period was ten or more decibels higher than the background sound level at the place of measurement shortly before or after the measurement period, as prescribed in section 17-10, it shall be presumed, for the purposes of the enforcement of sections 17-7 through 17-16, that the recorded sound levels in excess of the applicable sound level limit were caused by the source of sound, the activation of which caused the sound level to exceed the background sound level. The period of measurement of background sound level shall be at least one minute and readings shall be taken at five-second intervals. The proof of background sound level shall not be required for enforcement of sections 17-7 through 17-16.

Sec. 17-10. Maximum permissible sound levels by use occupancy.

(a) No person shall operate or cause to be operated any source of sound from any occupancy in such a manner as to create a sound level which exceeds the limits set forth for the use occupancy category in Table 1 or Table 2 of this section for more than two minutes, or ten percent of the sound level measurements taken at five-second intervals during a measurement period of at least five minutes, to be measured at or beyond the property boundary of the land use from which the sound emanates.

Table 1

Sound Levels by Use Occupancy Category

Use Occupancy Category	Time	Sound Level Limit dB(A)
Residential or Public Space	6 a.m.—10 p.m.	60
	10 p.m.—6 a.m.	55
Commercial or Business	6 a.m.—10 p.m.	65
	10 p.m.—6 a.m.	60
Manufacturing, Industrial or Agricultural	At all times	75

Table 2

Maximum Permissible Octave Bank Sound Levels by Use Occupancy Category and Frequency Band and Time of Day

Frequency (Hz)	Residential or Public Space		Commercial or Business	
	6 a.m.—10 p.m.	10 p.m.—6 a.m.	6 a.m.—10 p.m.	10 p.m.—6 a.m.
31	88	72	90	88
63	79	71	85	79
125	69	65	73	69
250	62	57	67	62
500	58	51	61	58
1000	54	45	55	54
2000	50	43	51	51
4000	46	42	49	49
8000	43	41	47	47

(b) Any source of sound which is the subject of a specific exemption or special permit in sections 17-7 through 17-16 shall not be permitted to exceed by more than 15 dB(A) or dB in octave band measurement for all categories those sound levels permitted in Table 1 or Table 2 of this section.

The following are exempt from the provisions of Table 1 of section 17-10:

- (1) Lawn mowers and agricultural equipment during daylight hours (7:00 a.m. to 10:00 p.m.) when operated with all the manufacturers' standard mufflers and noise reducing equipment in use and proper operating condition;
- (2) Nonamplified crowd noises resulting from the activities such as those planned by student, governmental or community groups;
- (3) Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers' specifications and with all standard equipment manufacturer's mufflers and noise reducing equipment in use and in proper operating condition;
- (4) Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches;
- (5) Noises resulting from any authorized emergency vehicle when responding to an emergency call or acting in time of emergency;

- (6) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefor has been granted by the city in accordance with this section. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained in this section;
- (7) Noises made by persons having obtained a permit to use the streets;
- (8) All noises coming from the normal operations of aircraft, not including scale model aircraft, and all noises emanating from the Fayetteville Municipal Airport property within the NEF (Noise Exposure Forecast) zones as established by a survey dated April 1977, and maintained in the office of the airport director.

Sec. 17-11. Specific prohibitions.

In addition to the general prohibitions set out in section 17-10 and the maximum permissible sound levels set out in Table 1 of section 17-10, and unless otherwise exempted in section 17-12, the following specific acts, or the causing or permitting thereof, are hereby declared to be unlawful:

- (1) Radios, television sets, musical instruments and similar devices. Operating, playing, or permitting the operation or playing of any radio, television, phonograph, musical instrument, electronic device, or similar device which produces or reproduces sound:
 - a. Between the hours of 10:00 p.m. and 7:00 a.m. in such a manner as to create excessive and unnecessary noise across a residential real property line or within a noise sensitive area; or
 - b. In such a manner as to exceed the levels set forth for the occupancy category set forth in Table 1 of section 17-10.
- (2) Loudspeakers. Using or operating for any purpose any loudspeaker, loudspeaker system, amplifiers, or similar device between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays in areas within or adjacent to residential, commercial, or noise sensitive areas, except for any noncommercial public speaking, public assembly, or other activity for which a special permit has been issued by the chief of police.
- (3) Street sales. Offering for sale, selling anything or advertising by shouting or outcry within any residential or commercial area or noise sensitive zone of the city except by special permit issued by the chief of police.

- (5) Loading and unloading. Loading and unloading, opening, closing or other handling of boxes, crates, containers, equipment, building materials, garbage cans, or similar objects between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 8:00 a.m. on weekends or holidays in or within 50 yards of residential area or noise sensitive zone.
- (6) Construction and demolition. Operating or causing the operation of any tools used in construction, drilling, repair, alteration, or demolition work between the hours of 9:00 p.m. and 6:00 a.m. on weekdays, or between 9:00 p.m. and 8:00 a.m. on weekends or holidays in or within 50 yards of any residential area or noise sensitive zone, except for emergency work by public service utilities or by special permit issued by the chief of police. This section shall not apply to the use of domestic power tools as specified in subsection (11) of this section.
- (7) Powered model vehicles. Operating or permitting the operation of powered model vehicles:
 - a. Between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends or holidays in or within 100 feet of any residential areas or noise sensitive zone; or
 - b. In such a manner as to exceed the levels set for public space land use, measured at a distance of not closer than 100 feet (30 meters) from any point on the path of a vehicle operating on a public space or public right-of-way.
- (8) Emergency signaling devices. The intentional sounding or permitting the sounding outdoors of any fire, burglary, or civil defense alarm, fire, whistle, or similar stationary emergency signaling device, except for emergency shall not occur before 7:00 a.m. or after 7:00 p.m., and any testing shall use the minimum cycle test time appropriate for such devices, in no case to exceed 60 seconds. Testing of the complete emergency signaling system, including the functioning of the signaling device and the personnel response to the signaling device shall not occur more than once in each calendar month. Such testing shall occur only on weekdays and not before 7:00 a.m. or after 10:00 p.m., and shall be exempt from the time limit specified in this subsection. The sounding or permitting the sounding of any exterior burglar or fire alarm or any motor vehicle burglar alarm, unless such alarm is automatically terminated within 15 minutes of activation, shall be prohibited.
- (9) Motor boats. Operating or permitting the operation of any motor boat in any lake, river, stream, canal, bay, or other waterway in such a manner as to cause unnecessary and excessive noise within a residential area or noise sensitive zone, or to exceed 86 dB(A) when measured at least 50 feet from the craft.

- (10) Noise sensitive zones. Creating or causing the creation of any sound within any noise sensitive zone so as to exceed the decibels levels set forth for such zone when measured at a distance of at least 25 feet (7.5 meters) from the sound source, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone or the creating or causing the creation of any excessive and unnecessary noise within or adjacent to any noise sensitive zone containing a hospital, nursing home, school, court or other designated area, provided that conspicuous signs are displayed indicating the presence of the noise sensitive zone.
- (11) Domestic power tools. Operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, or similar tool between 10:00 p.m. and 6:00 a.m. on weekdays, or 10:00 p.m. and 7:00 a.m. on weekends and holidays, unless such equipment is operated inside a building or other structure so that the sound therefrom does not travel across any residential real property line or sensitive zone and exceed the levels set forth in Table 1 of [section 17-10](#). All such equipment shall be properly muffled and maintained in working order so as not to create excessive unnecessary noise.
- (12) Multifamily dwellings. Operating or permitting the operation within a multifamily dwelling of any source of sound in a manner so as to exceed 55 dB(A) from 7:00 a.m. to 10:00 p.m. or 45 dB(A) from 10:00 p.m. to 7:00 a.m. on weekdays and 10:00 p.m. to 10:00 a.m. on weekends and holidays, when measured with an adjacent intrabuilding dwelling. These noise limits shall not be exceeded more than ten percent of any measurement, which shall not be less than five minutes. The maximum permissible sound level, when measured in an adjacent intrabuilding area between 10:00 p.m. and 7:00 a.m. on weekdays and 10:00 p.m. and 10:00 a.m. on weekends and holidays shall be 50 dB(A).
- (13) Places of public entertainment. Operating or permitting to be operated any loudspeaker or other source of sound in any place of public entertainment that exceeds the level shown in Table 3, at any point normally occupied by a customer, without a conspicuous and legible sign stating, "WARNING" SOUND LEVELS WITHIN MAY CAUSE PERMANENT HEARING IMPAIRMENT.

Table 3

Permissible Noise Exposures

Duration per day Continuous Hours	Noise Level dB(A)
8	90
6	92
4	95
3	97

2	100
1½	102
1	105
½	110
¼ or less	115

- (14) Refuse collection vehicles. No person shall collect refuse with a refuse collection vehicle between the hours of 7:00 p.m. and 6:00 a.m. on weekdays and 7:00 p.m. and 10:00 a.m. on weekends and holidays within a residential area or noise sensitive zone.
- (15) Recreational motorized vehicles operating off public right-of-way. No person shall operate or cause to be operated any recreational motorized vehicle or motorcycle that exceeds the limits set forth in Table 1 of [section 17-10](#) off the public right-of-way in any residential or noise sensitive zone. This section shall apply to all motorized vehicles or motorcycles whether or not duly licensed and registered.
- (16) Morning to evening. Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise in the city between the hours of 7:00 a.m. and 10:00 p.m. within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained road or public vehicular area, is prohibited.
- (17) Nighttime. Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise in the city between the hours of 10:00 p.m. and 7:00 a.m. the following morning within 100 yards of a dwelling unit, house, trailer or other building ordinarily occupied by another person, when such person who owns or is in control of such building has not given prior consent, or within 25 yards of a publicly maintained highway or public vehicular area, is prohibited.
- (18) Detrimental noise. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited within the city, no matter what the distance of the source of such noise is to any dwelling unit, house, trailer or building occupied by such other person, unless the person in control of such unit, house, trailer or building has given specific consent for such noise to continue.
- (19) Prohibited acts generally. The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

- a. Blowing horns. The sounding of any horn or signal on any automobile, motorcycle, bus or other vehicle, except as a danger signal, so as to create any unreasonably loud or harsh sound or the sound of such device for an unnecessary and unreasonable period of time.
- b. Radios, phonographs, stereo systems, music storage devices etc. The playing of any radio, phonograph, stereo systems, music storage devices or other musical instrument in such manner or with such volume, as to unreasonably annoy or disturb the quiet, comfort or repose of any person in any dwelling unit, house, trailer, building or other type of residence.
- c. Pets. The keeping of any animal or bird, which by causing frequent or long continued noise, shall unreasonably disturb the comfort and repose of any person in the vicinity.
- d. Use of vehicle. The use of any automobile, motorcycle or vehicle so loaded, or operated in such manner as to create an unreasonably loud or unnecessary grating, grinding, rattling or other noise.
- e.

Sec. 17-12. Motor vehicle noise.

(a) No person shall drive or move or cause or knowingly permit to be driven or moved a motor vehicle or combination of vehicles at any time in such a manner as to exceed the following noise limits for the category or motor vehicle shown below. Noise shall be measured at a distance of at least 25 feet (7.5 meters) from the near side of the nearest lane being monitored and at a height of at least four feet above the immediate surrounding surface.

SOUND PRESSURE LEVEL, dB(A)

	Speed limit 35 mph or less	Speed limit over 35 mph
Motor vehicles with a manufacturer's gross vehicle weight rating (GVW) or gross combination weight rating (GCWR) of 10,000 pounds or more, or any combination of vehicles towed by such motor vehicle, except those operated by an interstate motor carrier.		
Such vehicles operated by interstate motor carriers (measured at least 35 feet from the centerline of the traveled lane).	91	95

Any other motor vehicle or any combination of vehicles towed by any motor vehicle.

76

80

(b) This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 17-7 through 17-13 relating to motor vehicle mufflers for noise control.

(c) No person shall operate or cause to be operated any motor vehicle unless the exhaust system of such vehicle is:

- (1) Free from defects which affect sound reduction;
- (2) Equipped with a muffler or other noise dissipative device; and
- (3) Not equipped with any cut-out, bypass or similar device.

Sec. 17-14. Special permits - relief from allowable noise level limits.

Applications for a permit for relief from the maximum allowable noise level limits designated in sections 17-7 through 17-13 may be made in writing to the chief of police or his duly authorized representative. Any permit granted by the chief of police under this chapter must be in writing and shall contain all conditions upon which the permit shall be effective. The chief of police or his duly authorized representative may grant the relief as applied for under the following conditions:

- (1) General conditions and requirements. The chief of police may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens or other sound attenuating devices.
- (2) Permits for entertainment. Permits may be granted for the purpose of entertainment under the following conditions:
 - a. The function must be open to the public; admission may be charged.
 - b. The function must take place on public property or public vehicular areas of shopping centers in an area zoned CIP as prescribed in chapter 30 of this Code, pursuant to subsection (1) of this section.
 - c. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.
- (3) Other conditions. Special permits for nonentertainment special purposes may be issued under the following conditions:

- a.
 - 1. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or
 - 2. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant; and
 - b. If the special purpose be a recurring purpose, that it not recur more often than four times each calendar year; and
 - c.
 - 1. That the special purpose be absolutely necessary to the operation of the applicant's trade or business; or
 - 2. If the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur; and
 - d. Except in emergency situations, as determined by the chief of police, the special permit may be issued only between 7:00 a.m. and 12:00 p.m. on weekdays; and
 - e. The special permit may be issued for no longer than 15 consecutive days, renewable by further application to the chief of police.
- (4) Exterior loudspeaker not permitted. No permit may be issued to permit the use of any loudspeaker or sound amplifying device on the exterior of any building which at any time exceeds the sound level limits in Table 1 of section 17-10 except those used for emergency warnings.
- (5) Appeal. Anyone aggrieved by the provisions of this section shall have the right to appeal the decision of the chief of police to an administrative hearing officer in writing within ten days after receipt of the decision of the chief pursuant to section 1-9 of the City of Fayetteville Code of Ordinances . If the decision of the police chief is not appealed, the decision shall be deemed final.
- (6) At the hearing before the administrative hearing officer pursuant to an appeal as requested pursuant to subsection (5) of this section, the hearing officer shall determine whether issuance of the permit would be detrimental to the public health, safety and welfare of the community. If the hearing officer determines that the issuance of the permit would not be detrimental to the public health, safety and welfare, the hearing officer shall specifically authorize the chief of police to issue the permit to the applicant. If the hearing officer determines that the issuance of the permit would be detrimental to the public health, safety and welfare of the community, the hearing officer shall so notify the applicant, and the chief of police shall not issue the permit.

Sec. 17-15. Reserved.

Sec. 17-16. Noise from radios, tape players, loudspeakers, sound amplifiers.

(a) No person shall play, use, or operate, or permit to be played, used, or operated, any radio, tape recorder, cassette player, music storage device, or other machine or device for reproducing sound, if it is located in or on any of the following:

- (1) Any public property, including any public street, highway, building, sidewalk, park, thoroughfare, or public or private parking lot unless such person receives a special event or public assembly permit; or
- (2) Any motor vehicle on a public street, highway, public space or within the motor vehicular area of any public or private parking lot or park;

and if at the same time the sound generated is audible at a distance of 30 feet from the radio, tape recorder, cassette player, music storage device, or other machine or device that is producing the sound.

(b) Possession by a person of any radio, tape recorder, cassette player, music storage device, or other machine or device for reproducing sound as enumerated in subsection (a) of this section, shall be prima facie evidence that such person operates, or those persons operate, the radio, tape recorder, cassette player, music storage device, or other machine or device for reproducing sound.

Sec. 17-17. Enforcement responsibility for control of excessive noise.

(a) Primary enforcement responsibility. The chief of police of the city shall have primary enforcement responsibility for sections 17-7 through 17-16 as they relate to stationary sources and as they relate to motor vehicle sources.

(b) Powers of arrest or citation. Any police officer shall issue a citation for any violation under this article, except they may arrest for instances when:

- (1) The alleged violator refuses to provide the officer with such person's name and address and any proof thereof as may be reasonably available to the alleged violator; or
- (2) The alleged violator refuses to cease such illegal activity after being issued a citation.

Sec. 17-18. Penalties for violation of sections 17-7 through 17-16.

(a) Any person violating any provision of sections 17-7 through 17-16 shall be subject to a civil penalty in an amount in accordance with the fee schedule as adopted by city

council for each offense, and separate offenses shall be deemed committed on each day during or on which a violation occurs or continues. Any subsequent violation within a 12-month period of a first violation after the enactment of this section shall subject the violator to a civil penalty in accordance with the fee schedule as adopted by city council for each subsequent violation. For purposes of determining subsequent violations within a 12-month period, the date of the first violation from and after the enactment of this section shall be the anniversary date from which a new 12-month period shall begin.

The provisions of this city ordinance and any violation may be enforced by one, or all or a combination of the remedies authorized and prescribed by section 1-7 of the City of Fayetteville Code of Ordinances.

Proposed Noise Ordinance Amendments



City of
Fayetteville
North Carolina





A Modernized Ordinance



- The Police Department seeks to amend the ordinance to reflect American National Standards (ANSI)
- The proposed amendment serves to bring the ordinance in line with current technology
- The amendment makes the ordinance more enforceable but does not change the way sound is measured



Equipment Upgrades



- The adoption of ANSI standards prevents the need for future changes to the amendment as equipment becomes obsolete
- There is no current funding requirement for modernized sound reading equipment
- Standard training is incorporated with the purchase of equipment eliminating the need for additional training cost



Consistency



- The proposed amendment deletes any reference to barking dog violations which is currently enforced by the County Animal Control Ordinance effective July 1, 2013.
- The proposed amendment makes the ordinance consistent with general penalties, enforcement and appeal rights consistent with revisions to City Ordinance Section 1-7



City of
Fayetteville
North Carolina

The City of Fayetteville, North Carolina does not discriminate on the basis of race, sex, color, age, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

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CITY COUNCIL ACTION MEMO

TO: Mayor and Members of Council
FROM: Steven K. Blanchard, PWC CEO/General Manager
DATE: November 18, 2013
RE: **Bid Recommendation - Annexation Phase V-Project VI, Area 15-Arran Hills Subdivision**

THE QUESTION:

The Public Works Commission of the City of Fayetteville requests Council approve bid recommendation to award contract for Annexation Phase V, Project VI, Area 15 – Arran Hills Subdivision

RELATIONSHIP TO STRATEGIC PLAN:

Quality Utility Services

BACKGROUND:

The Public Works Commission, during their meeting of October 23, 2013 approved bid recommendation to award contract for Annexation Phase V – Project VI, Area 15 – Arran Hills Subdivision for the base construction bid plus the alternate bid for temporary patch and overlay to Utilities Plus, Inc., Linden, NC, the lowest responsive, responsible bidder in the total amount of \$2,318,789.62 and forward to City Council for approval. This item is budgeted in FY 2014 as CIP WS 47 – Phase V Annexation. \$2,324,437.50 was budgeted for construction of Area 15. Bids were received on August 28, 2013 as follows:

<u>Bidders</u>	<u>Total Cost</u>
Utilities Plus, Inc., Linden, NC	\$2,318,789.62
State Utility Contractors, Inc., Monroe, NC	\$2,669,419.65
Billy Bill Grading, Inc., Fayetteville, NC	\$2,680,345.00
DeVere Construction, Alpena, MI	\$3,368,579.12

Utilities Plus is a HUB Certified woman-owned business and will self-perform 99% of the work on the contract. Additionally, Utilities Plus, Inc. will be subcontracting 1% of the work to a certified DBE contractor. The total minority utilization on this project is 100%.

ISSUES:

N/A

BUDGET IMPACT:

Fayetteville PWC Budgeted Item

OPTIONS:

N/A

RECOMMENDED ACTION:

The Public Works Commission of the City of Fayetteville recommends to the City Council to award contract for Annexation Phase V – Project VI, Area 15 – Arran Hills Subdivision for the base construction bid plus the alternate bid for temporary patch and overlay to Utilities Plus, Inc., Linden, NC, the lowest responsive, responsible bidder in the total amount of \$2,318,789.62.

ATTACHMENTS:

Bid recommendation

Bid History

TO: Steve Blanchard, CEO/General Manager **DATE:** October 16, 2013

ACTION REQUESTED: Award contract for Annexation Phase V – Project VI, Area 15 – Arran Hills Subdivision for the base construction bid plus the alternate bid for temporary patch and overlay.

BID DATE: August 28, 2013 **DEPARTMENT:** Water Resources Engineering

BUDGET INFORMATION: CIP WS 47 – Phase V Annexation – FY2014 - \$2,324,437.50 was budgeted
for construction of Area 15.

BIDDERS	TOTAL COST
Utilities Plus, Inc., Linden, NC	\$2,318,789.62
State Utility Contractors, Inc., Monroe, NC	\$2,669,419.65
Billy Bill Grading, Inc., Fayetteville, NC	\$2,680,345.00
DeVere Construction, Alpena, MI	\$3,368,579.12

BASIS OF AWARD: Lowest responsive, responsible bidder

AWARD RECOMMENDED BY: Water Resources Engineering and Gloria Wrench

COMMENTS: Plans and specifications were requested by ten (10) contractors with six (6) contractors responding. A bid was received from Burney and Burney Construction; however, their bid was determined to be non-compliant with our specifications. Additionally, a bid was received from Dellinger, Inc.; however, Dellinger requested that their bid not be considered due to an error in calculation of their overlay pricing. Utilities Plus, Inc. submitted all of the required evaluation criteria and upon review, staff has determined they are sufficiently qualified to perform this work.

APPROVED _____ REJECTED _____
DATE _____

APPROVED _____ REJECTED _____
DATE _____

BID HISTORY

ANNEXATION PHASE V, PROJECT VI, AREA 15 - ARRAN HILLS SUBDIVISION BID DATE: AUGUST 28, 2013

Consulting Engineer

W. K. Dickson

Advertisement

- | | | |
|----|--|---------------------------|
| 1. | PWC Website | 07/20/13 through 08/28/13 |
| 2. | Matchforce | 07/20/13 through 08/28/13 |
| 2. | Greater Diversity News, Wilmington, NC | 07/18/13 |

List of Organizations Notified of Bid

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. CRIC, Fayetteville, NC
5. Fayetteville Business & Professional League, Fayetteville, NC
6. SBTDC, Fayetteville, NC
7. FTCC Small Business Center, Fayetteville, NC
8. Fayetteville Area Chamber of Commerce, Fayetteville, NC
9. CEED, Fayetteville, NC
10. Carolinas AGC, Charlotte, NC
11. iSqFt Planroom (Hispanic Contractors Association), Charlotte, NC

List of Contractors Requesting Plans and Specifications

1. Billy Bill Grading, Fayetteville, NC
2. State Utility Contractors, Monroe, NC
3. ES&J Enterprises, Autryville, NC
4. DeVere Construction Co., Raleigh, NC
5. TA Loving Company, Goldsboro, NC
6. Utilities Plus, Inc., Linden, NC
7. Autry Grading, Hope Mills, NC
8. Burney and Burney Construction, Greenville, NC
9. Dellinger, Inc., Monroe, NC
10. Wateree Construction Co., Inc., Sumter, SC

SDBE Participation

Utilities Plus is a HUB Certified woman-owned business and will self-perform 99% of the work on the contract. Additionally, Utilities Plus, Inc. will be subcontracting 1% of the work to a certified DBE contractor. The total minority utilization on this project is 100%.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Harper, Assistant City Attorney
DATE: November 18, 2013
RE: Request for Legal Representation of City Employee

THE QUESTION:

Whether to authorize the request for legal representation.

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient City Government – Cost Effective Services Delivery

BACKGROUND:

Police Officer Zachery Pittman is employed by the City of Fayetteville. Officer Pittman has been named as a Defendant in a federal lawsuit by Herman Harris as a result of the injuries he sustained during pursuit. Officer Pittman was acting in the scope and course of his employment with the City when Mr. Harris was injured. Officer Pittman has requested legal representation pursuant to N.C.G.S. § 160A-167, which states that the City may provide for the defense of a civil action brought against an employee based on an act allegedly done, or omission allegedly made, in the scope and course of his employment or duty as a City employee.

ISSUES:

None

BUDGET IMPACT:

Unknown at this time.

OPTIONS:

1. Authorize the request for legal representation.
2. Reject the request for legal representation.
3. Provide additional direction to staff.

RECOMMENDED ACTION:

Staff recommends that Council authorize the City to provide legal representation for employee Zachery Pittman.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen S. Hilton, AICP, Manager, Planning and Zoning
DATE: November 18, 2013
RE: **Amendment to Article 30-5 to modify standards for pedestrian pathways in parking lots.**

THE QUESTION:

Should the standards for providing a pedestrian pathway in larger surface parking lots (over 200 cars) be modified to correct an error and provide flexibility?

RELATIONSHIP TO STRATEGIC PLAN:

Livable City; beauty by design

BACKGROUND:

Pedestrian pathways are required in large surface parking lots (over 200 cars) to provide safe, clearly identified walking areas and to help organize and manage vehicular circulation with the large lots. Current standards require one pedestrian pathway for every six rows. Staff recognized that six rows (which could also be described as three parking bays) is too short a distance to serve as a hard and fast requirement, and therefore provided the working interpretation of six bays until an amendment could be considered.

The Planning Commission held a public hearing October 15, 2013; there were no speakers for or against. The Commission confirmed that staff received input from the development community. The Planning Commission voted unanimously to recommend approval of the revisions providing three options for pathways in large surface parking lots.

ISSUES:

Experience with site plans for larger developments and review of standards elsewhere confirmed that the six rows of parking requiring a pathway was too short an area, but 6 bays as a minimum was too great a distance (over the length of a football field). Most people prefer to continue searching for a parking space or to move a vehicle when the walking distance exceeds 200 feet to the store or a defined, attractive pathway (and particularly in more suburban developments). With input from the development community, the amendment provides:

1. three options for pathways and the potential to eliminate landscape islands along the pathway;
2. the ability to count two of the options at 100% or 150% toward open space, depending on features;
3. a more fully described objective, providing a basis for the City Manager's determinations in when the landscaped pedestrian pathway may not be required and where placement could be adjusted.
4. the administrative flexibility noted in #2 above;
5. a 15% percent allowance ("discount") for spaces in more remote, outlying areas such as in irregularly shaped lots.

BUDGET IMPACT:

No direct impact.

OPTIONS:

1. Approve the text amendments as presented by staff (Recommended).
2. Modify the proposed text amendment.

3. Defer action or remand to the Planning Commission with guidance regarding further research or change.
4. Deny the proposed text amendment.

RECOMMENDED ACTION:

The Planning Commission and staff recommend that City Council move to APPROVE the ordinance to modify standards for pedestrian pathways in large surface parking lots.

ATTACHMENTS:

Draft Ord - pedestrian pathways in pkg lots

PC Analysis - staff report

powerpoint

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND CHAPTER 30-5 TO MODIFY THE REQUIREMENTS FOR PEDESTRIAN PATHWAYS IN LARGE SURFACE PARKING LOTS.

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and subsequently amended, be amended as follows:

Section 1. In 30-5.A.11(f) Pedestrian Pathways, change Item (1) as shown below, to describe the purpose and reference a new table. Also in 30-5.A.11(f)(5), sidewalk width is changed to be consistent with other sidewalk requirements. Approval of this section also authorizes revisions to Figure 30-5.A as needed to be consistent with the adopted standard.

30-5.A.11. (f) Pedestrian Pathways

Off-street surface parking lots with 200 or more spaces shall provide fully-separated, improved pedestrian pathways that:

- (1) Are organized into a series of smaller modules providing fully-separated, connected, and convenient access for pedestrians and are located in accordance with Table 30-5.A.11, Pedestrian Pathway Options (below), unless exempted by the city manager (also see Section 30-5.B.4.(c)(3)f); Are located within planted landscaping strips located a minimum of every six parking rows

.....

- (5) Are in compliance with applicable State and Federal requirements while at a minimum, are at least four-five feet wide when located within a planted median ~~planting strips~~, and ten feet wide when crossing drive aisles;

Section 2. In 30-5.A.11(f) Pedestrian Pathways, add a new table as follows.

[new] Table 30-5.A.11. (f) Pedestrian Pathway Options¹			
Components	Option 1	Option 2	Option 3
Min. Width of Pathway Area	10'	20'	25'
Min. Sidewalk Width	5'	5'	5'
Landscaping	Ground cover	Ground cover + understory trees	Ground cover + canopy trees

Tree spacing /Size	N/A	20'/2" caliper	40'/3" caliper
Parking Spaces	85% w/in 150'*	85% w/in 205'*	85% w/in 270'*
Adjoining Interior Islands?	Required	Waived	Waived
Count as Open Space?	No	Yes; 100%	Yes; 150%

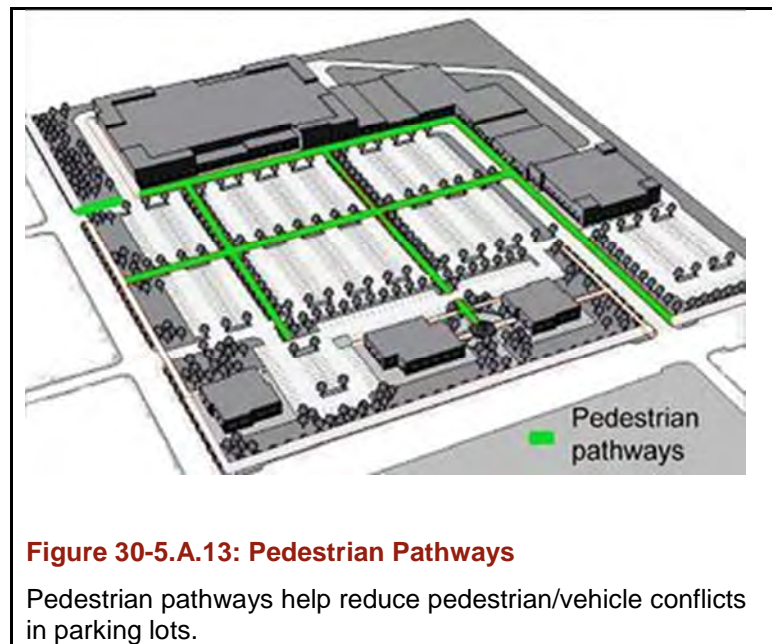
*measurement taken to the centerline of the sidewalk.

Footnote 1: Examples of each option include:

Option 1- 2 bays (128' & 5' to centerline of sidewalk; plus 17' wiggle room) ;4 bays between pathways

Option 2- 3 bays (192' & 10' to centerline of sidewalk; plus 3' wiggle room); 6 bays between pathways

Option 3- 4 bays (256' & 12.5' to centerline of sidewalk; plus 1.5' wiggle room); 8 bays between pathways



Section 3. Revise Section 30-5.B.4.(c)(3) Interior Vehicular Use Area Landscaping Standards, to eliminate redundant text and provide an option for tree plantings along pedestrian pathways.

30-5.B.4.(c)(3) Interior Vehicular Use Area Landscaping Standards

- f. ~~Off-street surface parking areas with 200 or more spaces shall be organized into a series of smaller modules visually separated by a median located at least every six parking rows which includes a ten foot wide landscaping strip planted with canopy trees (spaced 25 to 40 feet apart, depending on the mature size of the selected species) and a pedestrian pathway. When a pedestrian pathway median (see Section 30-5.A.11(f), Pedestrian Pathways) is widened to accommodate trees and the minimum planting area referenced in Section 30-5.B.3.E(3) is observed, the adjacent tree islands that would otherwise be required every 12 parking spaces (see Section 30-5.B(c)(3)c, above), may be eliminated in this area. Other requirements of this section still apply. As a design option, the pedestrian pathway may bisect the median (as~~

~~illustrated in Figure 30-5.A.11.f, Pedestrian Pathways), as long as each adjoining landscape strip is at least seven feet wide and is planted with understory trees (spaced 15 to 25 feet apart based upon selected species).~~

Section 4. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.

Section 5. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the 18th day of November, 2013.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

**Planning Commission
Staff Report
October 15, 2013
Proposed Text Amendment
Pedestrian Pathways in Parking Lots**

Proposed amendment: Staff-initiated text amendment to modify requirements for pedestrian pathways in large parking lots.

Background: The proposed amendment reflects staff experience during daily application of the new development code. This is part of an on-going overall fine-tuning and correcting typical of completely re-written codes. Staff proposes a change in the dimensions that guide the requirements and characteristics for a pedestrian pathway in a large parking lot. Current standards require one for every six rows. Because six rows could also be described as three parking bays, which is too short a distance to serve as a hard and fast requirement, interpretation has recognized that to mean six bays until an amendment could be considered.

Experience with site plans for larger developments revealed that the six rows of parking requiring a pathway may be too short an area, but 6 bays is beginning to be too great a distance (over the length of a football field), when most people prefer to continue searching for a parking space or to move a vehicle when the walking distance exceeds 200 feet in shopping areas (and particularly those in more suburban developments). Staff has drafted three options for pathways, two of which allow the pathway to be counted 100% or 150% toward open space. The objective to be achieved is more fully described, providing a basis for the City Manager's determinations in when the landscaped pedestrian pathway may not be required and where placement could be adjusted. Following additional review and comment, staff will present the recommendations with any appropriate changes at the October Planning Commission meeting, or will request continuation and bring the final draft to the November Planning Commission meeting.

Analysis: The UDO provides seven standards of review for proposed text amendments. Each standard is listed in the following table.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	Supports Strategic Plan goals for more efficient City government, more attractive city and growing city.
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	No direct conflict is apparent, and inconsistencies that have been identified are being removed by this amendment.
3) Whether and the extent to which there are changed conditions that require an amendment;	These adjustments should remove some conflicts or areas of confusion and more accurately reflect a pattern that provides safe, convenient pedestrian pathways from parking areas to the destination without being so far apart as to be useless to most patrons nor overly demanding of the development.

4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	These adjustments should remove some conflicts while retaining the public safety aspects of the pedestrian walkway requirement balanced with development needs. Equally important, the changes provide the flexibility to address the various configurations and relationship to surrounding activity areas and desired or logical pedestrian movement.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	The change related to the more flexible standard in the provision of pedestrian pathways in large parking areas should allow a better fit in specific areas consistent with public goals and adopted plans.
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	The change to the standards for pedestrian pathways would contribute to a more logical and orderly development pattern consistent with public goals and adopted plans.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.	There should not be negative environmental impacts.

Options:

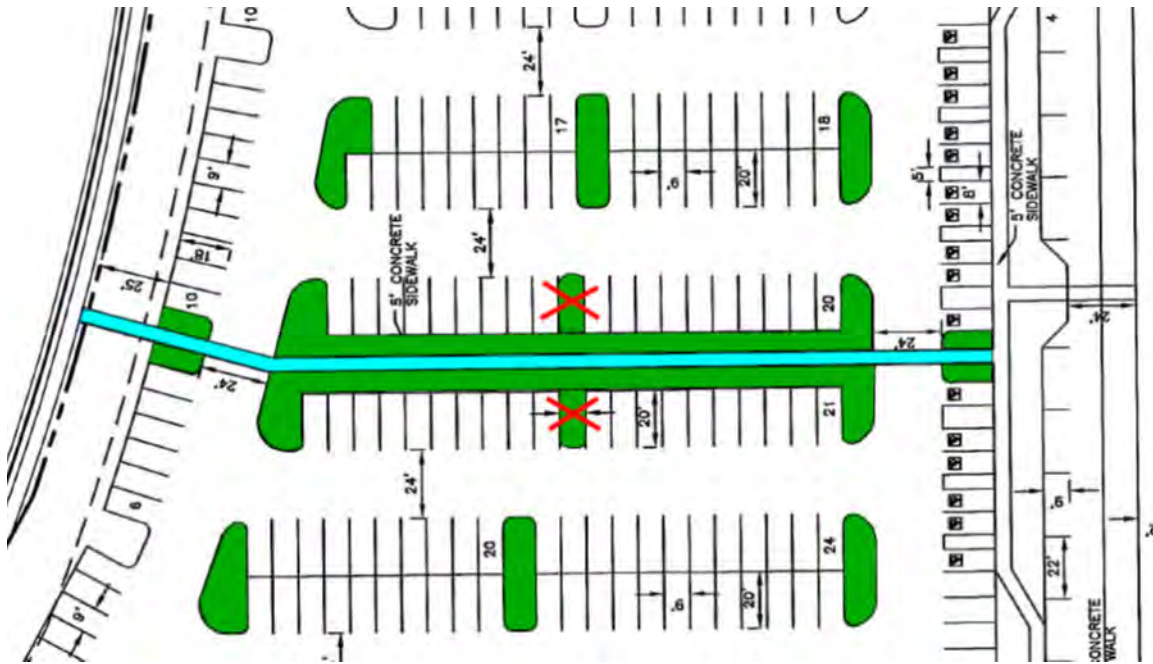
- Approval of the text amendment modifying standards for pedestrian pathways (recommended by staff)
- Approval with modifications of the proposed text amendment.
- Continue the hearing to a date certain with direction for further research or change.
- Denial of the proposed text amendments.

Recommendation.

~~Option 1: If the development advisory committee has not completed its review and comments or has comments with major changes needing further staff analysis, staff will recommend CONTINUATION of the public hearing on the proposed amendment regarding pedestrian pathways in large surface parking areas.~~ *[The advisory committee completed its review and accepted the approach with three options.]*

Option 2: Staff recommends approval of the proposed amendment regarding three options for pedestrian pathways in large surface parking areas.

Attachment: Illustrations
Draft Ordinance



The islands along a landscaped median / pathway may be removed if the median or pathway is at least twenty feet in width.



The major activity points around the anchor store are connected by landscaped walkways and crosswalks of distinctly different markings or materials.

City Council Public Hearings November 18, 2013



City of
Fayetteville
North Carolina



Text Amendment

to modify requirements for pedestrian pathways in large parking lots

Pedestrian Pathways

- Purpose:
 - Organize circulation patterns for both pedestrians and vehicles
 - Provide safe paths for pedestrians to a distant destination point or when crossing from one activity area to another
 - Reduce the sea of parking to more manageable pedestrian-scaled “rooms”
 - Achieve the above while adding value to the business through the overall appearance and perception of quality

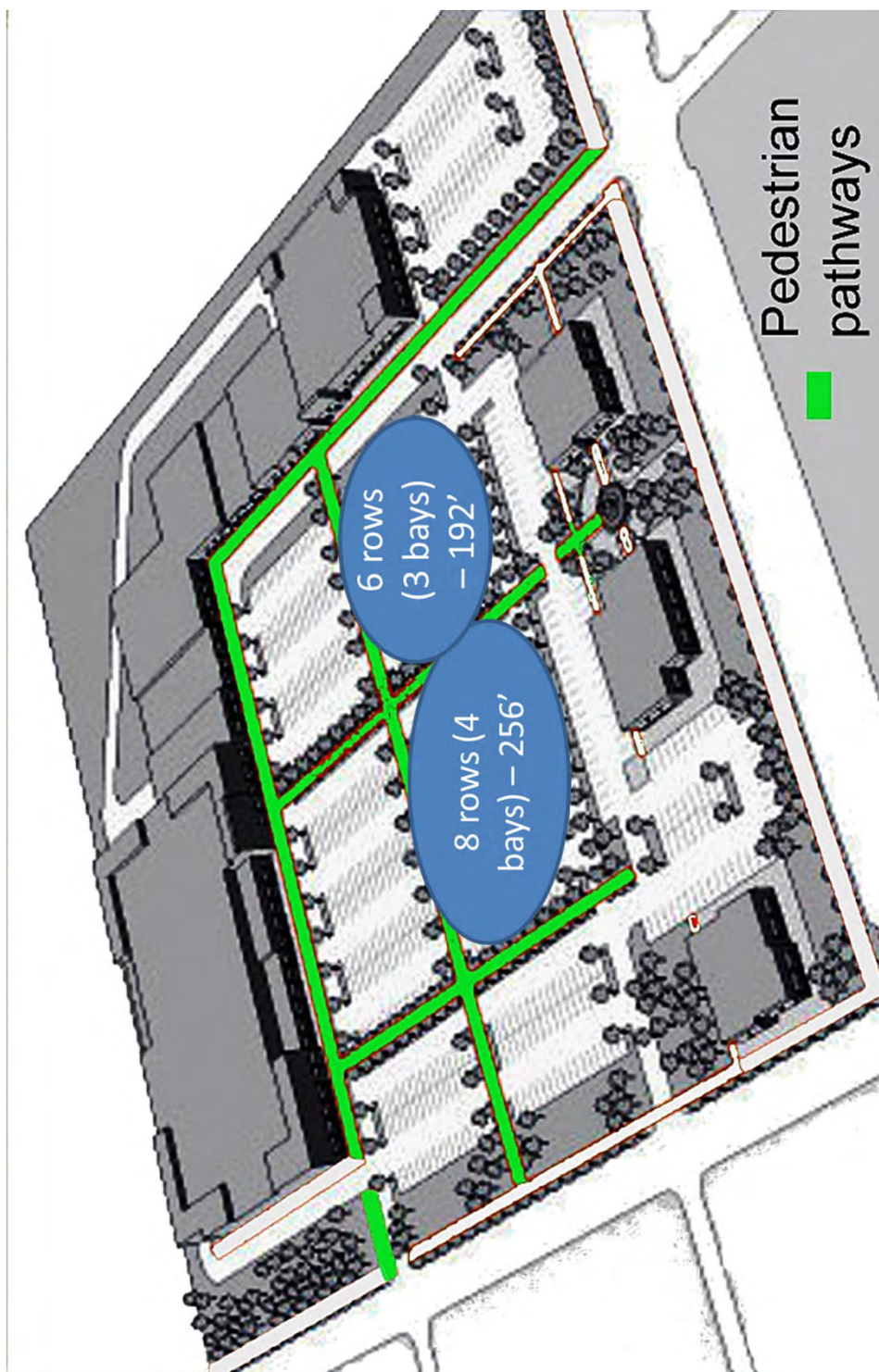
Pedestrian Pathways



- Issues:
 - Current text: specifies 6 rows, considered too close to warrant a 10-20' wide pathway every 6 rows.
 - Interpretation until an amendment can be approved: every 6 bays*, considered too far apart to be the minimum standard.
 - Clear, predictable standard needed but with flexibility for irregularly shaped lots, different circulation patterns

*Bay = travel aisle plus the row(s) of parking spaces accessed from the aisle

Pedestrian Pathways



Pedestrian Pathways



Pedestrian Pathways

Proposed Changes:

[new] Table 30-5.A.11. (f) Pedestrian Pathway Options¹

Components	Option 1	Option 2	Option 3
Min. Width of Pathway Area	10'	20'	25'
Min. Sidewalk Width	5'	5'	5'
Landscaping	Ground cover	Ground cover + understory trees	Ground cover + canopy trees
Tree spacing /Size	N/A	20'/2" caliper	40'/3" caliper
Parking Spaces	85% w/in 150'*	85% w/in 205'*	85% w/in 270'*
Adjoining Interior Islands?	Required	Waived	Waived
Count as Open Space?	No	Yes; 100%	Yes; 150%

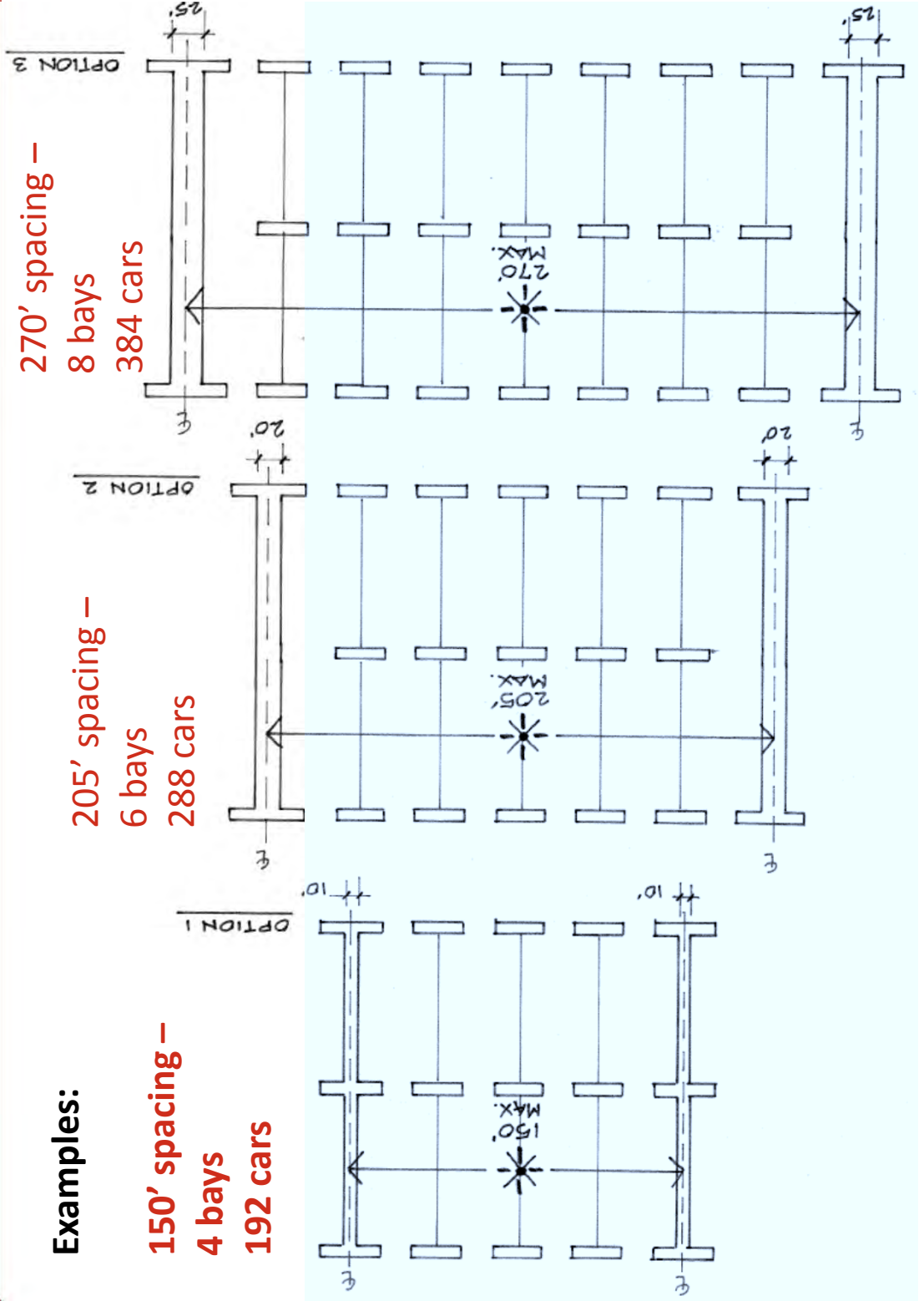
Pedestrian Pathways

Examples:

**150' spacing –
4 bays
192 cars**

**205' spacing –
6 bays
288 cars**

**270' spacing –
8 bays
384 cars**



Pedestrian Pathways

RECOMMENDATION:

Planning Commission and staff recommend approval of the proposed changes providing options for provision of a pedestrian pathway in lots with over 200 cars.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen S. Hilton, AICP, Manager, Planning and Zoning
DATE: November 18, 2013
RE: **Amendment to City Code Chapter 30 to modify zero lot line standards and allow it in additional zoning districts**

THE QUESTION:

Should these changes to zero lot line development standards be approved?

RELATIONSHIP TO STRATEGIC PLAN:

A Great Place to Live -- Livable Neighborhoods

BACKGROUND:

The proposed changes to zero lot line standards reflect extensive discussion with the development community. ZLL standards are used in a relatively unique way in Fayetteville, to provide significant flexibility in setback and lot area standards and, in many instances, some increase in actual density as well as greater ease in achieving the maximum allowed density because of the increased options in lot layout. The flexibility in setback requirements is essential in (re)development of smaller sites in established areas -- "infill development."

Because of concerns about infill on small lots in established residential areas and the potential to be incompatible with the existing development pattern, the current standards require a special use permit for development sites of less than three acres. Because of the time and the uncertainty associated with the two hearings for the SUP, representatives of the development community are seeking a reduction or elimination of the special use process for smaller ZLL developments. Under the former code, a neighborhood meeting and one public hearing before the Planning Commission was required for infill projects.

ZLL currently is allowed only in SF-15, SF-10, SF-6, MR-5, OI, NC, LC, and CC districts. The development community has asked for ZLL to be available in the AR Agricultural District.

The Planning Commission heard two speakers in favor of the proposed amendment at its meeting on September 17, 2013. The Commission voted unanimously to recommend Approval.

ISSUES:

The Planning Commission and Staff believe the ZLL standards can be accommodated in the AR district, although the Conservation Subdivision standards allow the same lot flexibilities. The proposed changes also make ZLL standards available in the two industrial districts, although it would be beneficial in relatively few instances because of the separation typically needed by industrial development. The proposed changes delete the Special Use Permit requirement for small residential developments but add standards for setbacks and, for single family development, compliance with Article 5 design standards plus additional standards for street orientation.

Subsequent to the Planning Commission meeting, staff identified two additional changes of value that should be applied to all new single-family detached and attached residential developments using zero lot line standards: (1) limitations on the parking area in front of the units, and (2) Article 5 standards apply regardless of size (otherwise, certain standards only apply to larger developments). Other community members active in drafting earlier infill standards and the current UDO standards have described scenarios that may not be adequately covered by the proposed standards. City Council tabled the hearing to the November 18 meeting to allow further discussion.

A meeting was held with interested parties and opportunities for compromise were identified. All

parties are in favor of continuing this item to allow additional collaborative discussions to occur.

BUDGET IMPACT:

No direct impact.

OPTIONS:

1. Approve the text amendment as presented, including the standards identified in the separate, updated report.
2. Deny the text amendment
3. Approve the text amendment with additional changes
4. Remand the text amendment to the Planning Commission with directions
5. Table the item until City Council's first meeting in January, tentatively scheduled for January 13, 2014 (recommended).

RECOMMENDED ACTION:

ORDINANCE AND RECOMMENDATION PENDING FURTHER MODIFICATION

The staff recommends that the City Council move to TABLE the text amendment modifying zero lot line application subject to certain standards until City Council's first meeting in January, tentatively scheduled for January 13, 2014.

ATTACHMENTS:

Draft Ord - ZLL

Evaluation Criteria report

CC ppt - ZLL

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO AMEND VARIOUS SECTIONS OF CHAPTER 30 TO MODIFY STANDARDS RELATING TO ZERO LOT LINE DEVELOPMENT.

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the Unified Development Ordinance adopted December 13, 2010 as Chapter 30 of the Code of Ordinances of the City of Fayetteville and subsequently amended, be amended as follows:

Section 1. Delete the entirety of Section 30-3.B.2 Zero Lot Line Applicability after the introductory paragraph and replace it with the following: *[red-lining used to inform as to existing language, what is deleted, and what is retained/modified]*

30-3.B.2. Zero Lot Line Applicability

In addition to traditional development, this Ordinance also allows zero lot line development in the agricultural, residential and business districts to provide flexibility in lot layout for greater development efficiency and density and/or in addressing site constraints. The zero lot line standards are allowed under the circumstances in the districts identified in Section 30-3.B.2.a, Applicability and subject to meeting certain conditions. Zero lot line development is subject to review and approval of a Major Site Plan (see Section 30-2.C.5). ~~Zero lot line development on a tract or site smaller than three acres also requires a Special Use Permit (see Section 30-2.C.7).~~ Zero lot line development is subject to all applicable use standards (Article 30-4), subdivision requirements (Article 30-6), and applicable design and development standards (Article 30-5).

(a) Applicability

- (1) ~~Table 30-3.B.2, Zero Lot Line Applicability, specifies under what circumstances zero lot line development is allowed in accordance with this Ordinance.~~ Districts

Zero lot line development is allowed in the agricultural, residential and business (AR, SF-15, SF-10, SF-6, MR-5, OI, NC, LC, CC, MU, and BP, LI and HI) zoning districts subject to specific conditions noted below.

(b) Procedure

(1) Major Site Plan Required

All applications for zero lot line development shall be reviewed as a Major Site Plan in accordance with the procedures and requirements in Section 30-2.C.5, Site Plan.

~~(2) Special Use Permit Required~~

~~In addition, a Special Use Permit (see Section 30-2.C.7), may also be required in accordance with Table 30-3.B.2 Zero Lot Line Applicability.~~

(3) Simultaneous Review

The review of the application for a Major Site Plan, Conditional Zoning or Special Use Permit (if required), and Alternative Plans (landscaping or parking, as may be applicable, or Administrative Adjustment, ~~if~~

requested) shall be conducted simultaneously, to the maximum extent possible.

(c) Standards

(1) Density

Zero lot line development shall comply with the maximum allowable gross density and maximum height requirements in the base zoning district where proposed, and the following standards:

(2) Required Setbacks

In ZLL developments, the following setbacks shall be observed:

- a. A minimum front or corner side setback of 15 feet shall be provided for all principal structures.
- b. Accessory structures shall not be located in any front or side yards for single family (detached and attached), duplex, triplex and quadraplex developments.
- c. Accessory structures of 15 feet or less in height shall be setback a minimum of 5 feet from any property line. Accessory structures greater than 15 feet in height shall be setback a minimum of 10 feet from any property line.
- d. Setbacks associated with an overlay district or any applicable setbacks from natural resources shall apply to all lots within a zero lot line development.

(3) Compliance with Design Standards

All zero lot line development **regardless of size** shall comply with all applicable development standards in Article 30-5: Development Standards, including the single-family, multi-family, commercial, office, and mixed-use, large retail, and transitional standards in Article 30-5: Development Standards.

(4) Conditions for residential development:

a. Orientation: Except as provided below, all dwellings on the exterior of a ZLL development that adjoin an existing street shall be oriented so that the primary entrance faces the adjoining street. In the case of corner lots, the primary entrance shall face the street from which the dwelling derives its street address.

Exception: When rear or side yards face the adjoining existing street(s), a Type A landscaped buffer shall be provided along the affected street(s). Any fences or walls installed shall be interior to this buffer and shall comply with the design standards of Article 30-5 for fences and walls. Gates or openings in such fences and walls may be provided for access purposes, including maintenance. Such buffers shall be shown on any final plans, plats or deeds, as applicable.

b. Parking: Vehicle Use Areas for residential development in any single-family district shall not exceed 50 percent of the area between the street right-of-way and the front façade of the house.

Section 2. In Article 30-3, in the tables and, specifically, the NOTES in each of the following zoning districts, SF-15, SF-10, SF-6, MR-5, OI, NC, LC, CC and MU, delete the note that begins “Zero lot line development on a tract or site of three acres ... “.

Section 3. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future text amendments as long as doing so does not alter the material terms of the Unified Development Ordinance.

Section 4. It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the 28th day of October, 2013.

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

**Staff Report
September 17, 2013
Proposed Text Amendment
Zero Lot Line Amendments**

Proposed amendment: Staff-initiated text amendment to modify zero lot line (ZLL) standards and allow ZLL in additional zoning districts.

Background: The proposed changes to zero lot line standards reflect extensive discussion with the development community. ZLL standards are used in a relatively unique way in Fayetteville, to provide significant flexibility in setback and lot area standards and, in many instances, some increase in actual density as well as greater ease in achieving the maximum allowed density because of the increased options in lot layout. Because of concerns about infill on small lots in established residential areas and the potential to be incompatible with the established development pattern, the existing standard require a special use permit for development sites of less than three acres. ZLL is currently allowed only in SF-15, SF-10, SF-6, MR-5, OI, NC, LC, and CC districts.

The development community has asked for ZLL to be available in the AR Agricultural District, and for reduction or elimination of the special use process for smaller ZLL developments.

Analysis: Staff believes the ZLL standards can be accommodated in the AR district, although the Conservation Subdivision standards allow the same lot flexibilities. Staff also supports making ZLL standards available in the two industrial districts, although it would be beneficial in relatively few instances because of the required separation from non-industrial development. In dropping the Special Use Permit requirement for small residential developments, staff recommends clearly established minimum standards relative to the design and setbacks for single family ZLL infill.

The UDO provides seven standards of review for proposed text amendments. Each standard is listed in the following table, although with basically corrections and minor adjustments, the analysis is only relevant in a few situations or very generally.

Standard	Analysis
1) Whether and the extent to which the proposed amendment is consistent with all City-adopted plans that are applicable;	Supports Strategic Plan goals for more efficient City government, more attractive city and livable neighborhoods.
2) Whether the proposed amendment is in conflict with any provision of this Ordinance, and related City regulations;	No direct conflict is apparent, and inconsistencies that have been identified are being removed by this amendment.
3) Whether and the extent to which there are changed conditions that require an amendment;	The simplified process (only the existing major site plan review) in exchange for clear design and development standards for residential infill and in other certain situations provides the developer the valued flexibility and ease of use while continuing to

	reinforce neighborhood compatibility.
4) Whether and the extent to which the proposed amendment addresses a demonstrated community need;	These changes reflect development needs and an efficient and effective review and approval process while providing for compatibility with established development.
5) Whether and the extent to which the proposed amendment is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and would ensure efficient development within the City;	The changes provide increased applicability and flexibility while remaining consistent with public goals and adopted plans.
6) Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern; and	The changes should continue to provide a logical and orderly development pattern consistent with public goals and adopted plans.
7) Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment.	There should not be negative environmental impacts.

Options:

- Approval of the text amendment to extend and modify zero lot line regulations (recommended by staff)
- Approval with modifications.
- Denial of the proposed text amendments.
- Continue the hearing to a date certain with direction for further research or change.

Recommendation. Based on staff experience with the current code, staff recommends approval of the draft ordinance modifying zero lot line regulations and applicability.

Attachment: Draft Ordinance



Text Amendment



**to modify zero lot line (ZLL) standards
and allow ZLL in additional zoning
districts**

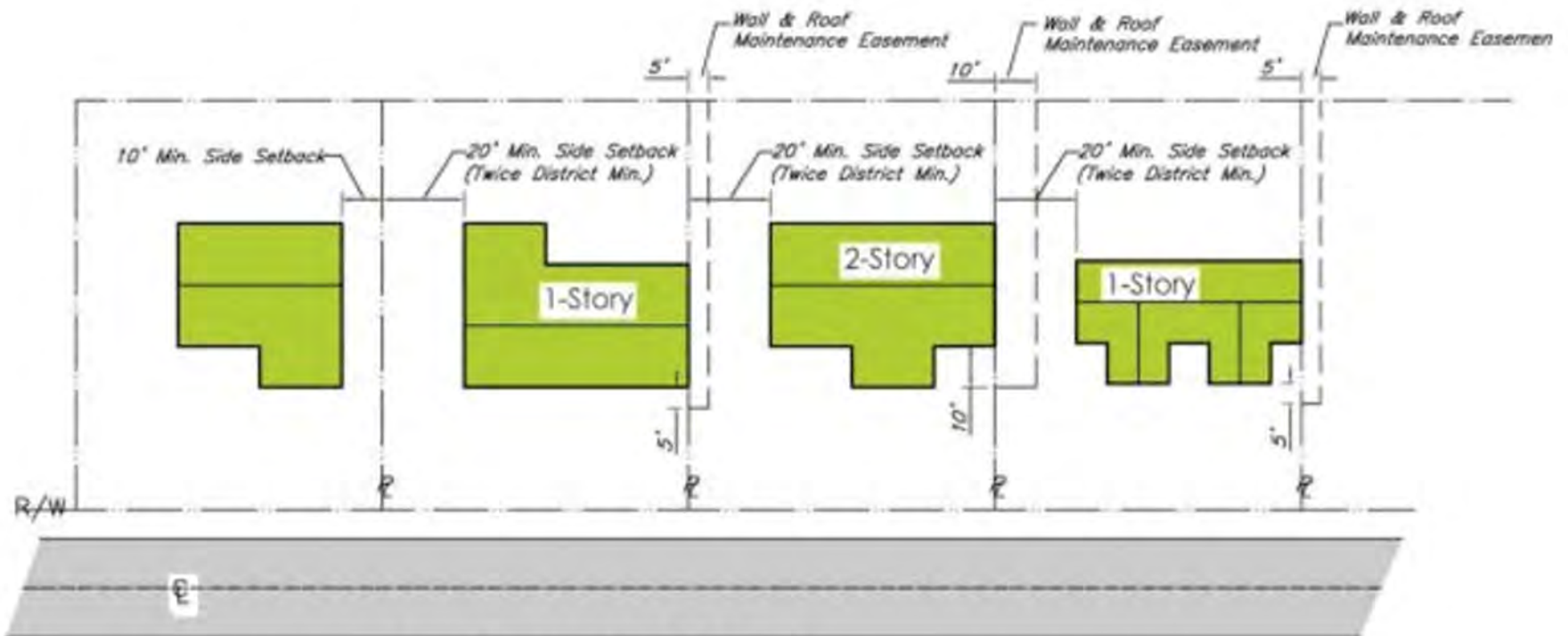
Zero Lot Line



- Zero Lot Line: a tool to provide flexibility in setbacks and lot dimensions when two or more structures intended for individual ownership are being built.

ZLL Elsewhere

Zero Lot Line Dimensional Requirements



- Based on R-3 Zoning.

Zero Lot Line



- **Local application:** more like “cluster development” in providing flexibility in all lot and setback dimensions except on perimeter dimensions, at a slightly higher density.
- **Benefits:** Developer can maximize allowed density; oddly shaped or constrained sites become more usable; infill becomes feasible.

Zero Lot Line



- **Issues with Current Standards:**
 - complex table;
 - special use hearing process for small residential sites discourages infill (re)development;
 - cannot be used in AR, BP, LI or HI districts.

Proposed



- **Proposed Standards:**
 - deletes complex table;
 - allows ZLL in AR and all other base districts;
 - establishes 15' minimum front setbacks;
 - clearly includes design standards;
 - for single family development, adds standards:
 - Type A buffer when side or rear yard faces the front of another house
 - orientation is to the street

Zero Lot Line



Related impacts of change: infill process

- Under old code, following issues with incompatible infill in neighborhoods, a process was set up for a neighborhood meeting and one hearing before the Planning Commission.
- Currently, infill development on small sites (less than 3 acres) requires SUP (two quasi-judicial hearings).
- The proposed change relies on design standards in Article 5 and with ZLL changes to provide the compatibility with surrounding development.



7-2-3

Zero Lot Line



- **ZLL Standards:**
 - Must meet Article 5 standards **regardless of size**
 - Minimum setbacks for front and corner yards (15')
 - Locational standards for accessory structures
- **SF Design Standards in Article 5:**
 - (a) Building Orientation (including to open space)
 - (b) Garage Standards
 - (c) Roof Projections
 - (d) Foundations
 - (e) Architectural Variability
- **Driveway width limitations** (in Community Form)
- **Parking area (vehicular use area) \leq 50% of front area**



Raeford and Dobbin

Rowan and McAllister





Morganton and Bethune

Farrington lane



Groton Avenue

Options



- Approve the text amendment as presented, including the two modifications for parking area and project size (recommended)
- Deny the text amendment
- Approve the text amendment with additional changes
- Remand the text amendment to the Planning Commission with directions

Zero Lot Line



RECOMMENDATION:

Planning Commission and Staff recommend approval of the proposed changes to the zero lot line standards, as presented, including the two changes recommended.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Craig M. Harmon, AICP, CZO - Senior Planner
DATE: November 18, 2013
RE: **P13-35F. The rezoning of property from AR – Agricultural Residential and SF-10 – Single Family Residential to OI – Office and Institutional or to a more restrictive district, for property located at 7733 and 7729 Hazelwood Avenue and being the property of Barbara Donovan, Janis Patterson & Michael Kravo (formally Gillis Development Corporation).**

THE QUESTION:

Request to rezone property to OI.

RELATIONSHIP TO STRATEGIC PLAN:

Growth and development

BACKGROUND:

Applicant: Tim Evans (representative for the owner)
Requested Action: AR & SF-10 to OI
Property Address: 7733 and 7729 Hazelwood Avenue
Council District: 7
Status of Property: 2 properties have single family residential on them and one is vacant and undeveloped.
Size: 1.7 acres +/- (to be rezoned)
Adjoining Land Use & Zoning:
North - AR & SF-10 Church & daycare
South - CC Commercial undeveloped
West – AR Church
East – LC Commercial strip center & SF-10 undeveloped
Letters Mailed: 49
Land Use Plan: Low Density Residential

ISSUES:

The requested action involves three properties. Two of these properties are zoned AR and have single family houses on them. The third property is split zoned LC (on Old Raeford Road) and SF-10 (on Hazelwood Avenue). Two churches, a daycare and small commercial strip center surround these properties. While the City's Land Use Plan does call for low density residential on these properties, there is only one residence in the surrounding area. All of the residential development is on the north side of Hazelwood Avenue and is not adjacent to these properties. The City's Unified Development Ordinance calls for OI districts to be used as a buffer or transitional zoning between heavy commercial and residential zoning districts.

On October 8th the Zoning Commission met and held a public hearing on this case. There were two speakers for this item, one in favor and one in opposition. After hearing arguments from both sides, the Commission voted to recommend approval 4-1. The speaker in opposition (Mr. Arreola) filed an appeal on this case

The Zoning Commission and staff recommend Approval of the proposed rezoning based on:

1. The OI zoning district is an appropriate transition district between commercial and residential uses.
2. If approved, there would be no residential development on the south side of Hazelwood Avenue.
3. The portion of this property to the south, along Old Raeford Road, is already zoned LC for commercial use.

BUDGET IMPACT:

This action would result in an increase in City services that will be offset by the revenue the City will collect in property taxes.

OPTIONS:

- 1) Approval of the rezoning to OI (Recommended).
- 2) Approval of the rezoning to a more restrictive district.
- 3) Denial of the rezoning.

RECOMMENDED ACTION:

Zoning Commission and Staff Recommend: That the City Council move to APPROVE Case P13-35F rezoning the subject property to OI - Office and Institutional as presented by staff.

ATTACHMENTS:

Zoning Map
Current Land Use Map
Land Use Plan Map
Site Photo 1
Site Photo 2
Site Photo 3
Site Photo 4

ZONING COMMISSION

CASE NO. P13-35F



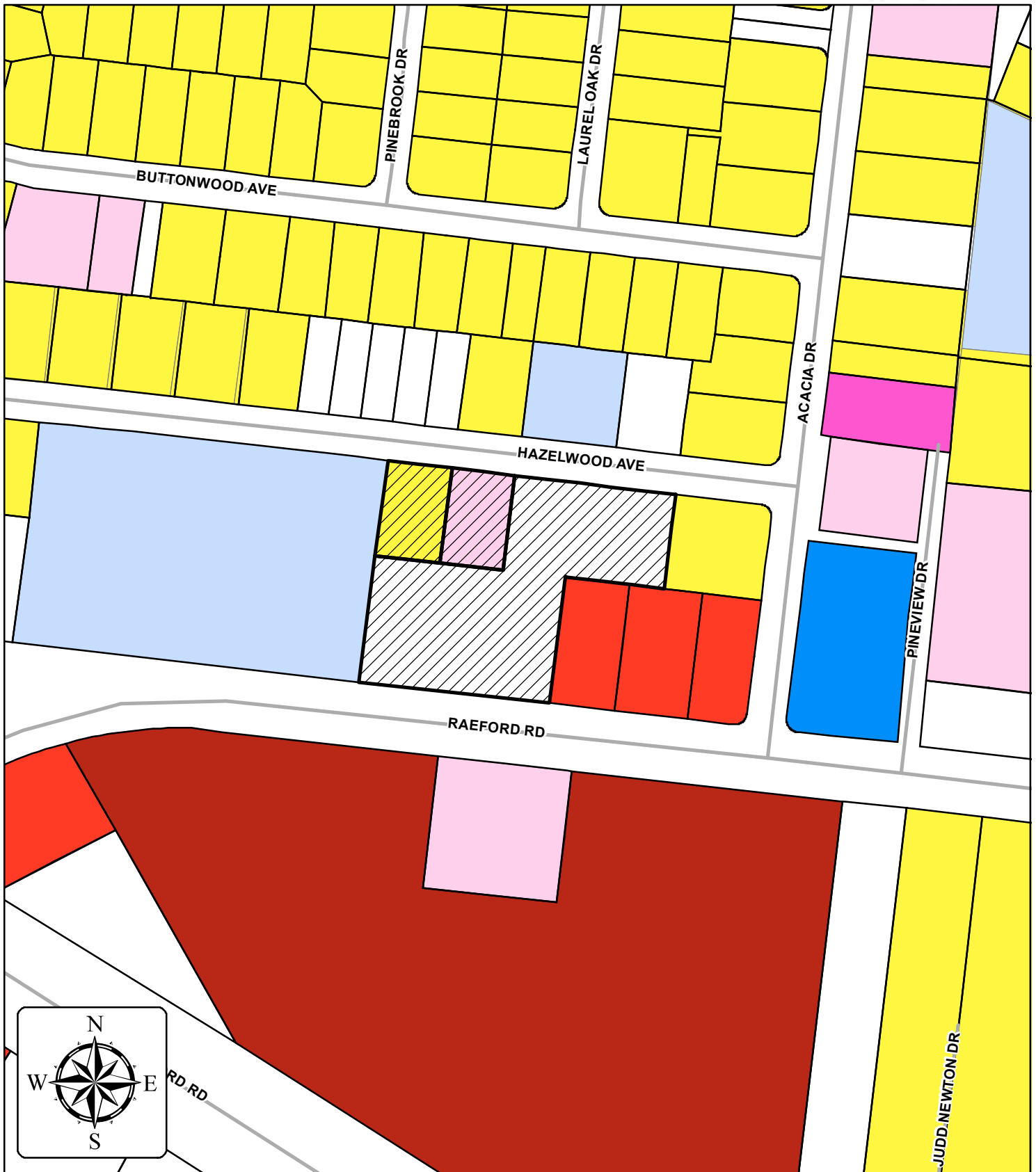
Request: SF-10 & AR to OI
Location: Hazewood Dr

Zoning Commission: 10/8/2013 Recommendation: _____
City Council: _____ Final Action: _____

Letters are being sent to all property owners within the circle, the subject property is shown in the hatched pattern.

Current Land Use

P13-35F

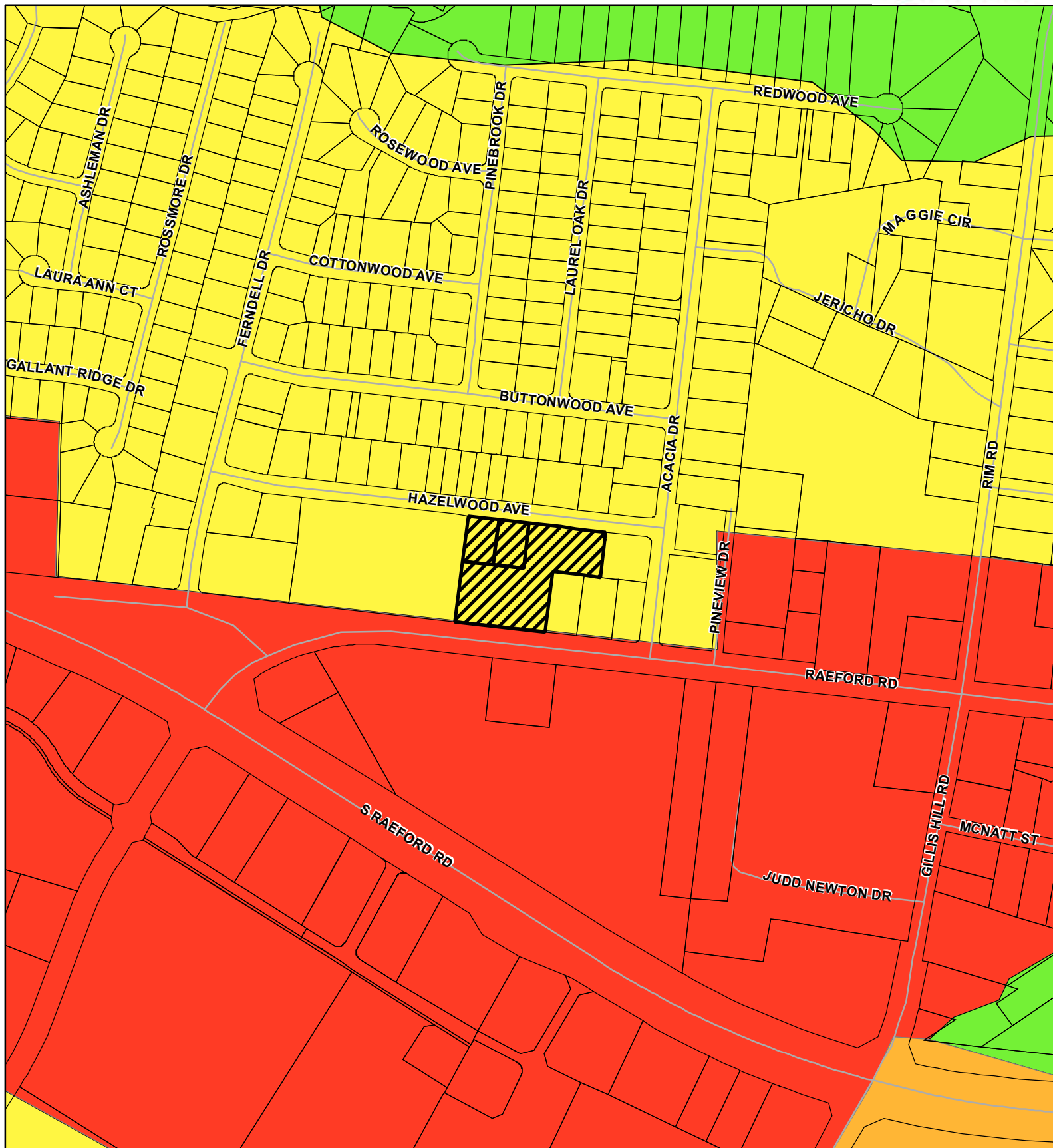


Legend

Existing Landuse	Common Area	Group Quarters	Industrial	Multi-Family	Open Space	Communications-Utilities	Vacant Commercial
Single Family Detached	Commercial	Golf Course	Institutional	Mobile Home	Parking	Under Construction	Not Verified
Single Family Attached	Cemetery	Government Office	Lake	Mobile Home Park	Predominantly Vacant	Vacant Land	Null PIN

Land Use Plan

Case No. P13-35F



Legend

Academic Training-Fort Bragg	Farmland	Historical District-Fort Bragg	Neighborhood Activity Node	Policy Directed Light Commercial
Activity Node	Governmental	Light Commercial	Office & Institutional	Policy Directed Office & Institutional
Airfield Operations-Fort Bragg	Heavy Commercial	Light Industrial	One Acre Residential Lots	Range & Training-Fort Bragg
Community Activity Node	Heavy Industrial	Low Density Residential	Open Space	Redevelop/Holding-Fort Bragg
Downtown	High Density Residential	Medium Density Residential	Policy Directed Heavy Commercial	Suburban Density Residential









CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Craig Harmon, AICP, CZO - Senior Planner
DATE: November 18, 2013
RE: **P13-36F. The issuing of a Special Use Permit for Towing and Recovery on property located at 1234 Gillespie Street and being the property of Johnny Parker (Deacon Properties).**

THE QUESTION:

Request to issue a Special Use Permit for an automotive wrecker service.

RELATIONSHIP TO STRATEGIC PLAN:

Growth and development

BACKGROUND:

Applicant: Deacon Properties (Johnny Parker)
Requested Action: SUP Automotive Wrecker Service
Property Address: 1234 Gillespie Street
Council District: 2
Status of Property: Developed Warehouse / Medical Supply
Size: 0.4 acres +/-
Adjoining Land Use & Zoning:
North - CC Auto repair
South - CC Auto repair & wrecker service
West – SF-6 Single Family Residential
East – M(P) Vacant industrial in the County
Letters Mailed: 24
Land Use Plan: Heavy Commercial

ISSUES:

This project will be part of Bullard's Towing & Recovery. The property is located at 1234 Gillespie Street. Several of the properties along Gillespie Street already have auto repair oriented business on them. This property is currently zoned CC - Community Commercial. The use requirements associated with Automotive Wrecker Services (Section 30-4.C.4(j) (5)) require that the use be at least 250 feet from any residential district, school or child care center. This use is approximately 120 feet from an existing residence to the southwest. A text amendment was approved recently that allows a reduction in the separation requirements requirement through a special use permit, upon showing of good cause with supporting evidence and mitigation of impacts.

The existing vegetation between this building and the residential properties to the west is enough to satisfy the City's type D buffer requirements. Also, there is no practical access from Hamlet Street to this property due to the vegetation and the change in elevation.

The Zoning Commission held a public hearing on this case on October 8th. There was one speaker in favor and none in opposition. The Commission voted 5-0 to recommend approval of this SUP application.

Conditions Recommended by the Zoning Commission and staff:

1. Maintaining the equivalent of a Type D buffer between this property and all residential zoning district around it.
2. Vehicles should be stored no closer than the rear façade of the existing building to Gillespie Street.
3. Provide solid screening of stored vehicles from Gillespie Street.
4. No vehicles shall be stored more than 90 days on the property.

The Zoning Commission and staff recommend Approval of the proposed SUP based on:

1. Conditions listed above.
2. Minimal impact to the surrounding district and existing residences due to the existing site conditions.
3. This project is located within the CC zoning district where automotive wrecker services are permitted subject to applicable requirements.
4. Minimal visual impact from Alexander Street which contains various other heavy commercial uses.
6. The existing vegetative screening will mitigate buffer concerns from residential uses.

A Special Use Permit shall be approved only upon a finding that all of the following standards are met:

- (1) The special use complies with all applicable standards in Section 30-4.C, Use-Specific Standards; *This use can only comply if the applicant can show mitigating circumstances and an SUP is issued.*
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands; *The proposed use is consistent with other nonresidential uses in the vicinity.*
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration; *As long as screening is provided per the conditions of approval listed above. This standard appears to be met.*
- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands; *As long as screening is provided per the conditions of approval listed above. This standard appears to be met.*
- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources; *No impact of these sort have been identified.*
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site; *Site access meets City standards.*
- (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; and *As long as screening is provided per the conditions of approval listed above. This standard appears to be met.*
- (8) The special use complies with all other relevant City, State, and Federal laws and regulations. *No compliance issues have been identified.*

BUDGET IMPACT:

This action would result in no increase in City services.

OPTIONS:

- 1) Approval of the SUP with conditions (Recommended).
- 2) Approval of the SUP with modified conditions.
- 3) Denial of the SUP.

RECOMMENDED ACTION:

The Zoning Commission and Staff Recommend: That the City Council move to APPROVE Case P13-36F issuing a special use permit for the subject property with conditions as presented by staff upon a finding that all of the following standards are met:

- (1) The special use complies with all applicable standards in Section 30-4.C, Use-Specific Standards;
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands;
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration;
- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands;
- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources;
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site;

- (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; and
- (8) The special use complies with all other relevant City, State, and Federal laws and regulations

ATTACHMENTS:

Zoning Map

Current Land Use Map

Land Use Plan Map

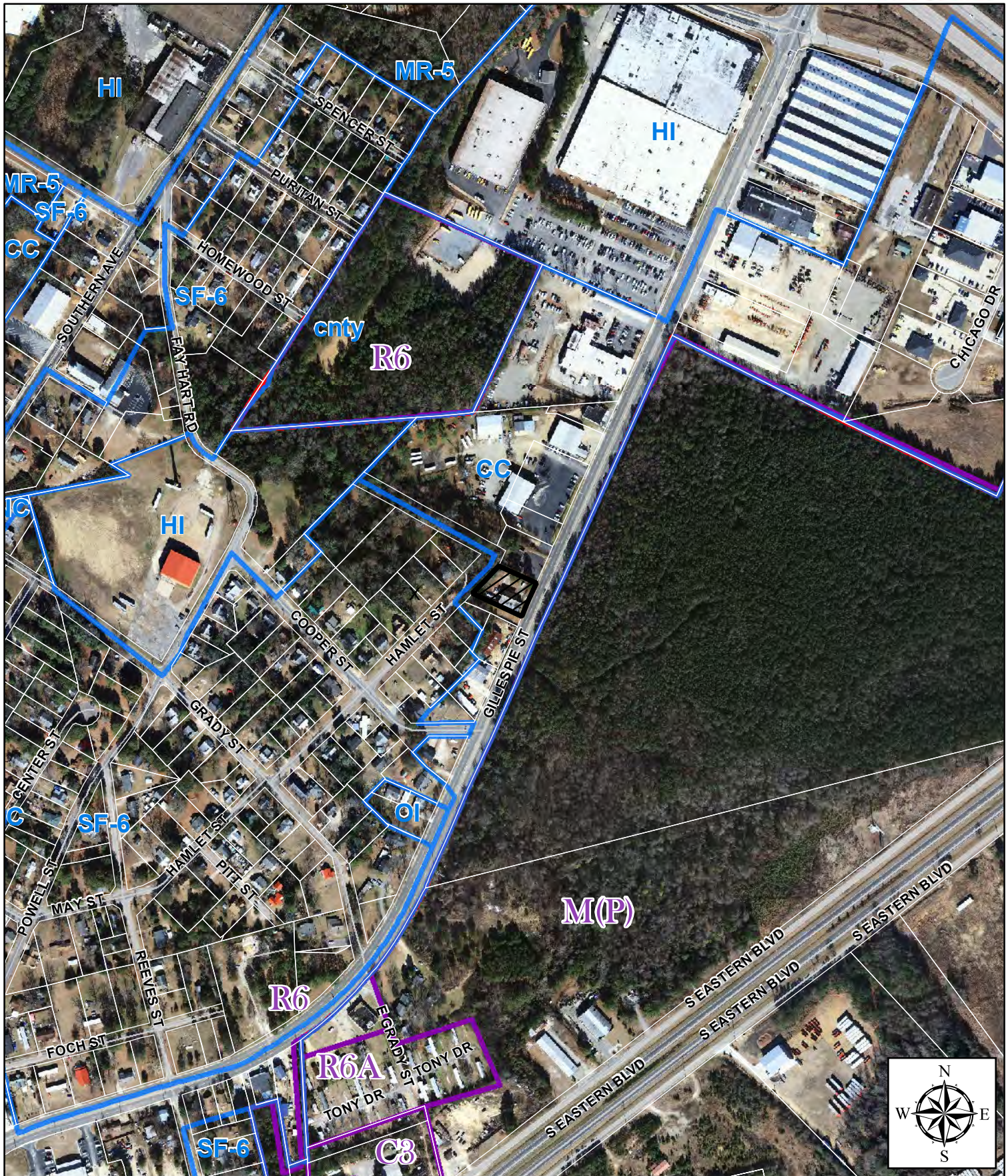
Site Photo 1

Site Photo 2

Site Photo 3

Site Photo 4

ZONING COMMISSION
CASE NO. P13-36F



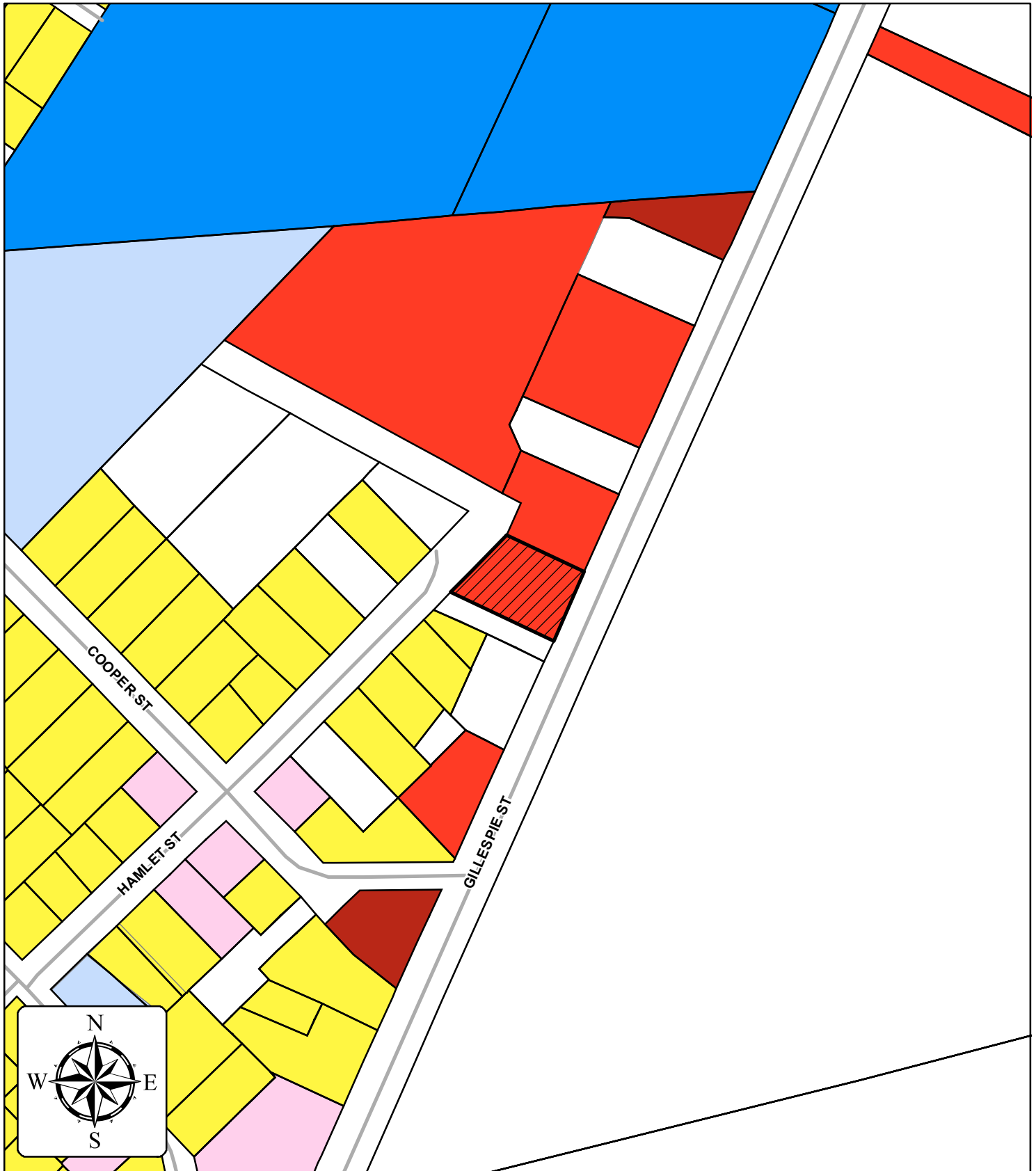
Request: SUP Towing & Recovery
Location: 1234 Gillespie

Zoning Commission: 10/8/2013 **Recommendation: _____**
City Council: _____ **Final Action: _____**

Letters are being sent to all property owners within the circle, the subject property is shown in the hatched pattern.

Current Land Use

P13-36F

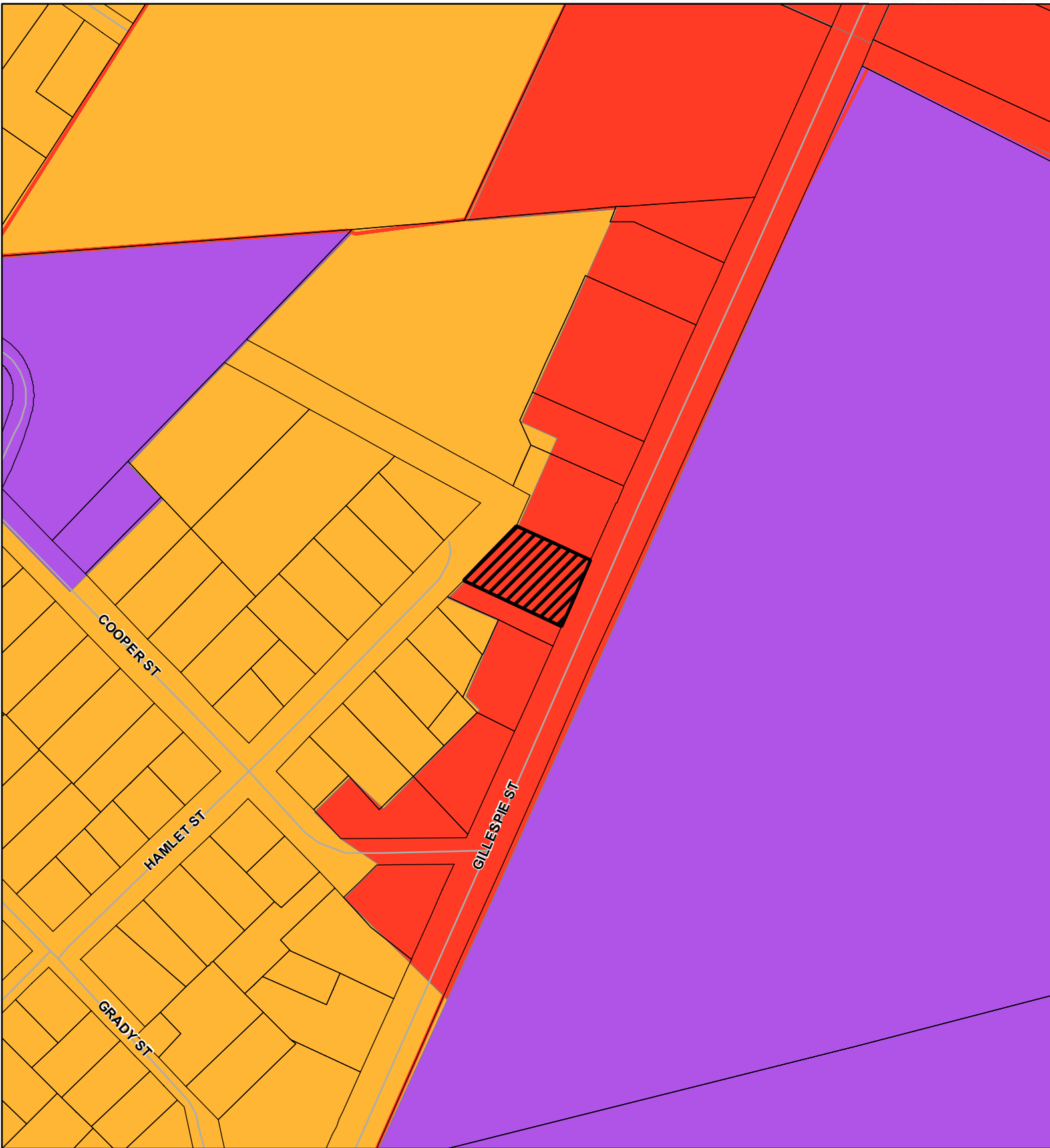


Legend

Existing Landuse	Common Area	Group Quarters	Industrial	Multi-Family	Open Space	Communications-Utilities	Vacant Commercial
Single Family Detached	Commercial	Golf Course	Institutional	Mobile Home	Parking	Under Construction	Not Verified
Single Family Attached	Cemetery	Government Office	Lake	Mobile Home Park	Predominantly Vacant	Vacant Land	Null PIN

Land Use Plan

Case No. P13-36F



Legend

Academic Training-Fort Bragg	Farmland	Historical District-Fort Bragg	Neighborhood Activity Node	Policy Directed Light Commercial
Activity Node	Governmental	Light Commercial	Office & Institutional	Policy Directed Office & Institutional
Airfield Operations-Fort Bragg	Heavy Commercial	Light Industrial	One Acre Residential Lots	Range & Training-Fort Bragg
Community Activity Node	Heavy Industrial	Low Density Residential	Open Space	Redevelop/Holding-Fort Bragg
Downtown	High Density Residential	Medium Density Residential	Policy Directed Heavy Commercial	Suburban Density Residential



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DRY ICE



ALL
AMERICAN
Towing & Recovery
(910) 484-6659
314 Gillespie St.





AUTO ALIGNMENT

BRAKES

TIRES

ALIGNMENT

OPEN

DUNLOP
TIRES

Auto
ALIGNMENT
& BRAKES

A-C SERVICE

USED
TIRES
20.00

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Craig M. Harmon, AICP, CZO - Senior Planner
DATE: November 18, 2013
RE: **Case # P13-39F. The initial zoning to CC – Community Commercial district, located at 1551 Jim Johnson Road, and being the property of Jeremy Stanley and Richard King.**

THE QUESTION:

The initial zoning to CC of property located on Jim Johnson Road.

RELATIONSHIP TO STRATEGIC PLAN:

Growth and development

BACKGROUND:

Applicant: Jeremy Stanley & Richard King
Requested Action: Initial Zoning to CC
Property Address: 1551 Jim Johnson Rd
Council District: 2
Status of Property: Developed Auto Repair
Size: 2.1 acres +/-
Adjoining Land Use & Zoning:
North - RR County – Residential & Other
South - CC - Hotel
West – RR County - Residential
East – CC – I-95
Letters Mailed: 15
Land Use Plan: Activity Node

ISSUES:

This property is a developed lot on Jim Johnson Road. It is currently zoned C3 in the County's jurisdiction. This property is adjacent to existing commercially zoned properties in the City. As you can see from the attached maps, this property is in very close proximity to Cedar Creek Road and Interstate 95. An auto repair business has already been built on this property.

Due to changes in the schedule for the City Council, this item will not be heard by the Zoning Commission until after the submission deadline for agenda items to be heard on November 18th. The Zoning Commission will meet on November 12th to hold a public hearing on this item. The City Council will be updated as to the Zoning Commission's action prior to its meeting on the 18th.

The City staff recommends Approval of the proposed initial zoning based on:

1. The City's Land Use Plan calls for this property to be part of an Activity Node.
2. This property is currently zoned C3 in the County. CC is the City's closest equivalent district.
3. This property borders existing commercial zoning in the City on two sides.

BUDGET IMPACT:

This action would result in an increase in City services that will be offset by the revenue the City will collect in property taxes.

OPTIONS:

- 1) Approval of the initial zoning to CC (Recommended).
- 2) Approval of the initial zoning to a more restrictive district.
- 3) Denial of the initial zoning.

RECOMMENDED ACTION:

Staff Recommends: That the City Council move to APPROVE Case P13-39F establishing the initial zoning for the subject property as CC - Community Commercial as presented by staff.

ATTACHMENTS:

Zoning Map

Current Land Use

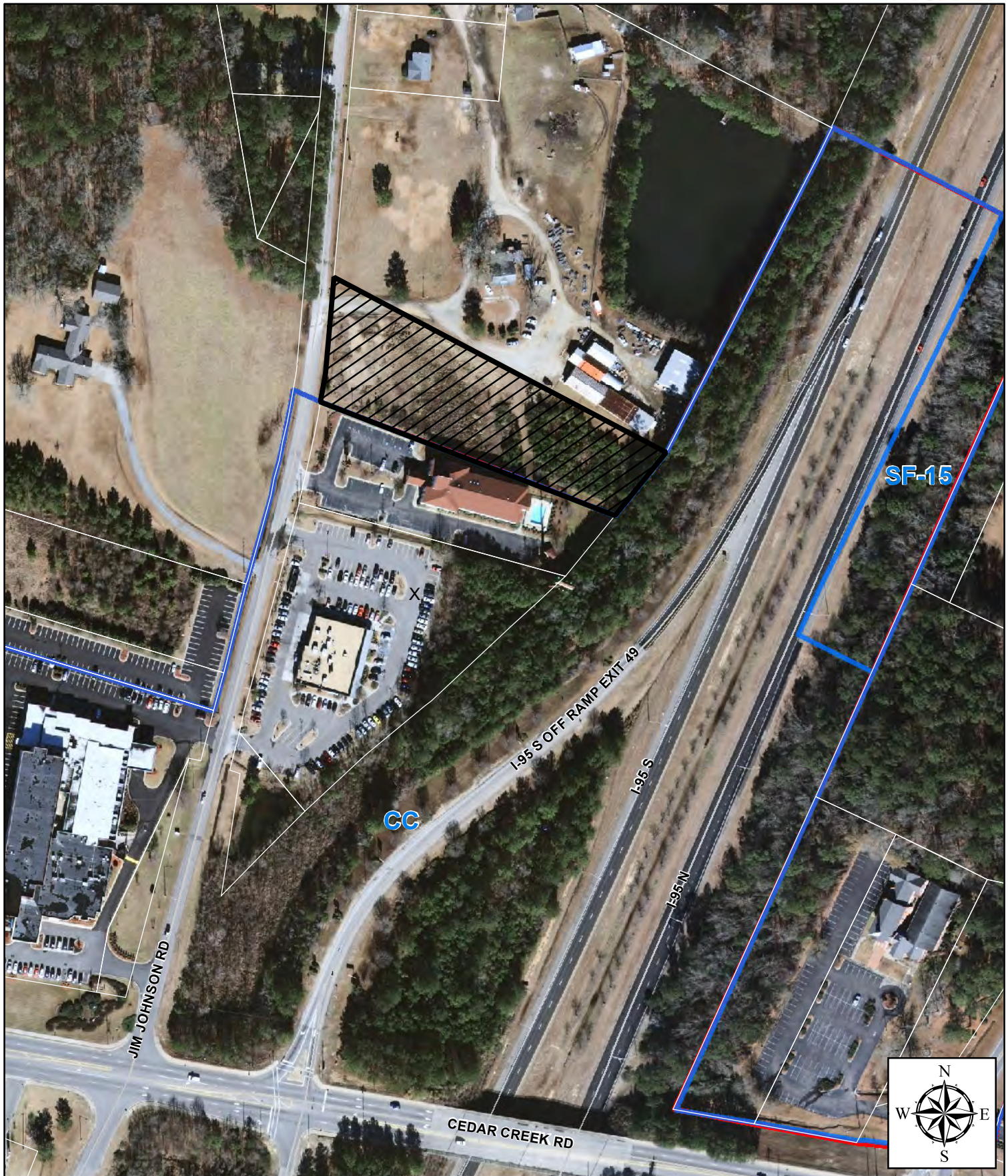
Land Use Plan

Property Survey

Site Photo 1

Site Photo 2

ZONING COMMISSION
CASE NO. P13-39F



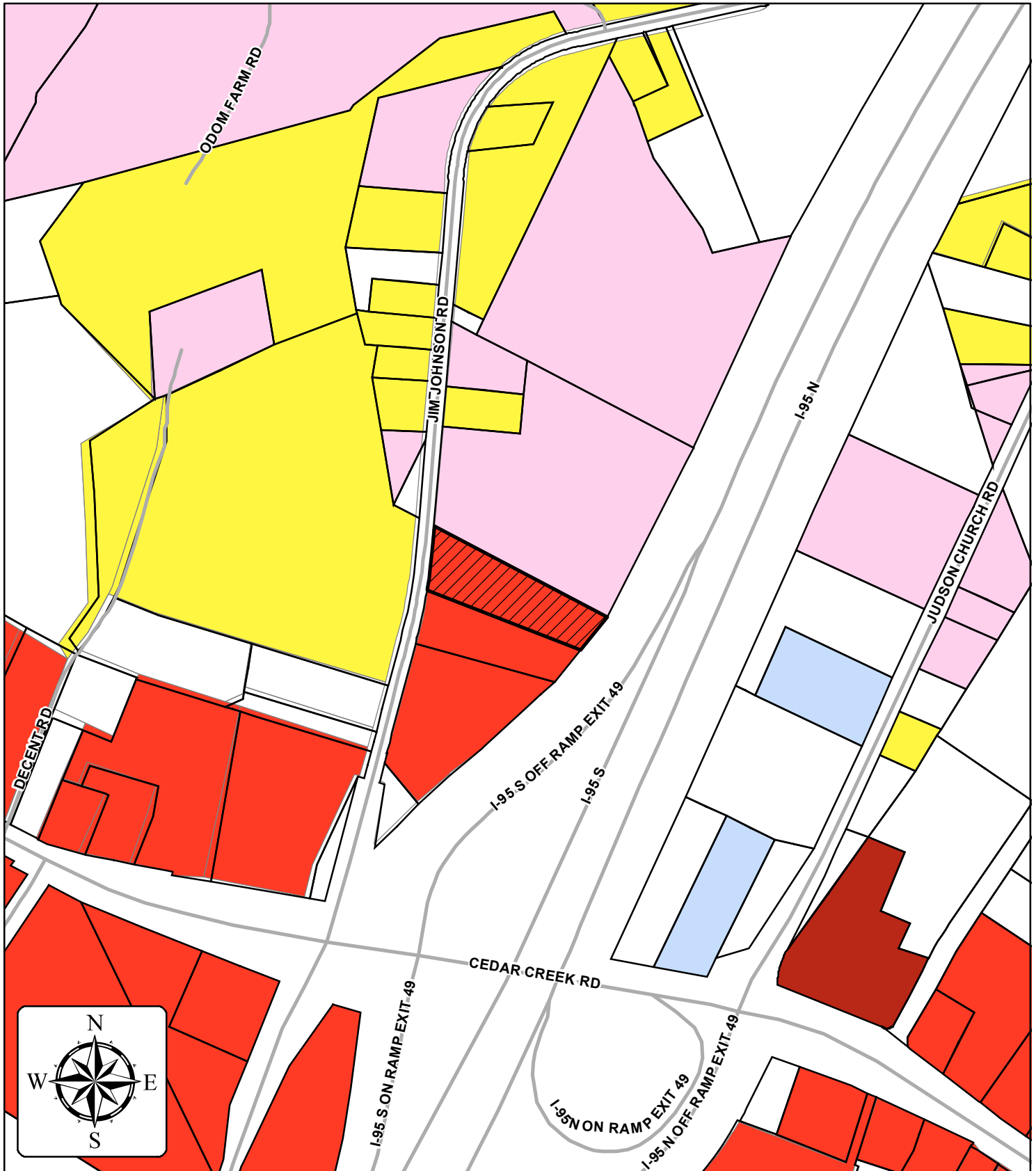
Request: Initial Zoning to CC
Location: 1551 Jim Johnson Rd

Zoning Commission: 11/12/2013 **Recommendation: _____**
City Council: _____ **Final Action: _____**

Letters are being sent to all property owners within the circle, the subject property is shown in the hatched pattern.

Current Land Use

P13-39F

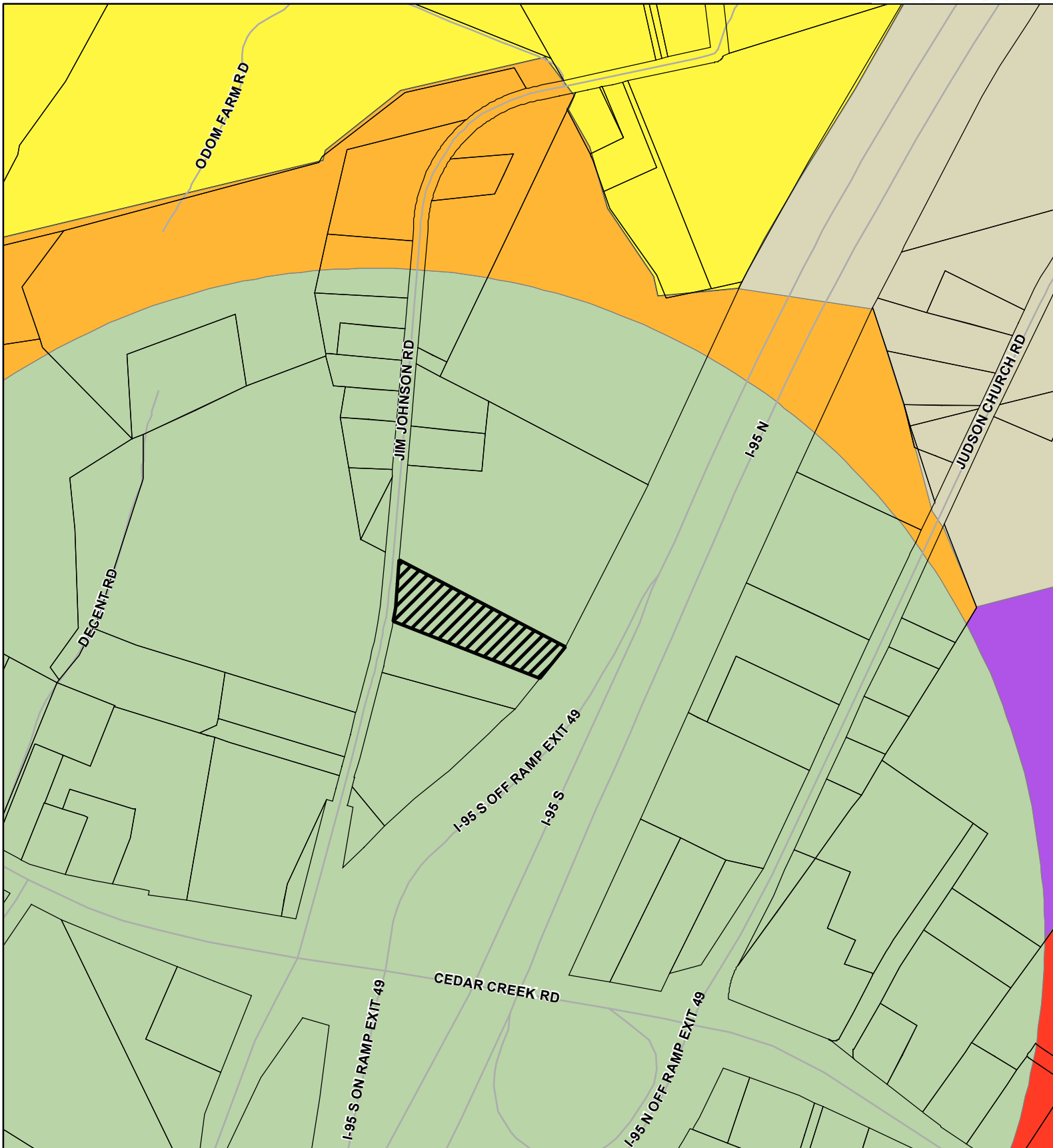


Legend

Existing Landuse	Common Area	Group Quarters	Industrial	Multi-Family	Open Space	Communications-Uilities	Vacant Commercial
Single Family Detached	Commercial	Golf Course	Institutional	Mobile Home	Parking	Under Construction	Not Verified
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Land Use Plan

Case No. P13-39F



Legend

Academic Training-Fort Bragg	Farmland	Historical District-Fort Bragg	Neighborhood Activity Node	Policy Directed Light Commercial
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Community Activity Node	Heavy Industrial	Low Density Residential	Open Space	Redevelop/Holding-Fort Bragg
Downtown	High Density Residential	Medium Density Residential	Policy Directed Heavy Commercial	Suburban Density Residential





CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: David Nash, AICP, Senior Planner
DATE: November 18, 2013
RE: **Public Hearing to Consider Request to Annex the Stanley and King Property-1551 Jim Johnson Road**

THE QUESTION:

Request to Annex the Stanley and King Property-1551 Jim Johnson Road

RELATIONSHIP TO STRATEGIC PLAN:

Strong local economy

BACKGROUND:

Mr. Jeremy Stanley and Mr. Richard King have submitted a petition requesting annexation of their property located at 1551 Jim Johnson Road. This property, which is contiguous to the City, consists of 2.10 acres, more or less. There is one building on the property. The building appears to be vacant at this time. Mr. Stanley proposes to use the building for a commercial use involving vehicle services.

On November 12, the Zoning Commission will hold its public hearing on the initial zoning of this property.

On November 18, the City Council will hold its public hearing on the initial zoning and on the annexation request.

ISSUES:

Sufficiency: The City's Real Estate Manager has verified that the petitioners, Jeremy Stanley and Richard King, are the owners of the property. (See Sufficiency Memo, attached.)

Services: City operating departments and PWC divisions have reviewed the proposed annexation and they should be able to serve the property.

City Services-The Fire Department reports that the travel distance from this property to the closest City fire station (Station 1 on Person Street) is 4.4 miles. The travel distance from this property to the closest County fire station (Vander) is 3.1 miles. The Effective Response Force (ERF) units needed to complete incident critical tasks have estimated travel time of 15 minutes, including County units. This is the threshold for response times described in the department's standard of coverage. If this property is added to the department's response plan, it will not have a significant impact. The Police Department reports that the annexation request will not impact the service level of the department. The Engineering and Infrastructure Department reported that the department would serve the area with existing forces, and there would be no costs and no impacts for the department.

The Environmental Services Department reported that since the property is expected to be a commercial use, it would be served by a commercial garbage/recycling hauler. The Transit Department reports that there would be no impact.

PWC Services-The PWC Water and Sewer Division reported that a PWC water line already exists in Jim Johnson Road. The owner can make a service lateral connection to the water line. A PWC fire hydrant also exists in Jim Johnson Road, directly across from the property. If the owners want PWC sewer, they would be required to extend the sanitary sewer main across the front of the property and install a service lateral. The PWC Electrical Division reported that PWC does not provide electrical or street light services in this area; this area is in the service area of Duke Energy.

Effective Date: Recent changes in the state law governing contiguous petition annexations require that a contiguous area be annexed either immediately, or on the June 30 after the date of passage of the ordinance, or on the June 30 of the following year after the date of passage of the ordinance.

BUDGET IMPACT:

Analyzing the budgetary impact of an annexation involves comparing projected revenues with projected costs.

Projected Revenues: If this property is annexed, it is projected that City revenues for a full fiscal year would be at least \$1,307. (This is based only on the current real property value of the property. There might also be revenues from personal property, vehicles, and the stormwater fee. There would be no population-based revenues, because this property has no population.)

Projected Costs: No City operating departments have expressed concerns or unusual increases in costs to serve this property, if it is annexed.

Budgetary Impact: If this property is annexed, it is expected that revenues will exceed costs. Therefore, it is projected that the budgetary impact will be positive for the City.

OPTIONS:

1. Adopt the Annexation Ordinance with an effective date of November 18, 2013, and include approval of the final initial zoning action consistent with the prior action on the zoning.
2. Adopt the Annexation Ordinance with an effective date of June 30, 2014, and include approval of the final initial zoning action consistent with the prior action on the zoning.
3. Adopt the Annexation Ordinance with an effective date of June 30, 2015, and include approval of the final initial zoning action consistent with the prior action on the zoning.
4. Do not adopt the Annexation Ordinance. This option means the property would remain outside the City and the initial zoning would not occur.
5. Table action on the requested annexation.

RECOMMENDED ACTION:

City staff recommends that City Council move to ADOPT the proposed ordinance annexing the area effective November 18, 2013, and establish the initial zoning consistent with the prior action on the zoning case.

ATTACHMENTS:

Vicinity Map
Basic Information Sheet About the Area
Sufficiency Memo
Proposed Ordinance
Legal Description Map

BASIC INFORMATION ABOUT THE AREA**Information Updated as of: November 6, 2013****Date Petition Received: September 10, 2013****Ordinance Adoption Date: / Effective Date:**

1. Name of Area:	Stanley and King Property-1551 Jim Johnson Road
2. Name of Owner:	Jeremy Stanley and Richard King
3. General Location/Address/ Directions to Property:	<u>General Location:</u> Eastern side of City, near interchange of Cedar Creek Road and I-95. <u>Address:</u> 1551 Jim Johnson Road <u>Directions:</u> Go out Cedar Creek Road toward I-95. Just before the interchange, turn north on Jim Johnson Road. Go past the Cracker Barrel Restaurant and the Comfort Inn. Property is adjacent to the Comfort Inn.
4. Tax Identification Number (PIN):	1 parcel: PIN 0455-38-6835
5. Fire Department To Be Affected:	0101-Vander
6. Is the Area Contiguous?	Yes
7. Is the Area in the Fayetteville MIA (Municipal Influence Area)?	Yes
8. Type of Annexation:	Petition-initiated contiguous area
9. Background:	Mr. Jeremy Stanley wants to open a business in the building located on this parcel. He would like to connect to PWC water.
10. Reason the Annexation was Proposed:	Mr. Stanley wants to connect to PWC water, so he has submitted an annexation petition.
11. Number of Acres in Area:	2.10 acres more or less (according to City's legal description map);
12. Type of Development in Area:	The land in the area currently has one "commercial" building on it.
13. Present Conditions:	<ul style="list-style-type: none"> a. <u>Present Land Use:</u> Commercial building (appears to be vacant) b. <u>Present Number of Housing Units:</u> 0 c. <u>Present Demographics:</u> Total Pop=0 d. <u>Present Streets:</u> No streets within area requested for annexation. e. <u>Water and Sewer Service:</u> GIS shows that PWC water is adjacent along the western side of Jim Johnson Road. A fire hydrant is on the western side of Jim Johnson Road, across from the property. GIS shows that PWC sewer ends at the southwest corner of the parcel. f. <u>Electrical:</u> GIS shows that PWC electrical lines are not in the immediate area. This area is in the service area of Duke Energy. g. <u>Current Real Property Tax Value:</u> Total=\$288,471 (Land=\$112,863, Building=\$175,608, Extra Feature=\$0) (These are the real property values for the 1 parcel listed above. (Source: GIS and Property Information Mini-Sheet-for Tax Year 2014))
14. Factors Likely to Affect Future of Area:	<ul style="list-style-type: none"> a. <u>Plans of Owners:</u> Assuming the site is annexed and initially zoned for commercial, the owner is expected to open a vehicle service type of use in the building. b. <u>Development Controls</u> <ul style="list-style-type: none"> 1. <u>Land Use Plans</u> <ul style="list-style-type: none"> a. 2010 Plan-Community Activity Node (around I-95 interchange) b. 2030 Plan-Urban Area (www.ccmmaps.org) 2. <u>Zoning</u> <ul style="list-style-type: none"> a. <u>Current Zoning in County:</u> C3 (www.ccmmaps.org) b. <u>Expected Zoning After Annexation:</u> CC-Community Commercial -goes to Zoning Commission on 11/12/13-(Case P13-39F) 3. <u>In Fay Airport Impact Zone?</u>-No (www.ccmmaps.org) 4. <u>In Fay Airport Overlay District?</u>-No (www.ccmmaps.org) 5. <u>In Simmons Airfield Noise Contour?</u> No 6. <u>Status of Plan Approval</u>-The County Planning staff approved a revision to a preliminary plan on 11/10/10-(Case 10-120)
15. Expected Future Conditions:	<ul style="list-style-type: none"> a. <u>Future Land Use:</u> Commercial b. <u>Future Number of Housing Units:</u> Total=0 (0 HU x 90% occupancy rate*=0 occupied HU) * Based on 2010 Census data for Fayetteville c. <u>Future Demographics:</u> Total Pop=0 (0 occupied HU x 2.45 avg household size*=0) *Based on 2010 Census data for Fayetteville d. <u>Future Streets:</u> No public streets expected within area. e. <u>Water and Sewer Service:</u> Water is expected to be provided by PWC. f. <u>Electric Service:</u> Property is expected to remain in the Duke Energy service area. g. <u>Future Real Property Tax Value:</u> Continuation of Current Tax Value shown above.

MEMO

To: David Nash, Planning Department

From: Kecia N. Parker, Real Estate Manager

CC: To the file

Date: October 3, 2013

Re: Sufficiency of Annexation Petition

SIGNERS OF THE PETITION: Richard King, Jeremy Stanley

Jeremy Stanley and Richard King per recorded deeds found in Deed Book 8323, Page 1 and Deed Book 9235, Page 26, is the record owner for the 2.10 acre tract.

1: 0455-38-6835- Lot 2 Ralph Williams and Associates property 2.10 acres

Beginning at NCGS Monument "BEST" having North Carolina Grid Coordinates (NAD 83) N=457,599.26 and E=2,053,820.84 thence North 02 degrees 50 minutes West 978.60 feet to an existing iron pipe, thence North 38 degrees 10 minutes 00 seconds East 129.48 feet to the TRUE POINT AND PLACE OF BEGINNING and runs thence North 69 degrees 29 minutes 47 seconds West 512.75 feet to the eastern margin of Jim Johnson Road, thence as the eastern margin of said road as it curves to the Left having a radius of 932.36 and a chord bearing and distance of North 06 degrees 28 minutes 43 seconds East 169.98 feet to a point, thence North 07 degrees 49 minutes 09 seconds East 37.21 feet to a point, thence South 62 degrees 35 minutes 00 seconds East 605.46 feet to a point, thence South 16 degrees 34 minutes 00 seconds West 4.97 feet to a point, thence South 38 degrees 10 minutes 00 seconds West 129.48 feet to the TRUE POINT AND PLACE OF BEGINNING.

My search ended 9/16/2013. No pertinent out conveyances were recorded for this property.

Petition is sufficient!

Annexation Ordinance No: _____

**Stanley and King Property-1551 Jim Johnson Road
Area Includes One Tax Parcel:
PIN 0455-38-6835**

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
CITY OF FAYETTEVILLE, NORTH CAROLINA**

WHEREAS, the City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the City of Fayetteville has investigated the sufficiency of the petition; and

WHEREAS, the City of Fayetteville has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall Council Chambers at 7:00 p.m. on November 18, 2013, after due notice by publication on November 8, 2013; and

WHEREAS, the City Council further finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described contiguous property owned by Jeremy Stanley and Richard King, is hereby annexed and made part of the City of Fayetteville, North Carolina as of November 18, 2013:

0455-38-6835- (Lot 2 Ralph Williams and Associates property, 2.10 acres)-Beginning at NCGS Monument "BEST" having North Carolina Grid Coordinates (NAD 83) N=457,599.26 and E=2,053,820.84 thence North 02 degrees 50 minutes West 978.60 feet to an existing iron pipe, thence

North 38 degrees 10 minutes 00 seconds East 129.48 feet to the TRUE POINT AND PLACE OF BEGINNING and runs thence North 69 degrees 29 minutes 47 seconds West 512.75 feet to the eastern margin of Jim Johnson Road, thence as the eastern margin of said road as it curves to the Left having a radius of 932.36 and a chord bearing and distance of North 06 degrees 28 minutes 43 seconds East 169.98 feet to a point, thence North 07 degrees 49 minutes 09 seconds East 37.21 feet to a point, thence South 62 degrees 35 minutes 00 seconds East 605.46 feet to a point, thence South 16 degrees 34 minutes 00 seconds West 4.97 feet to a point, thence South 38 degrees 10 minutes 00 seconds West 129.48 feet to the TRUE POINT AND PLACE OF BEGINNING.

Section 2. Upon and after November 18, 2013, the effective date of this ordinance, the above-described area and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in the City of Fayetteville and shall be entitled to the same privileges and benefits as other parts of the City of Fayetteville. Said area shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Fayetteville shall cause to be recorded in the office of the Register of Deeds of Cumberland County, and in the Office of the Secretary of State in Raleigh, North Carolina, an accurate map of the annexed area, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Cumberland County Board of Elections, as required by G.S. 163-288.1.

Adopted this ____ day of _____, 20__.

ATTEST:

Anthony G. Chavonne, Mayor

Pamela Megill, City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council Members
FROM: Randy Hume, Transit Director
DATE: November 18, 2013
RE: **Transit Service Changes**

THE QUESTION:

Transit Service Changes

RELATIONSHIP TO STRATEGIC PLAN:

The City of Fayetteville will be a highly desirable place to live, work and recreate with thriving neighborhoods and a high quality of life for all citizens.

BACKGROUND:

City Council approved funding for certain transit initiatives in the FY 2014 budget. These included two new routes, Strickland Bridge Road and Fort Bragg Express. In addition, staff had noted in its budget presentation the need to modify some routes using the Cross Creek Mall transit center due to the capacity limitations of that location, as well as to extend Saturday morning hours on Routes 3 and 4, while reducing the frequency of service on Route 12 after 8:00 p.m. In the meantime, Fort Bragg officials have agreed to allow FAST to enter post via the Yadkin Road ACP to connect with the on-post shuttles at the Reilly Road mini-mall. Due to security procedures for accessing the post, staff has proposed to split the current Route 17 into two routes with one bus each. This change would reduce the number of passengers that would otherwise have to exit the bus as it entered the Yadkin ACP and wait at the gate while the bus was traveling on post.

In accordance with our Title VI Plan and route change policies, staff advertised this public hearing in the Fayetteville Observer on October 22 and 29 and the Acento Latino on November 5. In addition, staff held several public workshops between October 30 and November 12 for purposes of explaining the proposed changes and receiving feedback and suggestions. Flyers describing the proposed route changes were distributed at the Transfer Center as well as posted on buses. Attached are both the english and spanish versions.

Following this public hearing and approval by City Council, FAST would implement the approved route changes in February 2014.

ISSUES:

Route 17 will be split into two routes in an effort to reduce the number of people that will be required to exit and wait at the Yadkin ACP while the bus travels on the post. Route 17 passengers will now be required to transfer to another bus to reach Cross Creek Mall, although the travel time will in most instances remain the same. This change will also eliminate two stops on Reilly Road between Fillyaw and Morganton Road.

Route 12 services will continue until 10:30 p.m. although the frequency of buses will be changed from 30 minutes to 60 minutes after 8:00 p.m. This savings will enable FAST to provide earlier Saturday service on Routes 3 & 4.

Two line-ups at Cross Creek Mall (i.e., some buses at the top of the hour and some at the bottom of the hour) will change trip and waiting times for some passengers. Route 14 would be adjusted to serve Walmart on Skibo to accomodate many of the passengers now transferring between Routes 6 and 14.

BUDGET IMPACT:

Funding for the proposed changes was included in the FY 2014 budget.

OPTIONS:

Approve or modify the proposed changes.

RECOMMENDED ACTION:

Staff recommends Council move to formally approve the route changes.

ATTACHMENTS:

Meeting Notices-Flyers

Service Changes-Presentation

PROPOSED BUS ROUTE CHANGES

to be effective

February 2014

New Routes

- **New Route – #10 Strickland Bridge Road:** Service between Century Circle in west Fayetteville along Strickland Bridge Road and Raeford Road to Ireland Drive to connect with Route #7
- **New Route - #50 Fort Bragg Express:** Limited stop service between the downtown Transfer Center and Fort Bragg's Butner Gate/ACP via Murchison Road

Changes related to extending service on to Fort Bragg

- **Route #17** would be modified to provide service between Walmart on Raeford Road to Santa Fe & Bonanza Drive with connection to Route #18 and a new Route #19 Yadkin Road-Fort Bragg
- **New Route - #19 Yadkin Road-Fort Bragg** would provide service between the Cross Creek Mall transit center and Fort Bragg's Reilly Road mini-mall via Yadkin Road, Fort Bragg's Yadkin Gate/ACP and Fillyaw Road with connection to Route #17 at Santa Fe and Bonanza Drive

Changes related to lack of capacity at Cross Creek Mall

- **Route #14** would be extended from Sycamore Dairy & McPherson Church Road to Walmart on Skibo prior to traveling to Cross Creek Mall
- **Route #6 and Route #18** times would be modified to depart Cross Creek Mall at the top of the hour (:00) and depart University Estates or 71st School Road at the bottom of the hour (:30)
- **Route #9** times would be modified to connect to Route #6 and Route #12 at the bottom of the hour (:30)

Changes Related to earlier Saturday morning services

- **Route #3** Saturday service would be expanded to start at 8:00am
- **Route #4** Saturday service would be expanded to start at 8:30am
- **Route #12** service hours would be reduced after 8:00pm to provide hourly (:60) service. Half-hour (:30) service would continue until 8:00pm.

Open House Information Sessions

Wed., October 30, 2013 (3:00pm – 5:00pm)
Headquarters (Main) Branch Library
300 Maiden Lane, Fayetteville, NC 28301
(along Routes #4 and #12)

Fri., November 1, 2013 (10:00am – 12:00 noon)
Westover Recreation Center
267 Bonanza Drive, Fayetteville, NC 28303
(along Route #17)

Wed., November 6, 2013 (11:00am -1:00pm)
FAST Offices, Conference Room
455 Grove Street, Fayetteville, NC 28301
(along Route #4)

Wed., November 6, 2013 (3:00pm – 5:00pm)
Fire Station #14
532 Langdon Street, Fayetteville, NC 28301
(along Route #12)

Thu., November 7, 2013 (6:30pm – 8:30pm)
West Regional Branch Library
7469 Century Circle, 28306
(in Strickland Bridge Road area)

Tue., November 12, 2013 (4:00pm - 6:00pm)
Cliffdale Branch Library
6882 Cliffdale Road, Fayetteville, NC 28314
(along Routes #17 and #18)

Public Hearing

Mon., November 18, 7:00pm
City Council Chambers
433 Hay Street
Fayetteville, NC 28301

Cambios Propuestos a las Rutas

Efectivo

Febrero 2014

Rutas Nuevas

- La nueva ruta #10 Strickland Bridge Road prestará servicio entre Century Circle en el oeste de Fayetteville por Strickland Bridge Road y Raeford Road hasta Ireland Drive para conectar con la ruta #7.
- La nueva ruta # 50 Fort Bragg Express prestará servicio de paradas limitadas entre el Centro de Transferencia en el centro de la ciudad y Fort Bragg Butner Gate/Punto de Acceso por Murchison Road.

Cambios relacionados con la extension de servicio a Fort Bragg La ruta #17 se modificará para prestar servicio de Walmart en Raeford Road a Santa Fe y Bonanza Drive con conexión con la ruta #18 y una nueva ruta #19 Yadkin Road-Fort Bragg.

- La nueva ruta #19 Yadkin Road-Fort Bragg prestará servicio entre el centro de tránsito de Cross Creek Mall y el mini centro comercial Reilly Road de Fort Bragg por Yadkin Road, Yadkin Gate/ACP y Fillyaw Road con conexión con la ruta #17 en Santa Fe y Bonanza Drive.

Cambios relacionados con la falta de capacidad en Cross Creek Mall La ruta #14 se ampliará de Sycamore Dairy y McPherson Church Road a Walmart en Skibo antes de viajar a Cross Creek Mall.

- Los horarios de la ruta #6 y la ruta #18 se modificarán para partir del Cross Creek Mall a la hora en punto (:00) y salir de University Estates o de 71st School Road sobre la media hora (:30).
- Los horarios de la ruta #9 se modificarán para conectar con la ruta #6 y la ruta #12 sobre la media hora (:30).

Cambios relacionados con servicios pro la mañana en sábado El servicio de la ruta #3 los sábados se ampliará para comenzar a las 8:00am

- El servicio de la ruta #4 los sábados se ampliará para comenzar a las 8:30am
- El servicio de la ruta #12 se reducirá después de las 8:00pm para prestar servicio de cada hora (60 minutos). El servicio de cada media hora (:30) continuará hasta las 8:00pm

Sesiones informativas abiertas al público

Miércoles, 30 de octubre de 2013 (3:00pm – 5:00pm)
Biblioteca, sede central
300 Maiden Lane, Fayetteville, NC 28301
(por rutas #4 y #12)

Viernes, 1 de noviembre de 2013 (10:00am – 12:00 del mediodía)
Westover Recreation Center
267 Bonanza Drive, Fayetteville, NC 28303
(por ruta #17)

Miércoles, 6 de noviembre de 2013 (11:00am -1:00pm)
Oficinas de FAST, sala de conferencias
455 Grove Street, Fayetteville, NC 28301
(por ruta #4)

Miércoles, 6 de noviembre de 2013 (3:00pm – 5:00pm)
Estación de Bomberos #14
532 Langdon Street, Fayetteville, NC 28301
(por ruta #12)

Jueves, 7 de noviembre de 2013 (6:30pm – 8:30pm)
Biblioteca, sede oeste
7469 Century Circle, 28306
(en el área de Strickland Bridge Road)

Martes, 12 de noviembre de 2013 (4:00pm - 6:00pm)
Biblioteca, sede Cliffdale
6882 Cliffdale Road, Fayetteville, NC 28314
(por rutas #17 y #18)

Audiencia Pública

Lunes., November 18, 7:00pm
el Salón municipal
433 Hay Street
Fayetteville, NC 28301

Proposed Transit Route Changes Public Hearing

November 18, 2013



Purpose



- Major Service Changes must be approved by City Council following a public hearing
- Ten (10) day notice required
 - Advertised October 22 & 29 – Fayetteville Observer
 - Advertised November 2 – Acento Latino
- Changes included in FY 2014 Budget
- To be implemented, February 2014 – if approved





Outreach Efforts



- Six (6) open house information sessions
 - October 30 through November 12
 - Varied times & locations
 - Transit accessible & impacted areas
 - Other Community Watch meetings
 - FACT meeting – November 12, Clifffdale Library
- Flyers at Transfer Center & on buses
- Other written or call-in comments



Overview



- New routes
 - #10 - Strickland Bridge Road
 - #50 – Fort Bragg Express
- Extending service to Reilly Road Mini-mall
 - Modify #17 (mitigate inconvenience at Yadkin Gate)
 - New #19 Yadkin Road-Fort Bragg-Fillyaw Road

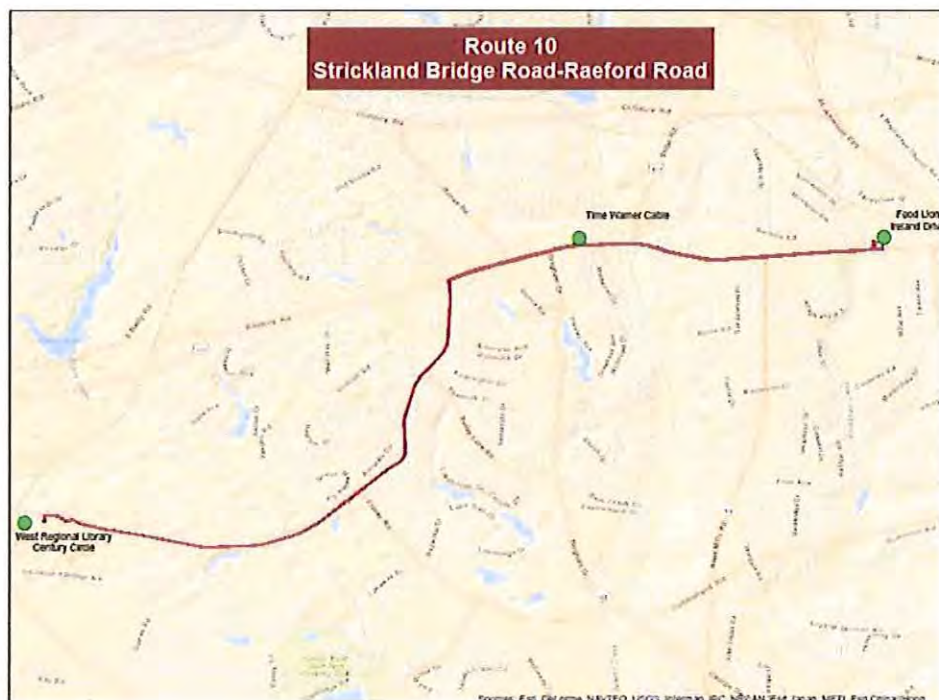


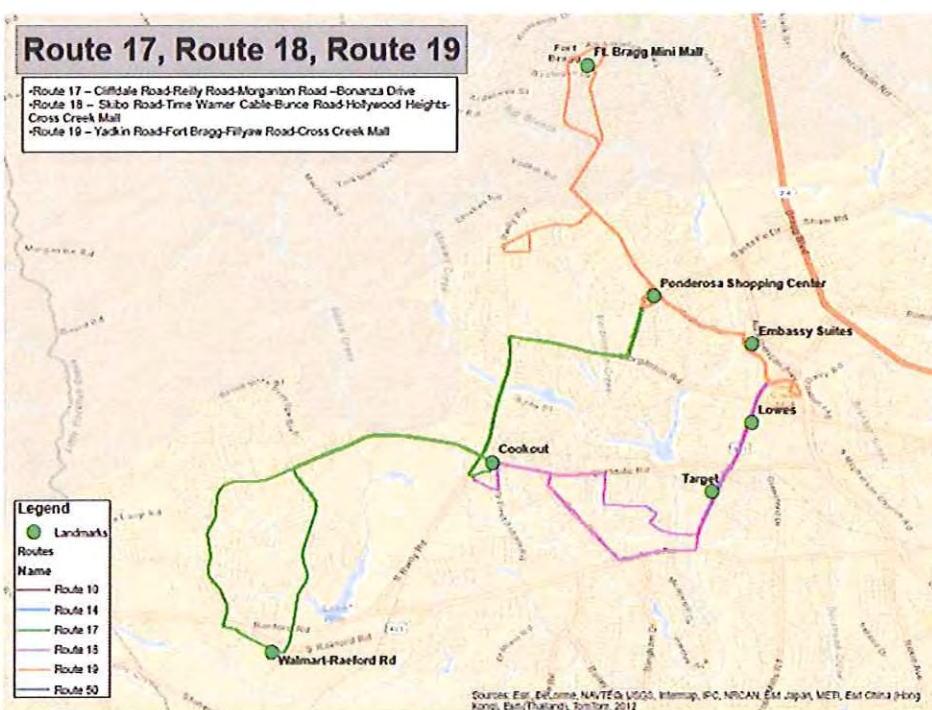
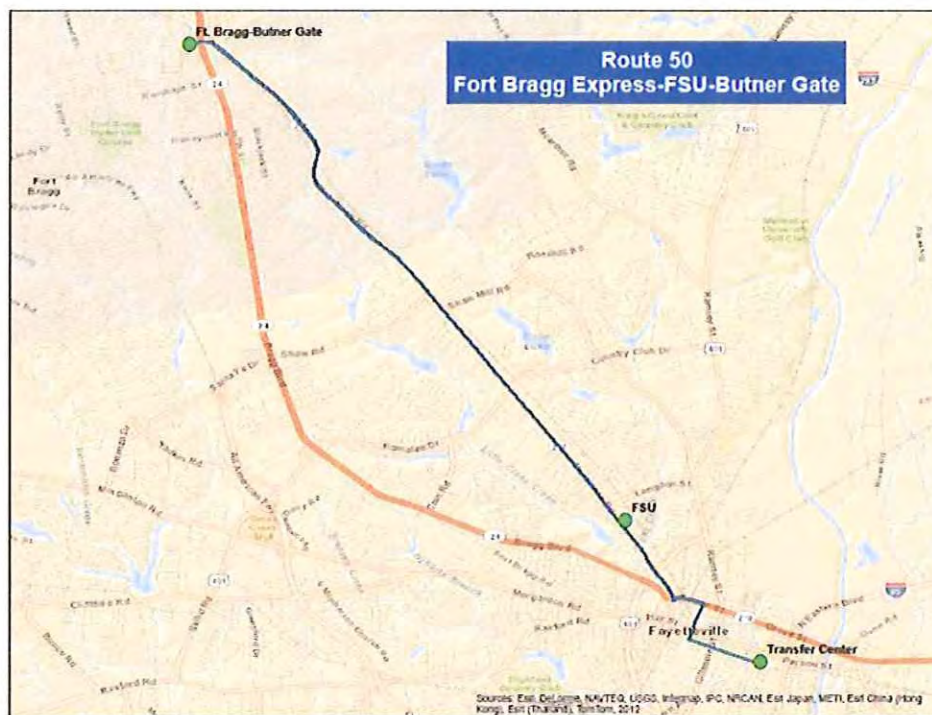


Overview



- Address capacity issue at Cross Creek Mall
 - Two line-ups – Top & bottom of hour
 - Change schedule times to routes #6, #9 & #18
 - Route #9 to accommodate connections to route #6
 - Extend Route #14 to Walmart on Skibo
 - To accommodate customers now connecting to route #6
- Earlier Saturday AM service on routes #3 & #4
 - Savings by reducing service frequency on Route #12
 - After 8:00 PM (:60 instead of :30)







Comments to Date



- Support proposed changes
 - Interest in Fort Bragg
- Need more buses on route #14
 - Overcrowding – express route to FTCC
- More bus stops along routes
- Seniors' & children's fares





Comments & Questions?



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CITY COUNCIL ACTION MEMO

TO: Mayor and Members of Council
FROM: Steven K. Blanchard, PWC CEO/General Manager
DATE: November 18, 2013
RE: **Contract Award for Connect Program (Advanced Metering Infrastructure Program)**

THE QUESTION:

The Public Works Commission of the City of Fayetteville requests Council approve contract award for the Connect Program

RELATIONSHIP TO STRATEGIC PLAN:

Quality Utility Services

BACKGROUND:

The Public Works Commission, during their meeting of August 28, 2013 approved awarding Phase 1 of the Connect Program to Sensus USA, Inc., authorized the General Manager to execute contracts for \$46.7 million and to forward to City Council for approval. The Connect Program is an advanced metering infrastructure program; which consists of two phases spanning over a total six years. The contract for Sensus USA, Inc. involves installation of infrastructure and advanced water and electric meters, and will take four years.

This item was presented and discussed at the September 3, 2013 City Council work session and September 9, 2013 regular Council Meeting. The City Council authorized the Public Works Commission General Manager to develop a service contract with Sensus USA, Inc. for the Advanced Metering Infrastructure Program in an amount not to exceed \$46.7 million during their meeting of September 9, 2013.

ISSUES:

N/A

BUDGET IMPACT:

PWC budgeted item; CIP Projects #C5 (\$19,692,500) and C6 (\$35,441,900)

OPTIONS:

N/A

RECOMMENDED ACTION:

The Public Works Commission of the City of Fayetteville recommends to the City Council to approve awarding contract to Sensus USA, Inc. and to authorize the PWC General Manager to execute the contract to Sensus USA, Inc.

ATTACHMENTS:

Executive Summary
Sensus Contract

Executive Summary

Connect Program (Advance Metering Infrastructure Program)

The Connect Program is a 6 year, 2 phase, program where technology is utilized to deliver utility services thru 2 way metering communications, computer-based remote control, and automation.

Phase 1 of the project will last 4 years and involves the construction of advanced infrastructure utilizing existing water towers, fiber and a communications network. Additionally, advanced “smart” meters will be installed for approximately 83,000 electric customers and 97,000 water customers.

After an extensive RFP process and review of proposals, presentations, lengthy discussions, reference checks and other due diligence activities, Sensus USA, Inc. was determined to be the vendor with the best solution to meet the needs of the Connect program. Sensus USA’s solution is a “turnkey” solution which will include the design and construction of infrastructure, procurement and installation of Sensus water meters as well as procurement and installation of commercial & industrial electric meters. PWC will purchase residential electric meters directly from Landis & Gyr (manufacturer) as they are the sole source provider. Sensus will be responsible for the installation of the residential Landis & Gyr meters.

The deployment schedule for the meters will be as follows:

Year Deployed	Electric Meters	Water Meters
2014	10,000	6,000
2015	40,000	48,000
2016	30,000	34,000
2017	<u>2,566</u>	<u>9,048</u>
	82,566	97,048

The costs for phase 1 will be spread over a 4 year period and has been budgeted in the PWC Capital Improvement Program (projects CS 5 and CS 6) in the amount totaling \$ 55,134,400. The yearly phase 1 costs as depicted in the CIP are projected as follows:

FY14	\$ 11,296,600
FY15	\$ 16,339,300
FY16	\$ 15,844,000
FY17	\$11,654,500

The contract for Sensus USA, Inc. is within the CIP budget item(s) referenced above.

Advanced Metering Infrastructure (AMI) Agreement

by and between

**The City of Fayetteville by and through its Public Works
Commission
("FPWC" or "Customer")**

and

**Sensus USA Inc.
("Sensus")**

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IN WITNESS WHEREOF, the parties have caused this AMI Agreement ("Agreement") to be executed by their duly authorized representatives as of the day and year written below.

RECITALS

WHEREAS, Customer is engaged in relevant part in the business of providing electric and water services to businesses and residents of Fayetteville, North Carolina and certain surrounding areas; and

WHEREAS, Customer is interested in procuring and utilizing AMI for its electric and water services, and accordingly in April 2013, Customer issued a Request for Proposals ("RFP") for the acquisition and installation of such infrastructure and related software and licenses; and

WHEREAS, Sensus, in conjunction with its installation subcontractor Apex CoVantage LLC ("Apex") submitted a proposal in response to the RFP, and Sensus was the selected vendor; and

WHEREAS, the parties accordingly enter into this Agreement for the procurement and installation of the AMI described in this Agreement, along with the related software and radio frequency licenses necessary for Customer to utilize the AMI;

NOW THEREFORE, for and in consideration of the mutual agreements and covenants set forth below, which the parties acknowledge constitutes sufficient consideration, the parties agree as follows:

TERMS AND CONDITIONS

1. **Term and Equipment.** The date that the last of Customer and Sensus signs this Agreement is the "Effective Date." This Agreement shall commence on the Effective Date and continue until: June 30, 2017 ("Term"), unless terminated sooner as provided for herein, and provided that it may be extended for a longer period by written agreement.
2. **Purchase of Equipment.**
 - A. **Equipment.** Customer shall purchase from Sensus the quantities and types of SmartPoint Modules and other Field Devices, RF Field Equipment, and other goods (collectively, "Equipment") and services set forth in the agreed upon Schedule of Values dated November 5, 2013, which is incorporated herein by reference, and the other terms and conditions in Exhibit E to this Agreement .
 - B. **Order and Delivery.** Upon receipt of purchase order(s) from Customer, Sensus shall promptly ship the ordered Equipment. (The agreed upon content for Customer's purchase order that will be used for purposes of this Agreement is set forth in Exhibit H). Purchase orders are used solely to time the ordering of shipments of Equipment under this Agreement. No purchase order is required to make this Agreement legally binding on the parties, and nor shall any terms or conditions in a purchase order (nor the acceptance thereof by Sensus) modify the terms and conditions of this Agreement. The obligation of Customer to purchase and the obligation of Sensus to sell, the Equipment and services set forth in the Schedule of Values, is binding upon the execution hereof, provided however, that the final quantities of water meters, electric meters and base stations ultimately ordered by Customer may vary slightly from the quantities specified in the Schedule of Values by up to five percent (5%) in order to ensure that Customer's entire field population of meters is serviced by the AMI System without superfluous meters or base stations being deployed. Final quantities of these items of Equipment will be determined by the Customer's project manager as deployment proceeds.

- C. Except for the Smartpoint Modules to be inserted into Landis and Gyr ("L&G") electric meters by L&G for Customer, all Equipment will be shipped to Sensus' meter installation subcontractor's (Apex) warehouse located in or near Fayetteville, North Carolina. Smartpoint Modules to be inserted into L&G electric meters will be shipped to L&G's facility located in or near Lafayette, Indiana. (Customer will enter a separate agreement with L&G for the labor of insertion of the Sensus' Smartpoint Modules into L&G electric meters, and for delivery of those meters to Apex's warehouse.) The pricing in the Schedule of Values includes the costs to Customer of shipment of all Equipment by Sensus. All Equipment will be shipped Ex Works shipping point, prepay freight and add. Title to, and risk of loss in all Equipment shall transfer to Customer upon shipment from Sensus or Sensus' contracted manufacturer.
- D. **Project Number.** After Sensus provides the Sensus project number to Customer, Customer shall include the Sensus project number on all purchase orders.
- E. **Equipment Warranties.** The Equipment is warranted as set forth in this subsection E.
- i. Sensus warrants its water meters according to the terms and conditions (including all limitations and exclusions) in the Sensus G-500 warranty, available at: <http://sensus.com/TC/TermsConditions.pdf> (click on the "G500" link), or 1-800-METER-IT ("G-500 Warranty"). To the extent the duration or other terms of the G-500 Warranty conflict with subparagraph 2.E.iv. below, the terms of that subparagraph shall control.
 - ii. Sensus warrants all other goods, software, and services listed in the Schedule of Values, except for the water meters (which are covered by the above warranty) according to the terms and conditions (including all limitations and exclusions) in the Sensus Limited Warranty, available at: <http://sensus.com/TC/TermsConditions.pdf> (click on the "General Warranty" link), or 1-800-METER-IT ("General Limited Warranty"). To the extent the duration or other terms of the General Limited Warranty conflict with subparagraph 2.E.iv. below, the terms of that subparagraph shall control.
 - iii. Both the G-500 Warranty and the General Limited Warranty are incorporated herein by reference as if set out fully in this Agreement.
 - iv. Sensus agrees that the G-500 Warranty and the General Limited Warranty shall extend until the last to occur of: (i) four (4) years from the Effective Date of this Agreement; (ii) eighteen (18) months from the date of shipment of the relevant meter; or (iii) twelve (12) months following such meter's installation; or, (iv) in the case of the G-500 Warranty, the end of its term as set forth in the G-500 Warranty.

These warranties shall apply to all meters listed in the Schedule of Values, including the Elster meters. Neither these warranties nor any implied warranty shall apply to any meters not listed in the Schedule of Values, including, without limitation, the L&G meters that Customer will buy separately from L&G, to be installed by Sensus' subcontractor as part of the project.

F. Network Warranty.

- i. Subject to subsection (ii) below, if installation of more than the Required RF Field Equipment is necessary for the AMI System to meet the specifications set forth in Exhibit B of this Agreement, Sensus shall, as Customer's sole remedy for such circumstances, timely deliver to the Customer the additional RF Field Equipment necessary to meet those specifications at no charge to the Customer, provided that all such additional RF Field Equipment shall be located and installed as directed by Sensus. Customer shall pay for the installation of the RF Field Equipment, and any Recurrent RF Field Equipment Fees for all such additional RF Field Equipment provided pursuant to this

subsection (i). The Customer shall have title to all such equipment provided pursuant to this subsection (i). Further, in the event of a deterioration in coverage that results in the required specifications in Exhibit B not being met, which deterioration is not due to either: (A) growth in the number of meters in the Service Territory or the amount of data to be transmitted over the AMI System; (B) Customer's lack of maintenance of the RF Network or (C) changes in the physical, natural or built environment in the Service Territory (e.g., new construction of buildings), Sensus shall, as Customer's sole remedy for such circumstances, perform at no charge to Customer additional RF propagation design and provide modification or enhancement to the existing RF Field Equipment, or provide additional RF Field Equipment as may be required to return the AMI System to the required level of performance per the specifications in Exhibit B. In any such case, any field work, installation, tower lease fees, any Recurrent RF Field Equipment Fees and any Ongoing Fees for all such equipment provided pursuant to this subsection will be the responsibility of Customer and at Customer's sole expense. Sensus' obligations under this subsection (i) shall cease upon the latter to occur of: (a) one year after the Effective Date, or (ii) one year after 85% of the meters that include SmartPoint Modules are installed, such that after that time, Sensus shall have no obligation to provide RF Field Equipment hardware at no cost, and the Customer will have to purchase such hardware, even it is necessary to meet the specifications in Exhibit B.

- ii. Notwithstanding anything to the contrary, the parties recognize and agree that the RF Field Equipment site design and build is based on the specific metering locations and antenna heights provided to Sensus by the Customer in writing prior to the Effective Date ("Customer's Meter Data"). For clarity, the Customer's Meter Data only contains the individual meter locations and antenna heights specifically provided to Sensus by the Customer in writing prior to the Effective Date. New or different metering locations and/or antenna heights provided after the Effective Date may or may not require additional RF Field Equipment and/or changes to the RF Field Equipment locations. In the event new and/or different RF Field Equipment locations are required to accommodate any new metering sites and/or antennae heights, Customer agrees to pay Sensus for the additional RF Field Equipment hardware, perform the necessary site preparation, and pay for the necessary installation, tower lease, Recurrent RF Field Equipment Fees and Ongoing Fees for all equipment purchased pursuant to this subsection (ii). Any equipment required pursuant to this subsection (ii) is excluded from the network warranty calculation described in subsection (i).

G. Limitations and Exclusions. THE WARRANTIES SET FORTH OR REFERENCED IN SECTIONS 2.E AND 2.F ABOVE ARE THE ONLY WARRANTIES GIVEN WITH RESPECT TO THE GOODS, SOFTWARE, AND SERVICES SOLD OR OTHERWISE PROVIDED BY SENSUS. THERE ARE NO IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.

H. Ongoing Maintenance of Equipment Once Installed and Accepted.

- i. **Field Devices.** Customer shall be responsible for the ongoing maintenance of the Field Devices once they are installed and have met the relevant acceptance criteria in Exhibit B to this Agreement. After that point, Customer shall provide the field services labor to visit a problem Field Device and perform diagnostics and repair or replacement. For electricity products where a problem is reported, Customer shall first test and confirm that each socket to which a Field Device will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, and is not "hot", damaged, or otherwise in need of maintenance or repair.
- ii. **RF Field Equipment.** Customer shall be responsible for the ongoing maintenance of the RF Field Equipment once it is installed and have met the relevant acceptance criteria in Exhibit B to this

Agreement. Customer shall be responsible for the ongoing monthly operations and expenses related to the RF Field Equipment, including any leasing costs, construction costs, taxes and costs of WAN Backhaul. Customer shall pay for electric power to the RF Field Equipment.

- iii. **Server Hardware.** Customer shall be responsible for the ongoing maintenance of the Server Hardware. Customer shall allow Sensus remote access to the Server Hardware and physical access coordinated with customer and VPN. Remote access to the Server Hardware must be through a high speed VPN. The high speed VPN shall comply with the requirements indicated by Sensus from time to time.

3. Services.

A. Installation of Equipment.

- i. **Generally.** The parties' respective obligations for the deployment and operation of the AMI System is set forth in the Statement of Work ("SOW") attached as Exhibit C to this Agreement. Sensus and its subcontractors shall use such reasonable skill and care as is standard in their industry in providing the services required under this Agreement. All such services shall be provided consistent with the details set forth in the SOW. If a service is inadequate, Customer's sole remedies, and Sensus' sole responsibility, shall be for Sensus or its subcontractor to re-perform the service or meet its warranty obligations set forth above.
- ii. **Indemnification.** [Intentionally omitted.]
- iii. **Field Devices.** Subject to the exceptions set forth in Section V.b.3 of the SOW, Sensus, or its subcontractor, shall install the Field Devices at Customer's End Users' premises, or other location as applicable. For installations performed by Sensus' subcontractor, Sensus shall cause its subcontractor to first test and confirm that each socket to which a Field Device will be connected is in safe operating condition, is fully functional and is not "hot", damaged or otherwise in need of maintenance or repair, and to otherwise follow the relevant installation protocol set forth in Section V of the SOW. For installations performed by Customer, Customer shall first test and confirm that each socket to which a Field Device will be connected is in safe operating condition, is fully functional and is not "hot", damaged or otherwise in need of maintenance or repair.
- iv. **Milestones for Project.** For the installations to be completed by Sensus or its subcontractor, best efforts will be made by the parties to complete those installations pursuant to the milestones set forth in Exhibit C-1 to this Agreement. Subject to paragraph v. below, there will be no monetary or other penalty if a milestone is not met. If a milestone is not met, the parties' respective project managers shall prepare and oversee implementation of a plan to get back on the milestone schedule and meet the next milestone.
- v. **Project Milestone 3.** If Project Milestone 3 in the Project Milestones is not met forty (40) days after Customer achieves Project Milestones 1 and 2 and Customer notifies Sensus in writing that it has done so, Sensus shall pay Customer liquidated damages of \$800 per business day, beginning on day 41 and continuing until Milestone 3 is reached, provided however, that the maximum amount of liquidated damages that Sensus shall be liable to pay shall be Twenty-Four Thousand dollars (\$24,000).
- vi. **RF Field Equipment.** Sensus shall perform the propagation analysis in the Service Territory to determine where to locate the RF Field Equipment. For the prices set forth in the Schedule of Values, Sensus, or its subcontractor, shall perform Sensus' obligations in Exhibit C with regards to the RF Field Equipment installation. Customer shall perform Customer's obligations in Exhibit C

with regards to the RF Field Equipment installation.

- B. **Software Implementation.** Sensus will configure and create an image of the RNI system to be installed by Customer with its virtual server environment. Sensus will assist Customer upon request with that installation process.
- C. **IT Systems Integration Services.** Integration of the Software into Customer's new or existing internal IT systems is not included in this Agreement.
- D. **Technical Support.** Sensus shall provide Customer the technical support set forth in Exhibit A.
- E. **Sensus' Personnel and Subcontractors.**
 - i. **Professional Conduct.** Whenever Sensus performs services on Customer's premises, Sensus agrees to act in a professional manner and to observe reasonable business practices. Sensus further agrees to not create a hostile work environment or harass any person on Customer's premises. Furthermore, Sensus agrees that: (a) Sensus will not act or engage in practices that could in any way subvert or compromise the security of Customer's electronic network, the integrity of Customer's data, the proper operation of Customer's hardware and software, or the accuracy and authentication of transactions processed by and through Customer's network; (b) Sensus will not inappropriately access Customer's network; and (c) Sensus will at all times follow procedures designed by Customer to maintain network integrity and the protection of Customer information.
 - ii. **Compliance with Security Policies.** Customer shall cause all personnel who perform services at Customer's premises to comply with all security and other rules and policies of Customer, which are applicable on the premises of Customer. Customer shall provide Sensus with written notice of such rules and policies at least five (5) business days prior to Sensus' personnel's first arrival at Customer's premises and within five (5) business days of any subsequent changes to such policies.
 - iii. **Key Personnel.** Ray Polak shall serve as Sensus' Project Manager, Mary Chandranathan or a Lead AEM as its Applications Engineer Manager ("AEM"), David Foster as its RF Lead Engineer, and Mark Miller (electric) and David Nimtze (water) as the FlexNet Managers of Technical Sales. (Collectively the "Key Personnel"). Key Personnel may work on other projects provided they dedicate sufficient time to performance of this Agreement. Sensus will maintain the continuity of the Key Personnel assigned to the project or engagement throughout its term unless, in the reasonable opinion of Sensus: (i) the removal of Key Personnel from this project is beneficial to Sensus' performance of services for Customer; or (ii) one or more of the Key Personnel resigns or is terminated. In the event any Key Personnel is reassigned, becomes incapacitated, or ceases to be employed by Sensus and, therefore, becomes unable to perform the functions or responsibilities assigned to him, Sensus shall: (i) within three (3) to five (5) business days, temporarily replace that resource with another resource properly qualified to perform the functions of the resource being replaced, and (ii) within one (1) month provide a permanent resource replacement of similar skills, knowledge and training, subject to the prior approval of Customer, which shall not be unreasonably withheld.
 - iv. **Resource Replacement.** At any time, Client may request in writing that Sensus remove from the project or engagement any Sensus resource performing services on the project or engagement. Upon receipt of such request, Sensus shall either:
 - (a) within seven (7) business days, notify Customer in writing of any objection to the removal on the grounds that it may impede Sensus' ability to perform the services required for the project or

engagement (Customer may still insist on removal of the resource, in which case the parties shall work in good faith to adjust the delivery schedule for the services such resource provided); or

- (b) within fourteen (14) calendar days from receipt of the request (or, if the resource is identified as Key Personnel, per the timeframe applicable to Key Personnel) remove and replace the resource with a resource with sufficient knowledge and expertise to perform the assigned services, which may be initially on a temporary basis until a permanent replacement is found (Customer shall have the right to approve the replacement resource, which approval shall not be unreasonably withheld).

- v. **Resource Qualification.** Sensus shall employ and assign to the project or engagement the number of personnel necessary to properly and timely perform Sensus' obligations, and upon Customer's request, provide Customer with a list of all personnel assigned by Sensus to the project or engagement, which list shall include the positions occupied by each such person. Sensus' personnel, including Key Personnel, shall have experience, training, and expertise at least equal to prevalent industry standards required for providing the services, and shall have sufficient knowledge of the relevant aspects of the services and the Customer's practices to enable them to properly perform Sensus' required duties and responsibilities. In the event of a breach by Sensus of its obligations in respect of the minimum proficiency levels of its personnel, Sensus shall promptly take one or the other (as reasonably directed by the Customer) of the following actions: (i) remove and replace the resource after receipt of notice from the Customer that such resource does not meet the required minimum proficiency levels, or (ii) take appropriate action in respect to addressing the resource deficiency, including, but not limited to, training to bringing the resource's proficiency levels in line with the required proficiency minimums.

- vi. **Subcontractors.**

Sensus will subcontract with Apex for the installation of meters (except for those that will be installed by Customer) pursuant to Section 3.A of this Agreement, and for other work required to carry out Sensus' responsibilities under the Scope of Work attached under Exhibit C (the "Apex Subcontract"). Sensus has provided an unexecuted copy of the Apex Subcontract to Customer, which has been approved in form by Customer. Sensus shall not replace Apex or enter into any other subcontract for performance of any of its obligations to Customer with any other third-party without the prior written consent of Customer, such approval not to be unreasonably withheld.

At least fourteen (14) calendar days before entering into any other subcontract for performance of any of its obligations to Customer, Sensus will state in writing to Customer the name of the proposed subcontractor, the scope of services the subcontractor would perform, and a brief description of the subcontractor's qualifications to perform the services. Sensus shall be fully responsible to Customer for all acts and omissions of Apex and its other subcontractors and of persons directly or indirectly employed by Apex and its other subcontractors to the same extent that Sensus is responsible for the acts and omissions of persons directly employed by it. Nothing in this Agreement shall create any contractual relationship between Apex and any other subcontractor to Sensus and Customer or any obligation on the part of Customer to pay or to ensure the payment of any monies due to Apex or any other subcontractor to Sensus. In the event of a dispute regarding subcontractor payment, Customer may furnish to any subcontractor evidence of amounts paid to Sensus on account of specific work performed by that subcontractor.

To the extent that Sensus will cause any part its obligations to Customer to be performed by a subcontractor, the confidentiality and other provisions of this Agreement will apply to such subcontractor and its officers, agents and employees in all respects as if the subcontractor and its

officers and personnel were employees of Sensus; and Sensus will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the subcontractor, its officers, agents, and employees, as if they were employees of Sensus.

Sensus warrants and represents that it has informed Apex fully and completely regarding Sensus' obligations under this Agreement as it relates directly or indirectly to the work to be performed by Apex. Before entering into any other subcontract for performance of any of the services to Customer, Sensus will likewise inform the subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the work to be performed by the subcontractor.

- F. **Product Roadmap.** Attached hereto as Exhibit F is an extract of Sensus' current product development roadmap. If the iPerl Water Meter Remote Shut-off Valve capability (item 3 in Exhibit F) is not available for 5/8 inch meters by July 1, 2015, Customer may, as its sole remedy for such circumstances, cancel any purchase orders for any such 5/8 water meters and shall not be obliged to purchase any such 5/8 inch meters as listed in the Schedule of Values.

4. **Software.**

A. **Software License.**

i. **License.**

- (a) Subject to all the terms and conditions of this Agreement, Sensus hereby grants to Customer for the Ongoing Fees, a nonexclusive, non-transferable, royalty-bearing license under Sensus' intellectual property rights (the "Software License") to use the Software for the Permitted Use. The Software License is personal to Customer and may not be sublicensed to Affiliates or other third parties. Customer shall have no rights to the Software other than those expressly granted in this Section; this Software License contains no implied licenses. Customer shall not use the Software other than for the Permitted Use.
- (b) [Intentionally omitted.]
- (c) Except as expressly authorized in accordance with the Permitted Use, Customer shall not (and shall not attempt to): (a) use, copy, adapt, translate, publish, display, sublicense, rent, lease, lend, transfer or distribute the Software, related documentation, or any copy thereof; (b) improve, enhance, revise, modify or make any other derivatives of the Software, related documentation or any copy or part thereof. Customer shall not reverse assemble, reverse compile, reverse engineer or otherwise translate or decode the Software or any part thereof, or any copy thereof. Sensus' suppliers of software and documentation (or any part thereof) are beneficiaries of this provision. Customer shall not destroy, remove or otherwise alter any proprietary notices (including, but not limited to, copyright notices) on the Software or related documentation, or any copy thereof, and agrees to reproduce any such notice(s) on any copy thereof it makes pursuant to this Software License.
- (d) The Software License shall commence on the Effective Date and shall remain in effect so long as Customer timely pays the Ongoing Fees for the license, and abides by the uses of the Software License stated above.

- ii. **Access to Software.** Customer shall ensure that only Customer employees and Customer's independent contractors who need access to the Software for Customer to obtain the benefits of this

Agreement may access it. Customer is liable for ensuring that its employees and independent contractors abide by the terms of the Software License.

iii. Third Party Software.

- (a) In addition to the Software, Sensus shall provide Customer with the open source software listed in Exhibit D under the heading "Bundled Third Party Software" (the "Bundled Third Party Software"). Customer acknowledges that it has received the terms and conditions of the Bundled Third Party Software ("Third Party EULAs"). Customer accepts the Third Party EULAs and agrees to comply with the terms of such Third Party EULAs.
- (b) Exhibit D contains, under the heading "Non-Bundled Third Party Software", certain third party software ("Non-Bundled Third Party Software"). Customer must license the Non-Bundled Third Party Software directly from third party licensors in order to operate the AMI System.
- (c) Customer acknowledges that both the Bundled Third Party Software and the Non-Bundled Third Party Software is subject to various rights and restrictions in favor of or imposed by the licensors thereof and that Customer's use of the Bundled Third Party software and/or Non-Bundled Third Party Software is subject to all such rights and restrictions. Sensus provides no warranty, indemnity nor support of or in relation to any third party software. All such rights and obligations are a matter strictly between Customer and the relevant third party licensors.

iv. Support and Maintenance.

- (a) For so long as the Customer pays the Ongoing Fees, Sensus shall provide Customer with ongoing software Patches, Updates, ongoing software maintenance and remote telephone support of the Software according to the terms set forth in Exhibit A. Software Upgrades are not included hereunder and shall be priced separately.
 - (b) Sensus will support and will maintain compatibility with the most recent Release and the two prior Releases ("Previous Releases"). If Customer requires support for versions that were released earlier than the Previous Releases, Customer's Ongoing Fees for software maintenance shall increase by thirty-three percent (33%) per year until Customer upgrades to a supported version of the Software.
- v. **Effect of Termination.** Upon the termination of the Software License, all rights of the Customer to use the Software shall immediately cease and Customer shall promptly remove and return to Sensus all copies of the Software and any related documentation and shall instruct all its employees that further use of the Software is prohibited.

B. Intellectual Property. Sensus and/or its supplier (as applicable) shall own all right, title, and interest in and to the Intellectual Property associated with the Software and related documentation, including any derivations and/or derivative works. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property.

C. UCITA. To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.

5. Spectrum Lease.

- A. **Definitions in this Section 5.** In this Section 5 only, “Sensus” shall refer to both Sensus USA, Inc and its wholly owned subsidiary, Sensus Spectrum LLC.
- B. **Spectrum Lease.** Sensus hereby grants to Customer and Customer accepts a spectrum manager lease (“Lease”) over the frequencies of the Federal Communications Commission (“FCC”) License and solely within Customer’s Service Area. (The frequencies of the FCC License within Customer’s geographic Service Area are called the “Leased Spectrum”). \$900 of the Ongoing Fees Customer is obligated to pay shall be applied as payment for Customer’s use of the Leased Spectrum.
- C. **Forms 608 and 602.** Sensus will file with the FCC: a FCC Form 608 (notification/application for a long term spectrum manager lease), and a FCC Form 602 (ownership disclosure information), copies of which are attached as Exhibit G to this Agreement. This Lease becomes effective when the FCC receives the notification. Sensus shall notify Customer forthwith upon notifying the FCC.
- D. **Lease Application.** In order to complete the FCC lease application, Customer will:
- i. Complete and sign the representations under Exhibit G of this Agreement such that Customer demonstrates it qualifies for a spectrum lease under FCC rules. Customer’s signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 and the ownership disclosures on Form 602 with the Customer as spectrum lessee.
 - ii. Give Sensus the coordinates of the boundaries of Customer’s Service Territory or, alternatively, approve Sensus’ estimation of the same.
 - iii. In the event that Customer does not already have one, Customer hereby authorizes Sensus to apply on Customer’s behalf and obtain for Customer a Federal Registration Number (FRN, the FCC’s unique identifier for each licensee) and shall supply Sensus with Customer’s Taxpayer Identification Number (TIN).
 - iv. Provide any other information or other cooperation reasonably necessary for the Parties to perform as set forth herein.
- E. **Permitted Use of Spectrum Lease.** Customer may transmit or receive over the Leased Spectrum only in the Service Territory and only using the equipment in its AMI System and used in accordance with this Agreement. Customer may use the Leased Spectrum only to read and direct meters in support of Customer’s primary utility business or any other operation approved by Sensus in writing. Without limiting the foregoing, Customer is prohibited from reselling, subleasing or sublicensing the Leased Spectrum or from transmitting voice communications over the Leased Spectrum.
- F. **Term of Spectrum Lease.** Unless terminated earlier (because for example Customer stopped using the Equipment), this Lease will have the same term as the FCC license. If Customer is operating in compliance with this Agreement and Customer’s underlying agreement with Sensus and is current on any payments owed to Sensus, when the FCC License renews, Sensus will apply to the FCC to renew this Lease.
- G. **Termination of Spectrum Lease.** The Lease will terminate: (a) two months after Customer stops transmitting with the Equipment in its AMI System; (b) upon termination, revocation or expiration of the FCC License; or (c) upon Customer’s material breach of this Agreement and failure to timely cure any such breach.

H. FCC Compliance. The following FCC requirements apply:

- i. Pursuant to 47 CFR 1.9040(a);
 - (a) Customer must comply at all times with applicable FCC rules. This Lease may be revoked by Sensus or the FCC if Customer fails to so comply;
 - (b) If the FCC License is terminated, Customer has no continuing right to use the Leased Spectrum unless otherwise authorized by the FCC;
 - (c) The Lease is not an assignment, sale or other transfer of the FCC License;
 - (d) The Lease may not be assigned except upon written consent of Sensus, which consent may be withheld in its discretion; and
 - (e) In any event, Sensus will not consent to an assignment of the Lease that does not satisfy FCC rules.
- ii. Pursuant to the standards set forth in 47 CFR 1.9010, Sensus retains *de facto* control over the applicable radio facilities, including that;
 - (a) Sensus will be responsible for Customer's compliance with FCC policies and rules. Sensus represents and warrants that it has engineered the Equipment and accompanying Software and other programs to comply with FCC rules. Customer will operate the Equipment solely in accordance with Sensus' specifications. Sensus retains the right to inspect Customer's radio operations hereunder and to terminate the Lease or take any other necessary steps to resolve a violation of FCC rules, including to order Customer to cease transmission. Sensus will act as spectrum manager in assigning spectrum under the FCC License so as to avoid any harmful interference with use of the Leased Spectrum or other violation of FCC rules. Sensus will be responsible for resolving any interference complaints or other FCC rule violations that may arise; and
 - (b) Sensus will file any necessary FCC forms or applications and Customer agrees reasonably to assist Sensus with such filing by providing any necessary information or other cooperation. Sensus will otherwise interact with the FCC with respect to the Lease, the FCC License or the Equipment.

- I. **Interference.** Customer agrees to report to Sensus promptly, and in no event later than 72 hours afterward, any incident related to the Leased Spectrum, including where Customer experiences harmful interference, receives a complaint or other notice of having caused harmful interference, or receives any type of communication from the FCC or other government agency regarding radio transmission. If third party radio frequency transmissions in or near the Customer's Service Territory are causing interference with the AMI System, Sensus shall make its resources available to the Customer (at Customer's expense) to try and remove or mitigate the interference. If FCC or other legal action is required to remove the interference, Sensus shall first consult and agree with Customer before any such steps are taken. Any such action shall be at Customer's expense.

6. General Terms and Conditions.

A. [omitted]

B. Indemnities.

- i. To the extent permitted by law, Sensus agrees to defend, indemnify and hold harmless Customer from and against all liabilities, demands, damages, losses, costs and expenses, in law or in equity, of every kind and nature whatsoever, including reasonable legal costs and attorneys' fees (collectively, "Losses") to the extent such Losses arise from a third-party claim against Customer arising from the actions or omissions of Sensus, Apex or any other subcontractor retained by Sensus for services to

be rendered under this Agreement. This includes any claim by any third-party for infringement of such third-party's copyright or other property rights in any software or leased spectrum.

- ii. To the extent permitted by law, Customer agrees to defend, indemnify and hold harmless Sensus from any against any Losses to the extent such Losses arise from a third-party claim against Sensus arising from the actions or omissions of Customer.
- iii. In the event that either party receives such a third-party claim, they shall promptly notify the other party of the claim in writing, provide to them all information relevant to the claim, and shall reasonably cooperate thereafter with the indemnifying party in responding to the claim (including making witnesses and documents available in discovery and trial). The indemnifying party shall select and compensate any counsel retained to respond to the third-party claim. However, the indemnified party may retain their own counsel at their own expense. The indemnifying party shall direct and control the response to any such claim, but shall not settle the claim without the knowledge of the indemnified party.

C. Limitation of Liability.

- i. The aggregate liability of either party to the other in any and all causes of action arising under, out of or in relation to this Agreement, its negotiation, performance, breach or termination (collectively "Causes of Action") shall not exceed \$5,000,000. This is so whether the Causes of Action are in tort, including, without limitation, negligence or strict liability, in contract, under statute or otherwise. This limit does not apply to any third-party claim, however.
- ii. As separate and independent limitations on liability, each party's liability to the other party shall be limited to direct damages. Neither party shall be liable to the other for: (i) any indirect, incidental, special or consequential damages; (ii) any lost or wasted water or electricity or any revenue or profits lost by either party or its Affiliates from any End User(s), irrespective whether such lost revenue or profits is categorized as direct damages or otherwise; (iii) any In/Out Costs; (iv) manual meter read costs and expenses; or (v) damages arising from maincase or bottom plate breakage caused by freezing temperatures, water hammer conditions, or excessive water pressure.
- iii. The limitations on liability set forth in this Agreement are fundamental inducements to both parties entering into this Agreement. They apply unconditionally and in all respects. They are to be interpreted broadly so as to give each party the maximum protection permitted under law.
- iv. To the maximum extent permitted by law, no Cause of Action may be asserted by either party against the other party more than TWELVE (12) MONTHS from when the claiming party knew or reasonably should have known of the basis of the Cause of Action, whichever event first occurs. In the calculation of any damages in any Cause of Action, no damages incurred more than TWELVE (12) MONTHS prior to the filing of the Cause of Action shall be recoverable.

D. Insurance.

- i. Sensus shall at all times during the Contract maintain in full force and effect such liability and other insurance as set forth below. Policy limits and insurers must be acceptable to FPWC. All insurance coverage shall be underwritten by an insurance company authorized to do business in the State of North Carolina by the North Carolina Department of Insurance with a current A.M. Best's Rating of A-IIIV or better. Sensus shall carry and maintain at all times during the term of the Contract the following types of insurance with coverage limits equal to or greater than the limits specified below:

General Liability

Minimum

(1)		<u>Limits</u>	
	General Aggregate:		\$4,000,000
	Property Damage Except		\$1,000,000
	Automobile:	each	
		occurrence	
			\$2,000,000
		aggregate	
	Bodily Injury Except		\$1,000,000
	Automobile:	each	
		occurrence	

The General Liability coverage shall cover all operations conducted for and services provided to FPWC, shall include (1) [intentionally omitted] (2) broad form property damage liability coverage, (3) personal injury coverage, (4) products liability and completed operations coverage, (5) cross-liability coverage, (6) premises and operations coverage and (7) independent consultants.

Warranty Period. The General Liability coverage, including Completed Operations coverage, must remain in effect through the 4 year Term of this Agreement.

	<u>Auto Liability</u>	<u>Minimum</u>
(2)		<u>Limits</u>
	Bodily Injury:	\$1,000,000
		each
		occurrence
	Property Damage:	\$2,000,000
		aggregate
		\$1,000,000
		each
		occurrence
		\$2,000,000
		aggregate

	<u>Workers' Compensation</u>	Statutory
(3)	All States Endorsement where appropriate	

	<u>Employers' Liability</u>	<u>Minimum</u>
(4)		<u>Limits</u>
	Each Accident:	\$1,000,000
	Disease - Policy Limit:	\$1,000,000
	Disease – Aggregate:	\$1,000,000

- ii. **Additional Insured Endorsements.** Each liability policy required to be carried by Sensus (except workers' compensation and employee liability) shall name Customer and its directors, officers and employees as additional insured under the policy. The additional insured status shall be confirmed by endorsements, copies of which shall be supplied to FPWC along with the Certificates of Insurance and copies of the Declarations page for each policy, as required herein.

- iii. **General Liability Endorsement.** The General Liability additional insured endorsement must be CG 20 26 07 04 (or equivalent). Any manuscript endorsement shall be presented on insurance carrier or authorized agent letterhead and must contain similar wording to CG 20 26 07 04.
- iv. **Auto Liability Endorsement.** The additional insured endorsement shall be presented on insurance carrier or authorized agent letterhead.
- v. **Primary Coverage.** Sensus' General Liability and Automobile Liability insurance policies (only) maintained pursuant to this Agreement shall be primary and non-contributing to any insurance carried by FPWC.
- vi. **Occurrence Policies.** Sensus' General Liability, Automobile Liability and Workers' Compensation insurance policies (only) shall be written on an "occurrence" basis. This agreement must be evidenced in the Certificates of Insurance provided to the FPWC.
- vii. **Notice of Cancellation Endorsement.** Sensus shall provide FPWC with notice of any cancellation, reduction, non-renewal or other material modification in its policy at least thirty (30) days prior to such cancellation, reduction, non-renewal or other material modification.
- viii. **Waiver of Subrogation.** All insurance policies required in this Section shall include clauses stating each underwriter will waive all rights of recovery, under subrogation or otherwise, against Customer. This clause must be evidenced in the Certificates of Insurance provided to Customer.
- ix. **Evidence of Insurance.** Before any work actually commences on behalf of FPWC, Sensus shall provide FPWC with Certificates of Insurance, applicable endorsements, and Declarations pages for all insurance policies that Sensus is required to purchase and maintain. FPWC shall be shown as the "Certificate Holder" for all such insurance policies.
 - (a) The Certificates of Insurance also shall evidence and attach copies of the endorsements and other insurance requirements contained in this Section D, as well as, the Declarations page for each applicable policy.
 - (b) The insurance requirements contained in this Section D are not waived or excused by Customer's acceptance of Certificates of Insurance, endorsements, or other documents that do not fully comply with the requirements contained herein.
 - (c) The Certificates shall provide that the policies of insurance have been issued and are in force at that time. Sensus' insurer shall provide an endorsement stating that, in the event of cancellation, no less than thirty (30) days prior written notice shall be given to the Certificate Holder.
- x. **Updated Certificates and Endorsements.** If insurance coverage is required by this Section to continue beyond the expiration dates of the insurance policies indicated in any Certificates of Insurance provided to FPWC, Sensus shall provide FPWC with: (a) written notice indicating replacement coverage for each expiring policy required in this Section at least thirty (30) days prior to the expiration date of the applicable policy; and (b) within thirty (30) days after each new policy incept, Sensus shall provide FPWC with replacement Certificates of Insurance that evidence and attach copies of the endorsements and other insurance requirements contained in this Section, as well as the Declarations page for each applicable policy.
- xi. **Deductibles/Self-Insured Retentions.** To the extent allowed by law, all or any part of any required insurance coverages may be provided under a plan (or plans) of self-insurance. Such self-insurance

coverages may be provided by Sensus' parent corporation. Sensus shall be solely responsible for the payment of any deductibles, self-insured retentions, or similar provisions contained in any policies required under this Section.

- xii. **Increase in Insurance Limits.** FPWC reserves the right to require additional types of insurance and/or higher policy limits from those described in this Section. Should this occur during the course of existing work, then Sensus shall be eligible for additional compensation commensurate with any cost increase incurred for such additional coverage for the duration of existing work then under contract.
 - xiii. **Notice of Accident.** In the event of any damage to any property or any bodily injury to any person(s) in the course of the services provided under this Agreement, Sensus will immediately notify FPWC (which notification shall be followed by a detailed written report within forty-eight (48) hours).
- E. **Notice of Breach and Bond, Cure Period, and Termination.** In the event that either party asserts that the other party has materially breached this Agreement, such party shall deliver a written notice to the other party specifying the nature of the asserted dispute or breach. The materially breaching party shall then be provided with a 30 day opportunity to cure any material breach, running from the date of their receipt of such a notice. Failing a cure of the material breach within that 30 day period to the reasonable satisfaction of the party that gave notice of the material breach, that party may: (i) terminate this Agreement by written notice, and/or (ii) commence arbitration pursuant to Section 6.L of this Agreement. If, at any time during the Term, Customer serves Sensus with such a notice alleging a material breach by Sensus (including a material breach caused by a Sensus subcontractor) and provided such allegation of material breach is made in good faith and with a reasonable basis in fact, Sensus shall, within fifteen (15) days of the receipt of such notice, deliver to Customer a bond from a third party financial institution, in a form reasonably acceptable to Customer, in the amount of One Million Dollars (\$1,000,000). The bond shall be maintained until whichever of the following occurs first; (A) the alleged material breach is cured, or the dispute is otherwise resolved to Customer's reasonable satisfaction, (B) Customer fails to institute an arbitration proceeding pursuant to Section 6L of this Agreement within sixty (60) days of service of the notice of alleged breach on Sensus, (C) the arbitrator(s) appointed under Section 6.L. of this Agreement enter a final award finding Sensus is not required to pay any money to Customer, or (D) an arbitration award and any resulting judgment, if any, against Sensus is fully paid. The amount of the bond is for security purposes only and is not evidence of either party's liability to the other, nor of the amount of any such liability.
- F. **Force Majeure.** If either party becomes unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligations affected by the event of Force Majeure will be suspended during the continuance of that inability. The party that is unable to perform will take reasonable steps to mitigate the Force Majeure and to minimize any resulting delay. In the event of any occurrence of Force Majeure that results in more than (14) fourteen days delay in the project schedule, the parties' respective project managers shall promptly meet to coordinate further efforts to mitigate the effects of such delays, and to revise the schedule and Term of the Agreement if appropriate. "Force Majeure" means acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.
- G. **Intellectual Property.** No Intellectual Property is assigned by one party to the other pursuant to this Agreement. Sensus shall own or continue to own all Intellectual Property used, created, and/or derived

in the course of its performance of its obligations under this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property does not automatically vest in Sensus by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Sensus all right, title, and interest that Customer may have in and to such Intellectual Property. Customer agrees not to reverse engineer any Equipment purchased or provided hereunder. Sensus agrees. However, that any intellectual property of Customer's used or accessed by any party during the Term of this Agreement shall continue to be the sole property of Customer. To the extent, if any, that any ownership interest in and to Customer's Intellectual Property vests in Sensus, Sensus agrees to grant and assign and hereby does grant and assign to Customer all right, title, and interest that Sensus may have in and to such Intellectual Property. "Intellectual Property" means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.

- H. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation, including North Carolina's public records law codified at G.S. 132-1 *et seq.* As used herein, "Confidential Information" means any and all technical and non-technical information that a party considers to be proprietary or otherwise confidential and takes reasonable precautions to prevent its disclosure and dissemination outside its organization, and which does not qualify as, and is exempt from any applicable public records laws. Such information shall include any information about Customer's personnel or customers, schedules reflecting breakdowns of Sensus' pricing for Equipment and services, technical information about either party's products or services, marketing and marketing plans, AMI System performance and number of base stations for the AMI System, AMI System architecture and design, AMI System software, and other non-public business and financial information of either party, and all trade secrets of either party. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include any: (i) information that is in the public domain other than due to the Recipient's breach of this Agreement; (ii) information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it. If Customer receives a public records request for Confidential Information received from Sensus, Customer shall give prompt notice to Sensus prior to responding to it. Upon such notice, Sensus shall have the opportunity to contest, at Sensus' expense, the request under applicable law before the information is produced by Customer to the requesting third party. In any event, Customer shall comply with any order of a court of competent jurisdiction concerning public records requests.
- I. **Non-Waiver of Rights.** A waiver by either party of any breach of this Agreement or the failure or delay of either party to enforce any of the articles or other provisions of this Agreement will not in any way affect, limit or waive that party's right to enforce and compel strict compliance with the same or other articles or provisions.
- J. **Assignment and Subcontracting.** Either party may assign, transfer or delegate their rights and obligations under this Agreement, without requiring the other party's consent: (i) to an Affiliate of the assigning party; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of the assigning party's assets. Apart from the foregoing, neither party may assign, transfer or delegate their rights and obligations under this Agreement without the prior written consent of the other, which consent shall not

be unreasonably withheld. Furthermore, Customer acknowledges Sensus may use subcontractors to perform Equipment installation and Software implementation with Customer's consent, pursuant to the terms in Section 3.E.vi of this Agreement.

- K. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Sensus.
- L. **Governing Law and Dispute Resolution.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The parties agree to one arbitrator for any dispute where the aggregate of any claims and counter-claims is below \$3,000,000.00, and to three arbitrators for any dispute where that aggregate figure is equal to or exceeds that amount. The arbitrator(s) will be selected pursuant to AAA's rules. The parties agree to best efforts to complete any arbitration within 12 months of its commencement. In their final award, the arbitrator(s) shall sign an acknowledgement that they have not awarded any damages which are excluded by this Agreement and shall make a ruling concerning the bond as per Section 6.E. This arbitration provision is binding and neither party may commence any action inconsistent with it.
- M. **Survival.** The Term of this Agreement is set to expire, absent an agreement to extend it, on June 30, 2017, since installation of all meters and other Equipment is expected to be completed by that date. However, obligations under this Agreement which by their express terms or nature will continue beyond completion of the installation of all Equipment and the Term shall survive and remain in effect at the end of the Term or earlier termination of this Agreement.
- N. **Severability.** In the event any provision of this Agreement is held to be void, unlawful or otherwise unenforceable, that provision will be severed from the remainder of the Agreement, the remainder of the Agreement shall remain in effect, and the parties will negotiate in good faith to attempt to agree upon a legally enforceable replacement for the provision held to be void, unlawful or otherwise unenforceable..
- O. **Four Corners.** This written Agreement, including all exhibits, and the Schedule of Values, all of which are incorporated herein by reference, represents the entire understanding between and obligations of the parties and supersedes all prior understandings, agreements, negotiations, and proposals, whether written or oral, formal or informal between the parties. There are no other terms or conditions, oral, written, electronic or otherwise. There are no implied obligations, except for the implied obligation of good faith under North Carolina law. All obligations of both parties are specifically set forth in this Agreement, including all exhibits, and the Schedule of Values. The ONLY operative provisions are set forth in writing in this Agreement including all exhibits, and the Schedule of Values, provided this understanding is not meant to prevent arbitrator(s) from reviewing and considering parole evidence if and when appropriate, including but not limited Customer's relevant Request for Proposals, Sensus' response and related correspondence between the parties.
- P. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Additionally, this Agreement may be executed by facsimile or electronic copies (but not electronic signature), all of which shall be considered an original for all purposes.
- Q. **Notice.** Any notice required or permitted to be given under this contract shall be in writing and delivered by registered mail, return receipt requested to the following addresses:

For Customer – 955 Old Wilmington Road, Fayetteville, NC, 28302-1089, Attention: CEO

For Sensus – 8601 Six Forks Road, Raleigh, NC, 27615 Attention CEO. (However, for purchase orders the address listed in Exhibit H shall be used.)

Notices may be emailed and/or faxed in addition to, but not in lieu of, being mailed as aforesaid.

7. **Other Definitions.** As used in this Agreement, the following terms shall have the following meanings:

- A. **“Affiliate”** of a party means any other entity controlling, controlled by, or under common control with such party, where “control” of an entity means the ownership, directly or indirectly, of 50% or more of either: (i) the shares or other equity in such entity; or (ii) the voting rights in such entity.
- B. **“AMI System”** identifies the Sensus FlexNet Advanced Meter Infrastructure System comprised of the SmartPoint Modules, RF Field Equipment, Server Hardware, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Sensus. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- C. **“Available Meter”** means an installed Sensus FlexNet meter or a Sensus SmartPoint Module which has been installed on a third party meter, and which, in either case, is not an Unavailable Meter (or on an Unavailable Meter in the case of SmartPoint Modules on third party meters) and which satisfies all of the following criteria: (i) it functions properly, is powered and is not a damaged or failed meter; (ii) it is in a deployment area of meters for Customer such that a sufficient number of two-way meters are in range of each other; (iii) it is serviced by a tower FlexNet Base Station or Echo Transceiver or Remote Transceiver that has not been subjected to a power failure greater than eight (8) total hours; (iv) neither it nor the FlexNet Base Station, Echo Transceiver or any other network equipment that serves that meter has been affected by a Force Majeure event; (v) illegal or unauthorized jamming of the radio spectrum is not preventing or interfering with radio communication to or from the meter; (vi) it is installed in the Service Territory; (vii) it has not been reported to Customer under Sensus' or Customer's preventative maintenance; (viii) its functioning or performance has not been adversely affected by a failure of Customer to perform its obligations or tasks for which it is responsible under this Agreement, including, but not limited to, testing and confirming that the socket to which the meter will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with ANSI standards, and is not “hot”, damaged, or otherwise in need of maintenance or repair; (ix) its functioning or performance has not been adversely affected by a failure or insufficiency of the back haul telecommunications network of Customer for communications among the components of the Sensus AMI System; and (x) it has been installed in compliance with the procedures and specifications approved by Customer and Sensus.
- D. **“Billing Window”** for a meter means the four day period commencing one day prior to the relevant billing day for such meter and ending two days after such billing day. The Billing Window for testing purposes shall be agreed by Customer and Sensus.
- E. **“CPI”** means the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) “All Items Less Food and Energy” for the U.S. City Average for All Items, 1982-84 = 100, not seasonally adjusted, or substantially similar succeeding index. Any CPI increases called forth in this Agreement shall be calculated to the third decimal point (e.g. 2.576%).
- F. **“DA Devices”** identifies RTMs and RTUs.
- G. **“DA Software”** identifies the Sensus software listed in Exhibit D under the heading “DA Software” and any Patches, Updates, Upgrades that are provided to Customer pursuant to the terms of this

Agreement ONLY TO THE EXTENT (i) pricing for the DA Software is specifically included in Exhibit E to this Agreement or in the Customer-Distributor Arrangement; and (ii) Customer is current in its payments for DA Software.

- H. **“Echo Transceiver”** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them by radio frequency to the relevant FlexNet Base Station.
- I. **“End User”** means any end user of electricity, water, and/or gas (as applicable) that pays Customer for the consumption of electricity, water, and/or gas, as applicable.
- J. **“Escalator(s)”** means the following:
 - i. **For Water Meters:**
 - (a) **For bronze and low lead water metering products:** the percentage change, for the relevant period, of the average of: (a) the United States Bureau of Labor Statistics Producer Price Index, Commodities, Group: Metals and metal products, Item: Copper and copper-base alloy castings (excl. die-castings), series ID: WPU102807013, not seasonally adjusted; and (b) the United States Bureau of Labor Statistics Producer Price Index, Industry Data, Industry and Product: Plastics material and resins mfg., series ID: PCU 325211325211, not seasonally adjusted
 - (b) **For plastic main case meters:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Producer Price Index, Industry Data, Industry and Product: Plastics material and resins mfg., series ID: PCU 325211325211, not seasonally adjusted.
 - (c) **For Omni meters:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Producer Price Index, Commodities, Group: Metals and metal products, item: other gray and ductile iron castings, other, series ID: WPU101504, not seasonally adjusted.
 - ii. **For all other goods and services:** the percentage change, for the relevant period, of the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) “All Items Less Food and Energy” for the U.S. City Average for All Items, 1982-84 = 100, not seasonally adjusted, or substantially similar succeeding index.
 - iii. Any Escalator increases called forth in this Agreement shall be calculated to the third decimal point (e.g. 2.576%)
- K. **“Field Devices”** means the meters, SmartPoint Modules, and DA Devices (if applicable).
- L. **“FlexNet Base Station”** identifies the Sensus manufactured device consisting of one transceiver, to be located on a tower that receives readings from the SmartPoint Modules (either directly or via an Echo Transceiver) by radio frequency and passes those readings to the RNI by TCP/IP backhaul communication. For clarity, FlexNet Base Stations include Metro Base Stations.
- M. **“FlexWare™ Software”** identifies the Sensus software listed in Exhibit D under the heading “FlexWare™ Software” and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
- N. **“In/Out Costs”** means any costs and expenses incurred by Customer in transporting goods between its warehouse and its End User’s premises and any costs and expenses incurred by Customer in installing, uninstalling and removing goods.

- O. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, maskwork rights, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- P. **"Ongoing Fee"** means the annual or monthly fees, as applicable, to be paid by Customer during the Term for Software Licensing and Spectrum, as set forth on Exhibit E.
- Q. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software. For clarity, Patches are not Updates or Upgrades.
- R. **"Permitted Use"** means only for reading Customer's meters in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.
- S. **"Release"** means both Updates and Upgrades.
- T. **"Remote Transceiver"** identifies the Sensus standalone, mounted relay device that takes the radio frequency readings from the SmartPoint Modules and relays them directly to the RNI by TCP/IP backhaul communication.
- U. **"Required RF Field Equipment"** means: The number of FlexNet Base Stations set forth in the schedule of values; 0 Remote Transceivers; and 0 Echo Transceivers
- V. **"RF Field Equipment"** means, collectively, FlexNet Base Stations, Echo Transceivers and Remote Transceivers.
- W. **"Recurrent RF Field Equipment Fees"** means any and all costs, fees and expenses required to keep the RF Field Equipment located in the field, such as tower lease fees, costs of electricity supply, and any local, state or federal government taxes or charges.
- X. **"RNI"** identifies the regional network interfaces consisting of hardware and software used to gather, store, and report data collected by the FlexNet Base Stations from the SmartPoint Modules. The RNI hardware specifications will be provided by Sensus upon written request from Customer.
- Y. **"RTMs"** identifies the remote telemetry modules.
- Z. **"RTUs"** identifies remote telemetry unit.
- AA. **"Service Territory"** identifies the geographic area where Customer provides electricity, water, and/or gas (as applicable) services to End Users as of the Effective Date. This area will be described in the parties' spectrum lease filing with the FCC.
- BB. **"Server Hardware"** means the RNI hardware.
- CC. **"SmartPoint™ Modules"** identifies the Sensus transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant FlexNet Base Station, Remote Transceiver or Echo Transceiver.

DD. **“Software”** means the Sensus software listed in Exhibit D under the heading “Sensus Software List” and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.

EE. **“TouchCoupler Unit”** identifies an inductive coupler connection from a water register to the SmartPoint Module.

FF. **“Unavailable Meters”** include meters with sockets with power cut at the pole, meters that are booted on the line side, sockets that are not provided power due to a power delivery system failure, meters with tamper, theft or other human induced failures that render the meter or SmartPoint Module incapable of providing a read, a Force Majeure event induced failures of the power delivery system, socket or meter, and/or any system or meter maintenance issue that precludes the meter from transmitting its message to the network. Examples of Unavailable Meters include: (i) Cut At Pole: a meter for which power has been turned off to the socket by Customer; (ii) Booted on Line Side: nominally a meter for which power has been turned off by placing “boots” in the socket from which the power to the meter has effectively been turned off; (iii) Failed or flawed power delivery to the meter socket: Customer power generation, distribution or delivery system failure that has effectively turned off power to the socket and/or meter; (iv) Tampered Meters: sockets, meters or distribution assets that have been modified by unauthorized personnel rendering the meter incapable of providing accurate usage readings from that meter; (v) Broken TouchCoupler unit: the TouchCoupler unit is damaged by intentional or unintentional acts; (vi) Broken Clip: the clip that holds the TouchCoupler unit into the radio package housing is broken and the unit can not complete the inductive electrical connection; (vii) Improper installation of the TouchCoupler unit: the TouchCoupler unit is not pushed all the way into the housing clip causing the unit to not be able to complete the inductive electrical connection; (viii) Unit not installed through the pit lid: the unit is not installed with the antenna positioned through the pit lid and properly secured with the retaining nut. The radio unit must also be securely attached to the antenna section; (ix) Radio unit not securely attached to the Antenna unit: The water-proof SmartPoint Module housing is not properly installed and secured to the antenna unit; (x) Damaged antenna: the unit’s antenna is damaged by intentional or unintentional acts; (xi) Damaged radio package: the unit’s water-proof radio package is damaged by intentional or unintentional acts; (xii) Data Base errors: the unit is removed from the system but not updated in the database. Still shown as in the system when in fact has been removed; (xiii) Phantom Units: the unit is removed from the system but is still transmitting and being heard by the system; and (xiv) Other Installation Defect: the unit is otherwise installed improperly so that it does not communicate with the FlexNet Base Station.

GG. **“Updates”** means releases of the Software that constitute a minor improvement in functionality.

HH. **“Upgrades”** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.

II. **“WAN Backhaul”** means the communication link between FlexNet Base Stations and Remote Transceivers and RNI.

Sensus USA, Inc.

By: _____

Name: _____

Title: _____

Date: _____

City of Fayetteville, by and through its Public Works Commission

By: _____

_____ (Title)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____

_____, Finance Director, City of Fayetteville Public Works Commission

Approved as to form.

By: _____
Karen McDonald, City Attorney

Exhibit A

Technical Support

1. Introduction

Sensus Technical Services will provide Customer with a single point of contact for support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills are to be forwarded to a senior support engineer or Technical Advisor within the team for further analysis. If Technical Services has exhausted all troubleshooting efforts for the product type, the issue will escalate to the Engineering Support Team. Occasionally, on-site troubleshooting/analysis may be required. The preferred order of on-site support is:

- a) The Customer (for assistance with the easiest and lowest time-consuming activities such as power on/power off).
- b) The local distributor.
- c) Sensus employees or contracted personnel, if required to fulfill a contract commitment.

2. Support Categories

- 2.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Sensus AMR, AMI, RF Network Equipment, Metering Products and Sensus Lighting Control.
- 2.2. Proactive reporting and resolution of problems.
- 2.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 2.4. Responding to service requests and product changes.
- 2.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

3. Support Hours

- 3.1. Standard Support Hours: Toll-free telephone support (1-800-638-3748 option #2) is available Monday thru Friday from 8:00AM EST to 6:00PM EST. After-hours, holiday and weekend support for Severity 1 and Severity 2 issues is available by calling 1-800-638-3748, option #8.

4. Support Procedures

- 4.1. Customer identifies an issue or potential problem and calls Technical Services at 1-800-638-3748 Option #2. The Customer Service Associate or Technical Support Engineer will submit a Support ticket.
- 4.2. The Customer Service Associate or Technical Support Engineer will identify the caller name and utility by the assigned software serial number, city, and state in which the call originated. The nature of the problem and severity levels will be agreed upon by both parties (either at the time the issue is entered or prior to upgrading or downgrading an existing issue) using the severity definitions below as a guideline. The severity level is then captured into a support ticket for creation and resolution processing. Any time during the processing of this ticket, if the severity level is changed by Sensus, the customer will be updated.

Severity Levels Description:

Sev1 Customer's production system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention.

Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., FlexWare, Sensus MDM).

Sev2 Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention.

Examples: Network equipment failure (e.g., FlexNet Echo, FlexNet Remote, Base Station transceiver, or VGB); inoperable reading devices (e.g., AR5500, VXU, VGB, or CommandLink); head end software application has important functionality not working and cannot create export file for billing system operations.

Sev3 The system is usable and the issue doesn't affect critical overall operation.

Example: Minor network equipment failure (e.g., Echo/Remote false alarms or Base Station transceiver false alarms); head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.

Sev4 Minor system issues, questions, new features, or enhancement requests to be corrected in future versions.

Examples: Minor system issues, general questions, and "How-To" questions.

- 4.3. The Customer Service Associate or Technical Support Engineer identifies whether or not the customer has a valid support agreement. If the customer is not on support, the customer is advised of the service options as well as any applicable charges that may be billed.
- 4.4. Calls are placed in a queue from which they are accessible to Technical Support Engineers on a first-come-first-serve basis. A first level Customer Service Associate may assist the customer, depending on the difficulty of the call and the representative's technical knowledge. Technical Support Engineers (Tier 1 support) typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any

existing pattern or if the call is a new report. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.

- a. Technical Services confirms that there is an issue or problem that needs further analysis to determine its cause. The following information must be collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
- b. Technical Services will check the internal database and product defect tracking system, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. Once it is confirmed that the issue has been resolved, the ticket is closed.
- c. If there is no known defect or support that defines the behavior, Technical Services will work with the customer to reproduce the issue. If the issue can be reproduced, either at the customer site or within support center test lab, Technical Services will escalate the ticket for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, the representative will open a Special Investigation RMA through the Support system. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the product sample(s) for a root cause analysis. Once it is determined that the issue cannot be resolved by Tier 1 resources, the ticket will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. Technical Services will immediately contact the customer to advise of the escalation. The response and escalation times are listed in Section 5. At this time, screen shots, log files, configuration files, and database backups will be created and attached to the ticket.

5. Response and Resolution Targets.

Sensus Technical Support will make every reasonable effort to meet the following response and resolution targets:

Severity	Standard Target Response	Standard Target Resolution	Resolution (one or more of the following)
1	30 Minutes	Immediately assign trained and qualified Services Staff to correct the error on an expedited basis. Provide ongoing communication on the status of a correction.	<ul style="list-style-type: none"> • Satisfactory workaround is provided. • Program patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into the Support Knowledge Base.
2	4 hours	Assign trained and qualified Services Staff to correct the error. Provide communication as updates occur.	<ul style="list-style-type: none"> • Satisfactory workaround is provided. • Program patch is provided. • Fix incorporated into future release. • Fix or workaround incorporated into the Support Knowledge Base.
3	1 Business Day	90 business days	<ul style="list-style-type: none"> • Answer to question is provided. • Satisfactory workaround is provided. • Fix or workaround incorporated into the Support Knowledge Base. • Fix incorporated into future release.
4	2 Business Days	12 months	<ul style="list-style-type: none"> • Answer to question is provided. • Fix or workaround incorporated into the Support Knowledge Base.

6. Problem Escalation Process.

- 6.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level of authority.
 - 6.1.1. Severity 1 issues are escalated by Sales or Technical Services to a Supervisor if not resolved within 2 hours; to the Manager level if not resolved within 4 hours; to the Director level if not resolved within the same business day; and to the VP level if not resolved within 24 hours.
 - 6.1.2. A customer may escalate an issue by calling 1-800-638-3748, Option 2. Please specify the Support ticket number and the reason why the issue is being escalated.
 - 6.1.3. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given Support ticket to Manager of Technical Services (1-800-638-3748, Option 2).

7. General Support Provisions and Exclusions.

- 7.1. Customer shall procure hardware..
- 7.2. Customer procures certain third party software licenses (e.g. Red Hat Enterprise Linux) required to operate the FlexNet-based applications on the hardware procured by Customer. Customer registers all the applicable third party software licenses in the customer's name and ships all documentation and licensing information to the customer with the server. The customer is

responsible for maintaining all third party software licenses.

- 7.3. In the event of a server hardware failure at the customer site, Customer shall provide replacement hardware and Sensus will provide replacement Sensus proprietary software (e.g., FlexWare) either on digital media or downloadable from an internet site, as necessary. The method of software redistribution is at Sensus' discretion. The customer is responsible for re-installing the replacement software. Sensus installation support is not covered under this standard Technical Support program but may be provided as a fee-based service.
- 7.4. Sensus provides online documentation for Sensus products through the Sensus User Forum (<http://myflexnetsystem.com/Module/User/Login>). All Sensus customers are provided access to this online database, which includes operation, configuration and technical manuals. Sensus also hosts periodic user group teleconferences to facilitate the interchange of product ideas, product enhancements, and overall customer experiences. The customer shall provide names and email accounts to Sensus so Sensus may provide access to the Portal.
- 7.5. Specialized support from Sensus is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.

Exhibit B

System Acceptance Test

Objective

The objective of the System Acceptance Test is to verify that the RNI functionality will operate and meet or exceed the criteria set forth in this Exhibit. All capitalized words not defined in this Exhibit shall have the meaning set forth in the Agreement to which this Exhibit is attached. The System Acceptance Test shall utilize the Test Equipment, as defined below, and such additional goods as set forth below. The Test Equipment must be installed prior to beginning any System Acceptance Testing. The Parties will jointly administer the System Acceptance Test. Customer may choose to waive testing of any requirement if it believes that such testing is unnecessary. Should any specific test be waived, such test shall be deemed to have passed.

System Acceptance Test shall consist of the following tests (each of which may have further sub-tests):

- A. Electricity Acceptance Test
- B. Water Acceptance Test
- C. FlexNet Base Station Acceptance Test
- D. RNI Acceptance Test

In this Exhibit, "Test Equipment" means:

- (a) The number of FlexNet Base Stations set forth in the Schedule of Values;
- (b) 0 Remote Transceiver;
- (c) 0 Echo Transceiver; and
- (d) 3 RNI (1 production, 1 Backup, & 1 Test)

For all tests below, Sensus will calculate the applicable performance requirements using the existing software features within the AMI System. Unless stated otherwise below, any disputes regarding the performance of the AMI System shall be settled using printouts of meter read data from the AMI RNI database.

Unless otherwise explicitly stated below, all tests shall be performed using Available Meters. Customer shall be responsible for showing, upon Sensus' request, that all endpoints used in the below testing are Available Meters, and Sensus, or Sensus' Distributor, shall be permitted to audit Customer's determination of Available Meters versus Unavailable Meters.

Electricity Acceptance Test

After the Effective Date, Customer shall deploy the Test Equipment and shall deploy a mutually agreed number of electricity meters ("Electricity Test Meters"), all installed in mutually agreed locations within Customer's Service Territory (collectively, the "Electricity Deployment").

All Electricity Test Meters shall be Available Meters. Customer shall send written notice to Sensus after the Electricity Deployment is complete so that communication testing can begin. Such notice shall indicate the date on which the Electricity Deployment is completed.

Within thirty (30) days after Electricity Deployment, the Parties shall begin the Electricity Acceptance Test on the Electricity Test Meters. For purposes of clarity, the tests in this section shall only be conducted on Electricity Test Meters, and Electricity Test Meters shall only include deployed electricity Available Meters. Customer and Sensus will work diligently in good faith to undertake reasonable efforts to complete the Electricity Acceptance Test no later than thirty (30) days after commencement of testing. The Electricity Acceptance Test shall consist only of the following subtests:

- EA-1: Communication: Daily Register Read Success
- EA-2: Communication: Daily Interval Read Success
- EA-3: Communication: 72 Hour Interval Read Success
- EA-4: Communication: 30 Day Interval Read Success
- EA-5: Last Gasp Performance
- EA-6: Restoration Performance
- EA-7: Measurement (Time Synchronization)
- EA-8: Measurement (Remote Read Accuracy)
- EA-9: Firmware Upgradeability
- EA-10: Meter Configuration
- EA-11: Operational Data Collection Accuracy
- EA-12: Disconnect (if applicable)
- EA-13: Reconnect (if applicable)

Upon satisfactory completion of each of the above tests, the AMI System will be deemed to have passed the Electricity Acceptance Test. Each test is described in detail below.

Sub-Test Specifications

Test Script EA-1: Communication: Daily Register Read Success	
Test Performed On (AMI):	Date:
Overview:	This test will determine the success rate for register readings obtained from the AMI System.
Function:	At a minimum, the system must allow for 99% of register readings to be captured over a twenty four (24) hour period as reported in the RNI Daily RIS report.
Goal in Context:	This test will determine the success rate for register readings obtained from the AMI System.
Preconditions:	Electricity Deployment must be complete.
Results for EA-1	
Post Condition Success:	Post Condition Failure:
Average Daily End Cut Register Read Success is equal to or greater than 99.0.	Average Daily End Cut Register Read Success is less than 99.0
Calculation of Success Criteria: Average Daily Register Read Success = ((the summation of the Daily Register Read Success for each of the thirty 24 hour periods) / 30 days) Daily Register Read Success = $100 \times ((\text{number of Available End Cut Registers read during a twenty four hour period} + \text{Unavailable Registers that reported a power failure or tamper alarm in the twenty four hour period}) / (\text{Available Registers population} + \text{Unavailable Registers that reported a power fail or tamper alarm in the twenty four hour period}))$. “Available Registers” mean registers that satisfy the requirements for Available Meters. “Unavailable Registers” mean registers that satisfy the requirements for Unavailable Meters. Note: A register that has reported a power failure or tamper during the twenty four hour period shall be counted as successfully read since the register has properly communicated and does not have a network hardware coverage issue.	
Post Condition Result:	

Test Script EA-2: Communication: Daily Interval Read Success	
Test Performed On (AMI):	Date:
Overview:	This test will determine the success rate for interval readings obtained from the AMI System.
Function:	At a minimum, the system must allow for 99% of interval reads to be captured over a rolling twenty four (24) hour period.
Goal in Context:	This test will determine the success rate for interval readings obtained from the AMI System.
Preconditions:	Electricity Deployment must be complete.
Results for EA-2	
Post Condition Success:	Post Condition Failure:
Average Daily Read Interval Success is equal to or greater than 99.0.	Average Daily Read Interval Success is less than 99.0
<p>Calculation of Success Criteria:</p> <p>Average Daily Read Interval Success = ((the summation of the Daily Read Interval Success for each of the thirty 24 hour periods) / 30 days))</p> <p>Daily Read Interval Success = 100 x ((number of delivered interval reads for Available Meters within a twenty four hour period) / (Available Interval Number)).</p> <p>Available Interval Number = ((Available Meter population) x (twenty-four readings per day)) – (the summation of the number of hours or partial hours every Available Meter was an Unavailable Meter during the thirty day period).</p>	
Post Condition Result:	

Test Script EA-3: Communication: 72 Hour Interval Read Success	
Test Performed On (AMI):	Date:
Overview:	This test will determine the success rate for interval readings obtained from the AMI System.
Function:	At a minimum, the system must allow for 99.5% of interval reads to be captured over a rolling seventy two (72) hour period. This will be worked in conjunction with the Oracle MDMS. Sensus reserves the right to test the file exchange between the MDMS and the RNI.
Goal in Context:	This test will determine the success rate for interval readings obtained from the AMI System.
Preconditions:	Electricity Deployment must be complete. This test commences seventy two hours after the commencement of the system acceptance testing, and continues for 27 days. Each day during the 27 days, the test will examine data collected over the past 72 hours (27 seventy-two hour periods total).
Results for EA-3	
Post Condition Success:	Post Condition Failure:
Average Seventy Two Hour Interval Read Success is equal to or greater than 99.5.	Average Seventy Two Hour Interval Read Success is less than 99.5.
Calculation of Success Criteria: Average Seventy Two Hour Interval Read Success = ((the summation of the Seventy-Two Hour Interval Read Success for each of the twenty seven 72 hour periods) / 27 seventy-two hour testing periods) Seventy Two Hour Interval Read Success = $100 \times ((\text{number of delivered interval reads for Available Meters within the seventy two hour period}) / (\text{Available Interval Number}))$. Available Interval Number = ((Available Meter population) x (seventy two hours)) – (the summation of the number of hours or partial hours every Available Meter was an Unavailable Meter during the seventy-two hour period).	
Post Condition Result:	

Test Script EA-4: Communication: 30 Day Interval Read Success	
Test Performed On (AMI):	Date:
Overview:	This test will determine the success rate for interval readings obtained from the AMI System.
Function:	At a minimum, the system must allow for 99.5% of interval reads to be captured over a rolling thirty (30) day period. As reported in the RIS percentage in the RNI.
Goal in Context:	This test will determine the success rate for interval readings obtained from the AMI System.
Preconditions:	<p>Electricity Deployment must be complete.</p> <p>This test commences thirty days after the commencement of the system acceptance test, and continues for fifteen days (total of 45 days after the commencement of system acceptance testing). Each day during the fifteen days, the test will examine data collected over the past 30 days (15 thirty day periods total).</p>
Results for EA-4	
Post Condition Success:	Post Condition Failure:
Average Thirty Day Interval Read Success is equal to or greater than 99.5	Average Thirty Day Interval Read Success is less than 99.5.
<p>Calculation of Success Criteria:</p> <p>Average Thirty Day Interval Read Success = ((the summation of the Thirty Day Interval Read Success for each of the fifteen 30 day periods) / 15 thirty day testing periods))</p> <p>Thirty Day Interval Read Success = $100 \times ((\text{number of delivered interval reads for Available Meters within the thirty day period}) / (\text{Available Interval Number}))$.</p> <p>Available Interval Number = ((Available Meter population) x (twenty-four readings per day) x (thirty days)) – (the summation of the number of hours or partial hours every Available Meter was an Unavailable Meter during the seventy-two hour period).</p>	
Post Condition Result:	

Test Script EA-5: Last Gasp Performance											
Test Performed On (AMI):		Date:									
Overview:	This test will determine the communication success rate of last gasp messages within the network and the latency of these messages being sent to the RNI. This test will be performed by evaluating planned outages throughout the Customer service territory of different severities. Alternatively, the test can be completed in a meter shop or test/sandbox environment due to the sensitive nature of planned outages.										
Function:	The RNI should be able to identify power failure at the electricity endpoints.										
Goal in Context:	<p>This test will determine the success rate for "last gasp" messages obtained under a single FlexNet Base Station with a maximum of 500 meters experiencing the same event and is based on different outage levels.</p> <p>The below listed success rate is based on a 300 second latency after a programmable delay of 120 seconds to filter out momentary outages:</p> <table border="1"> <thead> <tr> <th>Number of Available Meters affected by Power Failures ("Outage Event") Under a Single FlexNet Base Station</th> <th>1-100</th> <th>101-250</th> <th>251-500</th> </tr> </thead> <tbody> <tr> <td>Expected Success Rate</td> <td>90%</td> <td>85%</td> <td>75%</td> </tr> </tbody> </table>			Number of Available Meters affected by Power Failures ("Outage Event") Under a Single FlexNet Base Station	1-100	101-250	251-500	Expected Success Rate	90%	85%	75%
Number of Available Meters affected by Power Failures ("Outage Event") Under a Single FlexNet Base Station	1-100	101-250	251-500								
Expected Success Rate	90%	85%	75%								
Preconditions:	<ul style="list-style-type: none"> Electricity Deployment must be complete or the test can be completed in a meter shop or test/sandbox environment. The Electricity Test Meters must be configured to transmit alarm messages in the priority channel only. No other devices shall be utilizing this channel or communications (including, without limitation, no boost mode communication for water or gas SmartPoint Modules). If the test is run using more than one hundred meters, the test will be run once. If the test is run using ten to one hundred meters, the test will be run twice. If the test is run using one to nine meters, the test will be run twenty times. 										
Results for EA-5											
Post Condition Success:		Post Condition Failure:									
Average Outage Event Detection is equal or greater than: 90 if 1-100 meters experience an Outage Event 85 if 101-250 meters experience an Outage Event 75 if 251-500 meters experience an Outage Event		Average Outage Event Detection is less than: 90 if 1-100 meters experience an Outage Event 85 if 101-250 meters experience an Outage Event 75 if 251-500 meters experience an Outage Event									
Calculation of Success Criteria: $\text{Average Outage Event Detection} = ((\text{the summation of the Outage Event Detection for each time the test is run}) / (\text{number of times the test is run}))$ $\text{Outage Event Detection} = ((\text{number of Confirmed Outage Meters that report an outage event to the RNI within 420 seconds after the occurrence of an outage event}) / (\text{total number of Confirmed Outage Meters})).$ <p>"Confirmed Outage Meters" means Electricity Test Meters that have been proven by the Customer to have experienced a power failure during the testing period.</p>											
Post Condition Result:											

Test Script EA-6: Restoration Performance											
Test Performed On (AMI):			Date:								
Overview:	This test will determine the communication success rate of restoration events within the network. This test will measure the restoration performance of meters that previously experienced an outage event. This test will be performed by evaluating planned restoration events throughout the Customer service territory. Alternatively, the test can be completed in a meter shop or test/sandbox environment due to the sensitive nature of planned outages.										
Function:	This system should be able to identify restoration events to the RNI.										
Goal in Context:	This test will determine the success rate for power restoration messages obtained under a single FlexNet Base Station with a maximum of 500 meters.										
	The below listed success rate is based on a 300 second latency after a programmable delay of 120 seconds to filter out momentary restorations:										
	<table><tr><td>Number of meters that experience a power restoration ("Restoration Event") under a single FlexNet Base Station</td><td>1-100</td><td>101-250</td><td>251-500</td></tr><tr><td>Expected Success Rate</td><td>90%</td><td>85%</td><td>75%</td></tr></table>				Number of meters that experience a power restoration ("Restoration Event") under a single FlexNet Base Station	1-100	101-250	251-500	Expected Success Rate	90%	85%
Number of meters that experience a power restoration ("Restoration Event") under a single FlexNet Base Station	1-100	101-250	251-500								
Expected Success Rate	90%	85%	75%								
Preconditions:	<ul style="list-style-type: none">Electricity Deployment must be complete or the test can be completed in a meter shop or test/sandbox environment.The Electricity Test Meters must be configured to transmit alarm messages in the priority channel only. No other devices shall be utilizing this channel or communications (including, without limitation, no boost mode communication for water or gas SmartPoint Modules).If the test is run using more than one hundred meters, the test will be run once.If the test is run using ten to one hundred meters, the test will be run twice.If the test is run using one to nine meters, the test will be run twenty times.										
Results for EA-6											
Post Condition Success:			Post Condition Failure:								
Average Outage Event Restoration is equal or greater than: 90 if 1-100 meters experience an Restoration Event 85 if 101-250 meters experience an Restoration Event 75 if 251-500 meters experience an Restoration Event			Average Outage Event Restoration is less than: 90 if 1-100 meters experience an Restoration Event 85 if 101-250 meters experience an Restoration Event 75 if 251-500 meters experience an Restoration Event								
Calculation of Success Criteria:											
Average Outage Event Restoration = ((the summation of the Outage Event Restoration for each time the test is run) / (number of times the test is run))											
Outage Event Restoration = 100 x ((number of Confirmed Power Restoration Meters that report power restoration to the RNI within 420 seconds) / (total number of Confirmed Power Restoration Meters)).											
"Confirmed Power Restoration Meters" means Electricity Test Meters that have been proven by the Customer to have their power restored during the testing period.											
Post Condition Result:											

Test Script EA- 7: Measurement (Time Synchronization)	
Test Performed On (AMI):	Date:
Overview:	This test will determine if the meter is synchronized to the time standard.
Function:	The meter is synchronized to the national time standard, to a tolerance of sixty (60) seconds or less.
Goal in Context:	Test that the AMI system is synchronized to the national time standard.
Preconditions:	<ul style="list-style-type: none"> The installation of one (1) AMI electricity meter at a residence or lab setting that has not been subject to a power failure in the last fifteen (15) minutes ("<u>Time Test Meter</u>"). The Time Test Meter will be configured to display local time on the LCD. The local time will be compared to a mutually agreed standard time ("<u>Standard Time</u>").
Results for EA-7	
Post Condition Success:	Post Condition Failure:
The time displayed on the Time Test Meter is synchronized to the Standard Time to a tolerance of 60 seconds or less (+/-).	The time displayed on the Time Test Meter is synchronized to the Standard Time to a tolerance greater than 60 seconds (+/-).
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script EA-8: Measurement (Remote Read Accuracy)	
Test Performed On (AMI):	Date:
Overview:	This test will compare the time stamp at the meter with the time received in the RNI software to confirm accuracy of time stamps being used during validation, and therefore for billing purposes.
Function:	The meter provides accurate time stamped reads that match the time data acquired from the meter LCD.
Goal in Context:	The time on a manually read meter is compared to the time in a reading taken via an on-demand read.
Preconditions:	<ul style="list-style-type: none"> The installation of one AMI electricity meter at a residence or lab setting. The manual read and the on-demand read must be obtained simultaneously.
Results for EA-8	
Post Condition Success:	Post Condition Failure:
The data acquired through a manual read of the LCD kWh register differs from the data presented by an on-demand read taken at the same time by equal or less than +/-0.1%.	The data acquired through a manual read of the LCD kWh register differs from the data presented by an on-demand read taken at the same time by greater than +/-0.1%.
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script EA-9: Firmware Upgradeability	
Test Performed On (AMI):	Date:
Overview:	This test serves to document the ability of the network to perform firmware upgrades to the SmartPoint Modules and FlexNet Base Stations in the field.
Function:	The AMI network should provide adequate firmware upgradability functions such that the network is not at risk of being modified/alterd in any way that negatively impacts the performance of the SmartPoint Modules or other network regularly scheduled functions.
Goal in Context:	Test the firmware upgradeability process used by the AMI system.
Preconditions:	<p>The installation of one (1) AMI electricity meter ("Download Meter") at residence or in lab setting and the installation of one (1) FlexNet Base Station ("Download Base Station"), preferably in a test environment to avoid production interruption.</p> <p>The Customer shall initiate a FlexNet firmware update ("Download Material") from the RNI to the Download Meter and Download Base Station. The RNI/FlexWare Software will show if the Download Meter and Download Base Station successfully received the Download Material.</p> <p>Customer shall complete this test upon receipt of an Update or purchased Upgrade. If no such Update is released or Upgrade is purchased, Sensus shall take commercially reasonable steps to provide Customer with software to complete this test script.</p>
Results for EA-9	
Post Condition Success:	Post Condition Failure:
The Download Material is received by the Download Meter and the Download Base Station, as evidenced in the RNI.	The Download Material is not received by the Download Meter and the Download Base Station, as evidenced in the RNI.
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script EA-10 Meter Configuration	
Test Performed On (AMI):	Date:
Overview:	This test serves to document the ability of the network to configure individual meter parameters on-air.
Function:	The AMI network should provide adequate configuration functions so that the following settings can be changed on-air: Meter Grouping, Static Configuration (frequency, tx mode, read interval, tx rate) and Power Quality (Outage holdoff time, restoral hold off time, momentary time, low voltage threshold, voltage averaging window).
Goal in Context:	Modify the iConA configuration functions.
Preconditions:	<p>The installation of ten (10) iCon A electricity meters ("Configuration Meters") at residence or in lab setting.</p> <p>The Customer shall modify the three above listed meter configuration settings on the Configuration Meters via the RNI ("Configuration Change"). The RNI/FlexWare Software will show if the Configuration Changes were successfully received by the Configuration Meters.</p>
Results for EA-10	
Post Condition Success:	Post Condition Failure:
The three Configuration Changes are received by nine of the Configuration Meters and the Download Base Station, as evidenced in the RNI.	The three Configuration Changes are not received by nine of the Configuration Meters and the Download Base Station, as evidenced in the RNI.
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script EA-11: Operational Data Collection Accuracy	
Test Performed On (AMI):	Date:
Overview:	This test serves to document the ability of the network to collect accurate operational data from AMI electricity meters.
Function:	The AMI network should collect operational data from Available AMI electricity meters on a regular basis. This information should be accurate and collected on a regular basis to assist the Customer in managing various aspects of their distribution network.
Goal in Context:	Test the ability of the AMI network to collect accurate voltage information, voltage alarms, tamper alarms and theft alarms from AMI electricity meters
Preconditions:	<ul style="list-style-type: none"> • The installation of one (1) AMI electricity meter ("Operational Test Meter") configured with required alarms enabled at residence or in lab setting. • Customer will apply voltage to the meter of 110%, 100% and 90% of standard operating voltages. • Customer will induce an excursion event that exceeds the configured voltage alarm setting ("Voltage Test") • Customer will induce a tamper event (meter removal from socket) • Customer will induce a theft event (uni-directional meter installed upside down in a meter socket)
Results for EA-11	
Post Condition Success:	Post Condition Failure:
<ul style="list-style-type: none"> • Instantaneous voltage readings are equal or less than +/- 5% of actual field measurement (using calibrated equipment) • Voltage Alarm received by the Operational Test Meter during the Voltage Test • Tamper Alarm received by AMI system during induced tamper event • Theft Alarm received by AMI system during induced theft event 	<ul style="list-style-type: none"> • Instantaneous voltage readings are greater than +/-5% of actual field measurement (using calibrated equipment) • Voltage Alarm not received by the Operational Test Meter during the Voltage Test • Tamper Alarm not received by AMI system during induced tamper event • Theft Alarm not received by AMI system during induced theft event
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script EA-12: Disconnect (if applicable)	
Test Performed On (AMI):	Date:
Overview:	The Disconnect test is used to determine if Sensus' disconnect meters operate as designed. This test shall be performed on twenty (20) meters that have disconnects that are Available Meters.
Function:	The AMI system can disconnect meters remotely.
Goal in Context:	Customer shall request a disconnect operation from each Disconnect Meter at times mutually agreed by the Parties. The remote Disconnect Meters shall return the position status (open or closed) in addition to actually operating the switch.
Preconditions:	<ul style="list-style-type: none"> • The installation of twenty AMI electricity meters at residence or in lab setting ("Disconnect Meters"). • This test is applicable only if the Customer has ordered meters with disconnect/reconnect switches. Switch will only close without meter level intervention if unconditional reconnect is issued. • Execute a remote disconnect command for the twenty Disconnect Meters via the RNI/FlexWare Software. Validate that disconnect switch has opened and that load side is de-energized. Validate that each Disconnect Meter indicates that the disconnect switch is in the open state. Validate that a message is sent to the RNI indicating successful execution of the remote disconnect for each Disconnect Meter. • Validate that the RNI/FlexWare Software has incremented the switch cycle count by one through this test cycle for nineteen (or more) Disconnect Meters. • Customer confirms that the power is off at nineteen (or more) Disconnect Meters (in the field or on the bench)
Results for EA-12	
Post Condition Success:	Post Condition Failure:
The RNI/FlexWare Software has incremented the switch cycle count by one for nineteen (or more) Disconnect Meters, and it is confirmed that the power is off at nineteen (or more) Disconnect Meters.	The post-condition success criteria are not satisfied.
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script EA-13: Reconnect (if applicable)	
Test Performed On (AMI):	Date:
Overview:	The Reconnect test is used to determine if Sensus' disconnect meters operate as designed. This test shall be performed on the same twenty (20) Disconnect Meters defined in the above Disconnect test. For purposes of this test, they shall be referred to as "Reconnect Meters".
Function:	The AMI system can reconnect meters remotely.
Goal in Context:	Customer shall request a reconnect operation to each Reconnect Meter at times mutually agreed by the Parties. The remote Reconnect Meters shall return the position status (open or closed) in addition to actually operating the switch.
Preconditions:	<ul style="list-style-type: none"> • The installation of Disconnect Meters and completion of the above Disconnect test. • This test is applicable only if the Customer has ordered meters with disconnect/reconnect switches. Switch will only close without meter level intervention if unconditional reconnect is issued. • Prior to commencing the test, Customer shall confirm that no load is applied on the meter while is a disconnected state. • Execute a remote reconnect command for up to three meters via the RNI/FlexWare Software. Validate that the disconnect switch has closed and that the load side is reenergized. Validate that each Reconnect Meter indicates that the disconnect switch is in the closed state. Validate that a message is sent to the RNI indicating successful execution of the remote reconnect for each Reconnect Meter. • Validate that the RNI/FlexWare Software has incremented the switch cycle count by one through this test cycle for nineteen (or more) Reconnect Meters. • Customer confirms that the power is on at nineteen (or more) Reconnect Meters (in the field or on the bench) • If requested by Customer, this test can be run a second time with the load sensing feature of the meter enabled and load applied while the meter is in a disconnected state. During this test, success is achieved if the reconnect request does not reconnect the meter while load is applied.
Results for EA-13	
Post Condition Success:	Post Condition Failure:
The RNI/FlexWare Software has incremented the switch cycle count by one for nineteen (or more) Reconnect Meters, and it is confirmed that the power is off at nineteen (or more) Reconnect Meters.	The post-condition success criteria are not satisfied.
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Completion of Electricity Acceptance Test

Each of the above tests shall be successfully completed or waived for the Electricity Acceptance Test (communications with electricity meters and RNI) to be satisfied. Upon successful completion of each of the above described tests, or waiver thereof, Customer shall promptly issue written notice to Sensus. Such notice shall state that Sensus has successfully completed the Electricity Acceptance Test and the notice shall state the date on which the Electricity Acceptance Test was completed.

If the tests are successfully passed, but such notice is not provided to Sensus within five days after successfully completion of the tests above, then the Electricity Acceptance Test shall be deemed successfully completed.

If Sensus does not successfully complete any one of the above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the Parties shall re-perform the failed tests.

B. Water Acceptance Test

After the Effective Date, Customer shall deploy the Test Equipment and shall deploy a mutually agreed number of water meters ("Water Test Meters"), all installed in mutually agreed locations within Customer's Service Territory (collectively, the "Water Deployment").

All Water Test Meters shall be Available Meters. Customer shall send written notice to Sensus after the Water Deployment is complete so that communication testing can begin. Such notice shall indicate the date on which the Water Deployment is completed.

Within thirty (30) days after Water Deployment, the Parties shall begin the Water Acceptance Test on the Water Test Meters. For purposes of clarity, the tests in this section shall only be conducted on Water Test Meters, and Water Test Meters shall only include deployed water Available Meters. Customer and Sensus will work diligently in good faith to undertake reasonable efforts to complete the Water Acceptance Test no later than thirty (30) days after commencement of testing. The Water Acceptance Test shall consist only of the following subtests:

- WA-1: Communication: 96 Hour Interval Read Success
- WA-2: Communication: Time Required for Reading (On-Demand)
- WA-3: Measurement (Remote Read Accuracy)
- WA-4: Operational Data Collection Accuracy

Upon satisfactory completion of each of the above tests, the AMI System will be deemed to have passed the Water Acceptance Test. Each test is described in detail below.

Sub-Test Specifications

Test Script WA-1: Communication: 96 Hour Interval Read Success	
Test Performed On (AMI):	Date:
Overview:	This test will determine the success rate for interval readings obtained from the AMI System.
Function:	At a minimum, the system must allow for 99% of interval reads to be captured over a rolling ninety six (96) hour period (see the note regarding calculation of success criteria below). This will be worked in conjunction with the Oracle MDMS. Sensus reserves the right to test the file exchange between the MDMS and the RNI.
Goal in Context:	This test will determine the success rate for interval readings obtained from the AMI System.
Preconditions:	Water Deployment must be complete. This test commences ninety six hours after the commencement of the system acceptance testing, and continues for 26 days. Each day during the 26 days, the test will examine data collected over the past 96 hours (26 ninety-six hour periods total).
Results for WA-1	
Post Condition Success:	Post Condition Failure:
Average Ninety Six Hour Interval Read Success is equal to or greater than 99.0.	Average Ninety Six Hour Interval Read Success is less than 99.0.
Calculation of Success Criteria: Average Ninety Six Hour Interval Read Success = ((the summation of the Ninety Six Hour Interval Read Success for each of the twenty six 96 hour periods) / 26 ninety six hour testing periods)) Ninety Six Hour Interval Read Success = $100 \times ((\text{number of delivered interval reads for Available Meters within the ninety six hour period}) / (\text{Available Interval Number}))$. Available Interval Number = ((Available Meter population) x (ninety six hours)) – (the summation of the number of hours or partial hours every Available Meter was an Unavailable Meter during the ninety six hour period).	
Post Condition Result:	

Test Script WA-2: Communication: Time Required for Reading (On-Demand)	
Test Performed On (AMI):	Date:
Overview:	This test will determine the amount of time required to obtain on-demand readings from the system for customer call issues. The time required to obtain readings will be important as it can affect the ability to provide customer service.
Function:	The system should be capable of two-way communication to the endpoint.
Goal in Context:	Determine time required to obtain on-demand readings, for customer service calls.
Preconditions:	<ul style="list-style-type: none"> Water Deployment must be complete. Customer uses a random number generator to select twenty (20) Water Test Meters (“<u>On-Demand Meters</u>”) that are also Available Meters. To conduct the test, the Customer shall send an outbound on-demand read request from the RNI/FlexWare Software to each On-Demand Meter. The RNI will indicate if the On-Demand Meter received the communication and the RNI will indicate when the On-Demand Meter received the communication.
Results for WA-2	
Post Condition Success:	Post Condition Failure:
On-Demand Rate is equal or greater than 300.	On-Demand Rate is less than 300.
Calculation of Success Criteria: On-Demand Rate = ((the summation of the response time to the on demand read request for all On-Demand Meters) / 20).	
Post Condition Result:	

Test Script WA-3: Measurement (Remote Read Accuracy)	
Test Performed On (AMI):	Date:
Overview:	This test will compare the time stamp at the SmartPoint Module, with that determined through the RNI software to confirm accuracy of time stamps being used during validation, and therefore for billing purposes.
Function:	The module provides accurate time stamped reads that match the time data acquired from the meter display.
Goal in Context:	The time on a manually read module is compared to the time in a reading taken via an on-demand read.
Preconditions:	<ul style="list-style-type: none"> • The installation of one AMI water meter at a residence or lab setting. • The manual read and the on-demand read must be obtained simultaneously.
Results for WA-3	
Post Condition Success:	Post Condition Failure:
The data acquired through a manual read of the meter register differs from the data presented by an on-demand read taken at the same time by equal or less than +/-0.1% for a given unit of measure.	The data acquired through a manual read of the meter register differs from the data presented by an on-demand read taken at the same time by greater than +/-0.1% for a given unit of measure.
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Test Script WA-4: Operational Data Collection Accuracy	
Test Performed On (AMI):	Date:
Overview:	This test serves to document the ability of the network to collect accurate operational data from AMI water modules.
Function:	The AMI network should collect operational data from Available AMI water modules on a regular basis. This information should be accurate and collected on a regular basis to assist the Customer in managing various aspects of their distribution network.
Goal in Context:	Test the ability of the AMI network to detect backflow, tamper, cut wire, broken pipe, and low battery conditions from the installed base of AMI Test Meters.
Preconditions:	<p>The installation of twenty (20) AMI water meters ("<u>Operational Test Meters</u>") at residence or in lab setting.</p> <p>Customer will induce a tamper event.</p> <p>Customer will induce a cut wire event.</p>
Results for WA-4	
Post Condition Success:	Post Condition Failure:
<p>Tamper Alarm received by nineteen (or more) Operational Test Meters during induced tamper event</p> <p>and (unless one of the tests is waived)</p> <p>Cut wire alarm received by nineteen (or more) Operational Test Meters during cut wire event</p>	<p>Tamper Alarm not received by nineteen (or more) Operational Test Meters during induced tamper event</p> <p>or</p> <p>Cut wire alarm not received by nineteen (or more) Operational Test Meters during cut wire event</p>
Calculation of Success Criteria: Not Applicable.	
Post Condition Result:	

Completion of Water Acceptance Test

Each of the above tests shall be successfully completed or waived for the Water Acceptance Test (communications with water meters and RNI) to be satisfied. Upon successful completion of each of the above described tests, or waiver thereof, Customer shall promptly issue written notice to Sensus. Such notice shall state that Sensus has successfully completed the Water Acceptance Test and the notice shall state the date on which the Water Acceptance Test was completed.

If the tests are successfully passed, but such notice is not provided to Sensus within five days after successfully completion of the tests above, then the Water Acceptance Test shall be deemed successfully completed.

If Sensus does not successfully complete any one of the above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the Parties shall re-perform the failed tests.

C. FlexNet Base Station Acceptance Test

The purpose of this test is to verify that the FlexNet Base Stations are installed in accordance with Sensus guidelines and local electrical and building codes.

Within thirty (30) days after completion of RF commissioning of the applicable FlexNet Base Station, the Parties shall begin the FlexNet Base Station Acceptance Test on the applicable FlexNet Base Station. Customer and Sensus will work diligently in good faith to undertake reasonable efforts to complete the FlexNet Base Station Acceptance Test no later than thirty (30) days after commencement of testing. The FlexNet Base Station Acceptance Test shall consist only of the following subtests:

- FB-1: Electrical Installation

Upon satisfactory completion of each of the above tests, the AMI System will be deemed to have passed the FlexNet Base Station Acceptance Test. Each test is described in detail below.

Sub-Test Specifications

Test Script FB-1: Electrical Installation	
Test Performed On (AMI):	Date:
Overview:	Electrical Installation is a visual inspection by Sensus of the FlexNet Base Station electrical installation to ensure that it is installed in accordance with local building codes and Sensus' installation guidelines.
Function:	The FlexNet Base Station electrical installation is installed in accordance with local building codes and Sensus' installation guidelines.
Goal in Context:	<p>The following elements must be satisfied to pass the Electrical Installation test:</p> <ul style="list-style-type: none"> i. The FlexNet Base Station is connected to electric power in accordance with local electrical code. ii. The FlexNet Base Station is connected to suitable ground field. iii. The FlexNet Base Station is physically connected to the network connection (WAN), such as Fiber, cellular, DSL or cable modem.
Preconditions:	The AMI FlexNet Base Station is installed.
Results for FB-1	
Post Condition Success:	Post Condition Failure:
The above three test elements for the Electrical Installation test are satisfied.	Any one if the above test requirements is not satisfied.
Post Condition Result:	

Completion of FlexNet Base Station Acceptance Test

Each of the above tests shall be successfully completed or waived for the FlexNet Base Station Acceptance Test to be satisfied. Upon successful completion of each of the above described tests, or waiver thereof, Customer shall promptly issue written notice to Sensus. Such notice shall state that Sensus has successfully completed the FlexNet Base Station Acceptance Test and the notice shall state the date on which the FlexNet Base Station Acceptance Test was completed.

If the tests are successfully passed, but such notice is not provided to Sensus within five days after successfully completion of the tests above, then the FlexNet Base Station Acceptance Test shall be deemed successfully completed.

If Sensus does not successfully complete any one of the above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the Parties shall re-perform the failed tests.

D. RNI Acceptance Test

The purpose of this test is to verify that the RNI is installed in accordance with Sensus' guidelines and local electrical and building codes. This test will also verify that the RNI is communicating over the network to the FlexNet Base Station.

Within thirty (30) days after the installation and configuration of the applicable RNI, the Parties shall begin the RNI Acceptance Test on the applicable RNI. Customer and Sensus will work diligently in good faith to undertake reasonable efforts to complete the RNI Acceptance Test no later than thirty (30) days after commencement of testing. The RNI Acceptance Test shall consist of the following subtests:

- RNI-1: User Set-Up (Read Only, Billing, Admin Roles)
- RNI-2: Reporting Requirements

Upon satisfactory completion of each of the above tests, the AMI System will be deemed to have passed the RNI Acceptance Test. Each test is described in detail below.

Sub-Test Specifications

Test Script RNI-1: User Set-Up (Read Only, Billing, Admin Roles)	
Test Performed On (AMI):	Date:
Overview:	This test serves to document the ability of the RNI to assign users different levels of access.
Function:	The AMI network should provide adequate functions such that the access rights of certain users are limited while others are given full access to all features.
Goal in Context:	Set up four (4) users with different levels of access and verify user configuration.
Preconditions:	Customer RNI is configured.
Results for RNI-1	
Post Condition Success:	Post Condition Failure:
Users are only allowed to access system features specified under each role.	Users are able to access areas that should not be permitted or users are not able to access areas that should be permitted.
Post Condition Result:	

Test Script RNI-2: Reporting Requirements	
Test Performed On (AMI):	Date:
Overview:	This test serves to document the ability of the AMI system to provide standard reports required to operate and manage the AMI meter population and AMI network.
Function:	The AMI network should provide reporting capabilities to allow both the system operator and the Customer to manage all aspects of the system.
Goal in Context:	Standard reports are run to verify key operational objectives.
Preconditions:	Acceptance Test meter population installed in the service territory.

Results for RNI-2	
Post Condition Success:	Post Condition Failure:
<p>The following reports are generated and delivered</p> <p>Daily 72 Hour Stale Report Daily Read Verification Report Daily Read Interval Success Report Daily Meters with Alarms Report Installed Meters Report Overall System Graphs Overall System Stats FlexNet Base Station Status Reports 96 hour stale report</p> <p>Note that this test does not examine or test the accuracy of the reports; it only tests whether the reports are generated.</p>	<p>Reports are not generated.</p>
Post Condition Result:	

Completion of RNI Acceptance Test

Each of the above tests shall be successfully completed or waived for the RNI Acceptance Test to be satisfied. Upon successful completion of each of the above described tests, or waiver thereof, Customer shall promptly issue written notice to Sensus. Such notice shall state that Sensus has successfully completed the RNI Acceptance Test and the notice shall state the date on which the RNI Acceptance Test was completed.

If the tests are successfully passed, but such notice is not provided to Sensus within five days after successfully completion of the tests above, then the RNI Acceptance Test shall be deemed successfully completed.

If Sensus does not successfully complete any one of the above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the Parties shall re-perform the failed tests.

Results of System Acceptance Testing

Each of the above tests shall be successfully completed or waived for the System Acceptance Test to be satisfied. Upon successful completion of each of the above described tests, or waiver thereof, System Acceptance is deemed to have occurred, and Customer shall promptly issue written notice to Sensus of System Acceptance. Such notice shall state the date on which Sensus successfully completed the System Acceptance Test.

If the tests are successfully passed, but such notice is not provided to Sensus within five days after successfully completion of the tests above, then the System Acceptance Test shall be deemed successfully completed.

If Sensus does not successfully complete any one of the above tests, Customer shall promptly issue written notice to Sensus, describing the reason for Sensus' failure. Sensus shall have a reasonable time to cure such defects. Sensus shall provide notice to Customer when the defects are cured and the Parties shall re-perform the failed test(s).

Exhibit C
Statement of Work

I. General Responsibilities.

The parties shall (and Sensus shall cause its sub-contractor to) carry out their respective obligations under this Agreement so that the AMI System is deployed in accordance with the Deployment Milestones attached as Exhibit C-1. In particular:

a. Sensus will:

1. Conduct a propagation study to determine the locations best suited for installation of the FlexNet Base Stations and to ensure proper communications with end point transmitters and the RNI.

b. Customer will:

1. Provide a key point of contact to work with Sensus to help facilitate a timely installation of the AMI System.
2. Provide Sensus a map of its Service Territory with latitude and longitude ("lat/lon") coordinates of its Service Territory boundaries, a list of meter locations, and a list of preferred Customer tower locations.
3. [INTENTIONALLY OMITTED] .
4. Be responsible for monthly fees associated with the network access for all sites where network access is needed.
5. Provide communications link (high speed DSL is preferred) between the RNI and the FlexNet Base Station. One of the following should be used to access these components: (i) Cisco VPN; (ii) Open VPN Connection; or (iii) SSH access via port 22 to Linux NC. If Customer is providing SSH access, Port 22 on the firewall must be opened and redirected to the internal IP address of the Sensus RNI.
6. Purchase any routers, hubs, mounting equipment, uninterruptible power supply and/or security equipment needed to connect the RNI to Customer's internal network.
7. Be responsible for the payment of any taxes, renewal, regulatory or license fees associated with the network hardware and software.
8. Be responsible for applying for and purchasing any needed work permits.

II. RNI Responsibilities.

a. Sensus will:

1. Install the RNI software image. Customer shall provide the server hardware.
2. Supply and configure the RNI software and data management software necessary to operate on the AMI system.
3. Stage all Software and configure the RNI software for operation with the AMI System.
4. Install the RNI software, test, and verify proper network connectivity to access the FlexNet Base Station.
5. Commission the RNI software and provide setup and configuration of the RNI software and support the hardware installation at the Customer's location.

b. Customer will:

1. Purchase all needed RNI server hardware equipment.
2. Provide a location for the RNI hardware servers. The Sensus RNI must be placed behind Customer's firewall.
3. Provide a cabinet to house the server hardware when rack space is not available.
4. Provide network cabling from server hardware to a network router.
5. Be responsible for fees associated with acquiring and maintaining the static IP addresses needed to access network equipment located at the FlexNet Base Station site.
6. Provide the necessary static IP addresses for the AMI System components.
7. Provide a power source for the RNI hardware equipment.
8. Connect the data management software to the billing system which allows for data to be imported for billing purposes.
9. Allow a minimum of thirty (30) to forty-five (45) days from the time the FlexNet Base Station, RNI and sufficient endpoints have been operational before requiring that data be used for billing purposes.
10. Provide any necessary equipment for software system data backup.
11. Perform software system backup on a regular basis as recommended by Sensus.
12. Be responsible for the FlexWare Software application provided for the exclusive use of the AMI System within a virtual server environment. Customer cannot add, and/or delete applications within the FlexWare Software or the servers that house the software or otherwise modify the resource allocation of the virtual environment without the prior, written approval of Sensus.

13. Provide 24x7x365 high speed VPN connection to the RNI computer and FlexNet Base Station network to authorized Sensus AMR Technical Services personnel for the purpose of performing system maintenance, troubleshooting and system monitoring (if Customer prefers, they can require that Sensus personnel coordinate with them to have a remote login port opened only during the period Sensus requires access)
14. Provide two (2) available network ports on Customer's Local Area Network (LAN)
15. Provide two (2) static IP addresses (Linux and Windows servers) within Customer's LAN subnet to support Sensus RNI

III. FlexNet Base Station Site Responsibilities

a. Sensus will:

1. Determine the correct FlexNet Base Station configuration for the project. FlexNet Base Stations are available in three configurations: indoor, outdoor and rack mounted.
2. Identify and hire a qualified installation team to install and commission the FlexNet Base Station equipment and make final end connections to the equipment for an agreed upon installation fee. Installation to include any cranes or boom mounted trucks required to mount antenna & attachments points to top of antenna structures. Monopoles as purchased in this agreement will be erected by Sensus. Provide the FlexNet Base Station and antennae sufficient to receive meter data and provide the meter data to the RNI via Customer's provided network.
3. Provide the following equipment for the FlexNet Base Station installation: (a) Antel BCD-87010 Omni Directional Antenna or appropriate panel antenna as required, (b) up to 400 feet of 7/8" coaxial cable per FlexNet Base Station location, (c) N/F connectors for 7/8" coaxial cable required for antenna installation connection, (d) jumpers required to attached antenna to coax and to FlexNet Base Station (length of Jumper to be determined by individual site), (e) RF Polyphaser surge current arrestor, (f) grounding Kits for 7/8" coaxial cable, (g) #6 stranded grounding wire for grounding FlexNet Base Station Cabinet, (h) antenna mount and standoff for antenna installation, (i) hoisting grips to install coaxial cable and to support coax cable, (j) equipment required to pickup, transport and install FlexNet Base Station on Platform, and k) one (1) hoisting grip per coax cable and hangars as needed.
4. Have access to a ground field (supplied by Customer) to properly ground the FlexNet Base Station and antenna equipment.
5. Mount the FlexNet Base Station cabinet (if needed) to the structure provided and identified by Customer.
6. Make all data and power terminal, and antennae connections at the FlexNet Base Station Cabinet. This includes the connection from the power source (supplied by Customer) and connection of the CAT 5 data line (supplied by Customer) from the network access point at the site.
7. Provide all strapping hardware needed to run the data and power cables from the base of the FlexNet Base Station site to the antennae if needed.
8. Install the antenna at an agreed-upon location on the antenna structure.
9. Provide and install Andrew 7/8" coaxial cable from each FlexNet Base Station location to antenna mount location. Coax will be installed on the appropriate leg of tower or mounting structure.
10. Provide and install antenna mount with a 3 foot stand-off for the antenna installation.
11. Mount the Sensus provided Antel BCD-87010 or appropriate panel antenna for installation.
12. Install the Sensus provided RF Polyphaser and bond it to the ground buss entry location.
13. Install a 6 foot jumper from polyphaser entry port of FlexNet Base Station duplex.
14. Ground the FlexNet Base Station to common ground with appropriate #6 ground wire and appropriate ground lugs.
15. Program and commission the FlexNet Base Station for proper operation.
16. Sweep the antenna and coax line to ensure conformance to Sensus' published specifications.
17. Perform drive-by testing to verify coverage.
18. Not be held responsible for damage to any interior/exterior coatings on water tanks that result from welding of antenna mounts to tanks. Parties will agree to a scope of work prior to installation.

b. Customer will:

1. Provide an area at the FlexNet Base Station site for installation if the FlexNet Base Station is to be installed at a Customer provided site and prepare the site as follows:
 - A. The site must have a network connection available for the FlexNet Base Station to communicate with RNI. Suggested communications methods are Ethernet, DSL, Microwave and wireless. The Ethernet connector on the FlexNet Base Station unit is an RJ-45 type, 10/100 auto signaling rate. Minimum WAN bandwidth requirements are 128 kbps with a redundant path. Any network equipment to interface the FlexNet Base Station such as Juniper router / firewall, switches, etc. will be Customer provided.
 - B. Customer will supply connectivity information to Sensus (IP address, default gateway, sub-net mask, etc.).
 - C. Provide suitable antenna mounting structure such as a tower, mono-pole, or building that is capable of supporting the weight of the antenna, cable, mounting hardware and wind loading.

- D. An Indoor site should have adequate room for the rack facilitating opening of both front and rear doors, and an available 120V grounded outlet within 10 feet.
 - E. An Outdoor site installation single phase 240 VAC 30 amp circuit from Meter bank to disconnect panel on FlexNet Base Station.
 - F. An Outdoor site shall have installation of FlexNet Base Station concrete support pad or suitable steel support structure with a minimum loading capacity of 600lb./ sq.inch.
 - G. An Indoor site should have adequate environmental control/ventilation. Recommended environmental ranges are shown in the Sensus Tower Gateway Base Station Installation Manual. Although the unit is capable of operation in extreme temperatures, maintaining a moderate and constant temperature environment will promote trouble-free service and long life.
 - H. The site must have all RF and power connections properly surge arrested to prevent damage in the event of a major lightning strike. A Halo type building ground installation with a tie available to connect to the rack ground bar is recommended; Motorola R-85 grounding specification preferred.
 - I. Customer to supply a cable bridge between the antenna mounting structure and the indoor/outdoor FlexNet Base Station site if and as needed.
 - J. For each outdoor basestation that is required at your location, you are responsible to provide two (2) additional ports on your LAN and one (1) additional port for each indoor basestation
2. Provide the necessary trenching of the power line, conduit, and cabling needed to supply power from the power source outlet to the base station cabinet. All electrical equipment will be installed in accordance with local codes.
 3. Provide network access at the site where the FlexNet Base Station is to be installed. Customer should consult with a Sensus representative regarding the available options for network connections between FlexNet Base Station and RNI.
 4. Provide CAT 5 UV and weather resistant network cable from the network service provider access link to the cabinet.
 5. Provide any conduit or trenching needed to run the data cable to the FlexNet Base Station. Customer is responsible to assure that data cable is located within 1 foot of the final location of the FlexNet Base Station.
 6. Provide padlocks at each FlexNet Base Station location for security purposes.
 7. Install grounding material at the location of the FlexNet Base Station installation. At a minimum, the material should consist of # 4 or #2 stranded copper wire which will connect to the FlexNet Base Station.
 8. Provide access to a proper ground field at the FlexNet Base Station site to enable Sensus to properly ground the FlexNet Base Station and antenna equipment.
 9. Be responsible for getting access/permission to any structure that is not owned by Customer.

IV. (Not Applicable)

V. Endpoints & Field Installation Responsibilities

“Endpoint” means a meter, and any SmartPoint Module that is attached to but not installed in a meter, otherwise referred to as a “Field Device” in the Agreement.

a. Sensus will:

1. Install or hire a qualified installation contractor to install all Endpoints to be used in the AMI System, subject to the exceptions listed in Part V.b.3. below that will be installed by Customer, pursuant to the following meter installation milestones in Exhibit C-1. :
2. Installation Contractor will take the following digital pictures at each electric meter installation location:
 - A. Picture of surrounding area of premise before beginning
 - B. Picture of existing electrical meter base & reading
 - C. Picture of exposed meter socket once meter is removed
 - a. If the inspection reveals a hazardous condition or meter base damage, Customer shall be notified by Apex through a PER ticket. No attempt to remove or install a meter shall be made until such hazard has been addressed. No energized meter base shall be left open and unattended. If Apex personnel has to remain on site for safety reasons, Apex shall be paid at the standby rate.
 - b. Voltage checks shall be performed to verify that the correct meter type is replaced.
 - c. All installations shall be sealed with a Customer approved seal.
 - d. Once the meter base is opened, installer shall conduct a visual inspection for any obvious issues including, but are not limited to:
 - e. Animals;
 - f. Burn marks, signs of arcing or odors related to either;

- g. Cracked mounting blocks;
 - h. Signs of loose connections;
 - i. Discolored or rusted connections;
 - j. Insulation melted or cracking; and
 - k. Signs of tampering.
- D. Picture of electric meter after installation (Should have surrounding area included)
3. Installation Contractor will take the following digital pictures at each water meter installation location:
- A. Picture of surrounding area of premise before lid is removed
 - B. Picture of existing water meter after lid is removed
 - a. Before proceeding, the area and piping around the existing meter setting will be checked for suitable condition, if condition is not suitable for a water meter exchange, escalate a problem ticket.
 - b. The inlet-side valve to the meter must be closed prior to meter exchange. When changing-out the meter, avoid getting any debris such as dirt, bark, etc., into the service line. Tighten the meter nuts snugly during installation. .
 - C. Picture of new water meter after Installation
 - D. Picture of water meter box surrounding area and premise
4. Provide Customer access for 10 users to the ProField software, website, & license.
5. Be responsible for the quality of installation of Endpoints installed by Sensus or its subcontractor.
6. Replacement Water Pit Lids: All external mounting holes for SmartPoint Modules must be recessed. Any external surface of a SmartPoint Module assembled to a pit lid must not extend beyond the upper surface of the pit lid when pit lid is closed.
7. Support the network commissioning of the Endpoint to confirm the receipt of hourly reads with 99% RIS for a 7 day period after a binding message has been received in the RNI ("Completed Installation").

b. Customer will:

- 1. Purchase additional meters from Landis & Gyr pursuant to Section 2 of this Agreement.
- 2. Customer is responsible for testing and confirming the safety of sockets and pipes prior to installation of the Customer- installed Endpoints, as outlined above for installations by Sensus or its subcontractor.
- 3. Install or hire a qualified installation contractor to install all Endpoints to be used in the AMI System at the following locations:
 - A. Traffic lights,
 - B. Railroad crossings,
 - C. Hospitals,
 - D. Elementary and secondary schools,
 - E. Universities,
 - F. Entities owned in whole or in part by Customer, and
 - G. Or as otherwise designated by Customer, provided that the total amount of Customer installs (C thru I) shall not exceed 2,000 electric nor 700 water.
- 4. Visit and troubleshoot Endpoints that are not reporting into the system. Investigate any non-reporting Endpoints to ensure that there are no cut wires, improper installations, improper programming and resolve all data entry errors in the system.
- 5. Assign an internal and/or installation contractor auditor to ensure installation work is correct. Sensus will train this individual to properly identify and correct any known problems in the field. This individual will be the primary contact to troubleshoot, identify and correct non reporting Endpoints and installation errors.
- 6. Once the installer has completed troubleshooting of installation issues, Sensus will investigate the remaining Endpoints to identify and fix any coverage issues.
- 7. Coordinate with Sensus to establish the Endpoints installation schedule, shipment quantities, and overall project timeline.
- 8. Be responsible to rent or purchase approved handheld programming devices in sufficient quantities to meet the demands of the installers.

Exhibit C-1
Deployment Milestones

FPWC AMI PROJECT MILESTONES					
Milestone #	Date	Description	Base Stations - Total	Quantity Electric meters - Total	Quantity water meters - Total
1	January 2, 2014	Customer to have Vmware environment purchased and ready for Sensus to load RNI Software	N/A	N/A	N/A
2	2-Jan-14	TGB site location preparation completed by Customer in accordance with SOW (concrete pad, power, backhaul, etc.)	N/A	N/A	N/A
3	31-Jan-14	RNI Headend & 1 TGB Operational	1	N/A	N/A
4	28-Feb-14	Network infrastructure and electric meters	N/A	500 (pilot)	N/A
5	30-Jun-14	Network infrastructure, electric, and water meters	stations as per the Schedule	1000	1000
6	30-Sep-14	Electric and Water Meters	N/A	3000	3000
7	31-Dec-14	Electric and Water Meters	N/A	10000	6000
8	31-Mar-15	Electric and Water Meters	N/A	20000	12000
9	30-Jun-15	Electric and Water Meters	N/A	30000	26000
10	30-Sep-15	Electric and Water Meters	N/A	40000	40000
11	31-Dec-15	Electric and Water Meters	N/A	50000	54000
12	30-Jun-16	Electric and Water Meters	N/A	60000	68000
13	31-Dec-16	Electric and Water Meters	N/A	70000	82000
14	30-Jun-17	Electric and Water Meters	N/A	82566	97048

Note 1: all infrastructure and first 1000 meters need to be ordered by November 15, 2014

Note 2: Milestones may be adjusted in accordance with the detailed project SOW. The project SOW will be the dates of records for the Milestones.

Note 3: Milestone 14 is an approximate number, the parties acknowledging that full deployment may result in a slightly different final count.

Note 4: Subject to Section 3.A.v. of this Agreement, no penalty is imposed on Sensus for missing the deployment milestones, but; (i) the respective project managers shall meet and develop a mitigation plan to catch up for lost time; and (ii) pricing escalation may be delayed if applicable under the paragraph titled "Escalation" in Exhibit E.

Note 5: Sensus not responsible for installation of 500 Electric Meters for Pilot Build

Note 6: With respect to milestone 3, RNI will be ready to accept information from 1 TGB so as to begin integration testing by January 31, 2014.

The integration to the MDMS will not be completed by January 31, 2014. The integration will be ready to begin January 31, 2014

**Exhibit D
Software Listing**

THIRD PARTY SOFTWARE		
Software	Version	
BUNDLED THIRD PARTY SOFTWARE	Apache Tomcat	Version 5.5.23
	Apache Camel	Version 2.5
	Geos	Version 2.2.3-1
	Java	Version 1.6.20
	JMS/Active MQ	Version 5.4.2
	Ntpd	Version 3.9
	Open LDAP	Version 2.3.43-3
	Open SSH	Version 4.4
	Open SSL	Version 0.9.8e-7
	Perl	Version 5.8.8
	PostgreSQL	Version 8.4
	Spring Framework	Version 3.0.5
	Apache HTTP Server	Version 2.2.3
	copSSH	Version 2.1.0
	cURL	Version 7.15.5-2
	PostGIS	Version 1.3.5-1
	Sarissa	Version 0.9.7.1
	ImageMagick	Version 6.2.8.0-4
	Ghostscript	Version 8.15.2-9.4
NON- BUNDLED THIRD PARTY SOFTWARE	Database: Oracle OR MS SQL Server	Oracle 11g MS SQL Enterprise 2008 R2
	MS Windows Server 2003 (Stats)	Enterprise Edition (64 bit installation)
	MS Windows Server 2008 (Database/Parser)	Enterprise Edition (64 bit installation)
	RedHat Linux	RedHat Enterprise Linux AS 5.8.Premium Edition
	Big Brother or HP Open View	Version 3.1 Version 7.51 or newer
	Red Gate SQL Backup or Veritas Netbackup	Standard Edition Version 6.0 or newer
	Google Earth	Version 4.1 or newer
SENSUS SOFTWARE LIST		
	Software	Version
FLEXWARE™ SOFTWARE	Sensus RNI	Version 3.1
	FlexNet Base Station Software	Version 100120
DA SOFTWARE	PowerVista™ Application	Customer will only have a license to the DA Software ONLY TO THE EXTENT (i) pricing for the specific item of DA Software is specifically included in Exhibit E to this Agreement or in the Customer-Distributor Arrangement; and (ii) Customer is current in its payments for that specific item of DA Software
	SCADA-Xchange™ Software	

If Sensus is providing Customer with a license to use RedHat Linux Software, Customer agrees to the following:

By entering into this Agreement, Customer agrees to abide by and to be legally bound by the terms and conditions of the Red Hat End User License Agreements identified below, each of which are incorporated into this Agreement by reference and are available at the websites identified below. Please read the Red Hat End User License Agreements and incorporated references carefully.

Subscription:

End User License Agreement:

Red Hat Enterprise Linux

http://www.redhat.com/licenses/rhel_rha_eula.html

JBoss Enterprise Middleware

http://www.redhat.com/licenses/jboss_eula.html

Exhibit E
Pricing

Price Schedule. The Schedule of Values sets forth by line item the quantity, unit prices and costs for Equipment and services agreed upon by the parties. Customer shall pay for all Equipment and services rendered by Sensus in the quantities and at the prices set forth in the Schedule of Values, subject to the variation allowed for in Section 2.B. of the Agreement. The parties further agree that Sensus' unit prices and other pricing details set forth in the Schedule of Values which Sensus identified as confidential information when first submitted to Customer, constitutes trade secret information as defined in N.C. Gen. Stat. § 66-152(3), and is confidential information as defined in N.C. Gen. Stat. § 132-1.2. .

Price Summary. In summary, and without the confidential pricing detail, the Equipment and services will be provided as follows:

Item Number	Item	Meter Type	Quantity	Costs
Project Management				
1	Project Management & Application Engineer (yearly)		4	
2	Project Manager of Technical Service (yearly)		4	
	SUB-TOTAL \$1,614,800.00			
AMI Management System (Head End)				
3	Regional Network Interface (RNI) Primary Server, Software, & Installation Labor		1	
4	RNI Test Server, Software, & Installation Labor		1	
5	RNI Backup Server, Software, & Installation Labor		1	
6	Flexnet Software Maintenance: Primary Server (yearly)		4	
7	Flexnet Software Maintenance: Test Server (yearly)		4	
8	Flexnet Software Maintenance: Backup Server (yearly)		4	
9	VGB Software Autoread & Autovu (AMR Capability)		1	
	SUB-TOTAL \$1,395,495.00			
AMI Management System (Field Infrastructure)				
10	Indoor Base Station		Total as per Schedule of Values	
11	Outdoor Base Station		Total as per Schedule of Values	
12	Base Station Installation		Total as per Schedule of Values	
13	Antenna/cabling/connectors		One for each Base Station as per Schedule of Values	
14	Monopole		11	
15	RF Modems for Backhaul (2 non-fiber locations <i>if required</i>)		2	
16	VGB Hardware (AMR Capability)		1	
	SUB-TOTAL \$1,838,595.00			
Training, Site Acceptance Testing & Customer Support				

17	Training		1	
18	Site Acceptance Testing (SAT) – Electric		1	
19	Site Acceptance Testing (SAT) – Water		1	
20	Customer Service & Support		1	
	SUB-TOTAL \$257,000.00			
Electric Meter Materials				
21	Landis & Gyr Focus AXR-SD 2S (class 200)- <i>Flexnet Module (w/Zigbee) Only</i>	Residential	88,679	
22	Landis & Gyr Focus AXR-SD 1S (class 100)- <i>Flexnet Module Only</i>	Residential	117	
23	Landis & Gyr Focus AXR-2SE (class 320)- <i>Flexnet Module Only</i>	C&I	1,032	
24	Landis & Gyr Focus AX 3S (class 10)- <i>Flexnet Module Only</i>	C&I	538	
25	Landis & Gyr Focus AX 3S (class 20)- <i>Flexnet Module Only</i>	C&I	353	
26	Landis & Gyr Focus AX 4S (class 10)- <i>Flexnet Module Only</i>	C&I	1,508	
27	Landis & Gyr Focus AX 4S (class 20)- <i>Flexnet Module Only</i>	C&I	418	
28	Landis & Gyr Focus AXWR-SD 12S (class 200)- <i>Flexnet Module (w/Zigbee) Only</i>	C&I	1,392	
29	Elster meter with Flexnet Module 9S (class 20)	C&I	406	
30	Elster meter with Flexnet Module 16S (class 200)	C&I	2,518	
31	Elster meter with Flexnet Module 16S (class 320)	C&I	581	
32	Elster meter with Flexnet Module 35S (class 20)	C&I	2,252	
33	Elster meter with Flexnet Module 36S (class 20)	C&I	304	
	SUB-TOTAL \$6,051,979.00			
Electric Meter Installation, Repair & Equipment				
34	Electric Meter Installation			
	1S-100	Residential	21	
	2S-200	Residential	75,659	
	2S-320	C&I	648	
	3S-10	C&I	442	
	3S-20	C&I	65	
	4S-10	C&I	1,412	
	4S-20	C&I	34	
	9S-20	C&I	118	
	12S-200	C&I	624	
	16S-200	C&I	1,462	
	16S-320	C&I	197	
	35S-20	C&I	1,868	
	36S-20	C&I	16	
35	Electric Meter Socket Repair (estimate—will be	Residential/C&I	900	

	billed upon service)			
36	Command Link - Maintenance Equipment		6	
37	Trimble- Maintenance Equipment		6	
	SUB-TOTAL \$1,633,864.32			
Water Meter Materials				
38	iPERL - 5/8x3/4 or 3/4 short	Residential	112,393	
39	iPERL - 1"	Residential	8,893	
40	iPERL 1" Hydrants	Residential	5	
41	OMNI meters - 1-1/2" OMNI R2	Residential/C&I	1,636	
42	OMNI meters - 2" OMNI R2 17" LL	Residential/C&I	182	
43	OMNI meters - 3" T2 turbine MC	Residential/C&I	139	
44	OMNI meters - 3" T2 turbine MC	Residential/C&I	6	
45	OMNI meters - 4" T2 turbine MC	Residential/C&I	37	
46	OMNI meters - 6" T2 turbine MC	Residential/C&I	23	
47	OMNI meters - 6" T2 turbine MC	Residential/C&I	12	
48	OMNI meters - 8" C2 compound MC	Residential/C&I	5	
49	Transmitters-SmartPoints - 520M Pit Version - Includes Touchcouple Single Port FlexNet M	Residential/C&I	123,331	
50	Replacement Lids -SmartPoints - 520M Pit Version - Includes Touchcouple Single Port FlexNet M	Residential/C&I	86,457	
	SUB-TOTAL \$20,194,684.54			
Water Meter Installation & Equipment				
51	Water Meter Installation			
	5/8"	Residential	86,457	
	1"	Residential	8,613	
	1" - Hydrant	Residential	5	
	1 1/2"	Residential/C&I	1,583	
	2"	Residential/C&I	174	
	3"	Residential/C&I	138	
	3" - Hydrant	Residential/C&I	6	
	4"	Residential/C&I	36	
	6"	Residential/C&I	19	
	6" - Fire Service	Residential/C&I	12	
	8"	Residential/C&I	5	
52	Command Link - Maintenance Equipment		6	
53	Trimble- Maintenance Equipment		6	
	SUB-TOTAL \$2,799,798.55			

Travel				
54	Travel expenses for on-site personnel (yearly)		4	
				\$36,000.00
TOTAL COST				\$35,822,216.00

Escalation. The pricing in the Schedule of Values shall remain in effect until December 31, 2017 (“Trigger Date”). On the Trigger Date, and on each anniversary after the Trigger Date, the pricing will be adjusted by the relevant Escalator as defined in Section 7.J of the Agreement. For example, if the Trigger Date occurs in January 2018, the Escalator(s) will be calculated by comparing December 2017 and December 2016 figures. Provided, however, that, if the project is delayed due to (i) Force Majeure; or (ii) Sensus or its subcontractor failing to meet deployment milestone 10 in Exhibit C-1 by June 30, 2017, and where the delay is not due to the Customer, the Escalator’s application shall be delayed in lockstep with the delay. For example, if a tornado delays the project six weeks, price escalation shall be delayed six weeks past December 31, 2017.

Currency. All prices are in USD.

Equipment. Invoices for all SmartPoint Modules and other Field Devices, RF Field Equipment, and any other goods sold by Sensus to Customer shall be sent to Customer when the relevant Equipment is shipped from Sensus’ or Sensus’ contracted manufacturer’s factory.

Third Party Meters. Payment for SmartPoint Modules shipped to L&G or any other third-party meter manufacturer identified by Customer will be due within thirty (30) days of the invoice date, irrespective of how long it takes L&G or any other such third-party meter manufacturer to deliver their meters containing the SmartPoint Modules to Customer.

Services. Invoices for Ongoing Fees and services (other than meter installations) shall be sent monthly for the prior month’s activity. Invoices for meter installation shall be sent bi-weekly for all Completed Installations.

Payment. Customer shall pay all invoices within thirty (30) days of the invoice date. Sensus reserves the right to establish credit limits for Customer and may require full or partial payment prior to shipment of any goods or commencement of any services provided hereunder in the event that Customer ever has an account payable due to Sensus over \$100,000 that is more than 60 days past due. All payments shall be made via electronic payment to the account(s) indicated by Sensus from time to time, unless Sensus requests a change in payment methods in writing.

Late Payments. Any invoices not disputed in good faith by Customer which Customer does not pay within the time provided in this Agreement may, at Sensus’ sole discretion, bear interest at the legal rate of 8% per annum (collectively, “Interest Rate”).

Disputed Invoices. If Customer disputes an invoice, it shall give written notice of the dispute to Sensus within 30 days of the invoice date. If it does not do so, the entire invoice shall be deemed payable without reduction. If Customer gives written notice of the dispute within the required thirty (30) days, it shall, at such time as the notice is given, pay the undisputed amount of the invoice and the disputed portion shall be resolved by the parties under the dispute resolution provisions of this Agreement. If it is ultimately determined that some or all of the disputed amount was payable, that amount may, at the sole discretion of Sensus, bear interest from the original due date until Customer pays it at the Interest Rate.

Withholding. Customer may withhold payment on an invoice for defective goods and services. Payment by Customer of an invoice shall deem Sensus to have fully complied with this Agreement for all goods and services represented in the invoice.

Taxes. All prices quoted are exclusive of federal, state and municipal taxes. Customer shall be liable for all sales, use and other taxes (whether local, state or federal) imposed on the goods, services, licenses, and/or other rights provided to Customer hereunder.

Delivery and Packaging. All costs of shipment of Equipment from Sensus’ or Sensus’ contracted manufacturers’ factory to L&G or Apex’s factory have been included in the pricing set forth in the Schedule of Values, and Customer will not charged separately for such shipments. Sensus reserves the right to select the manner in which Equipment is packaged, provided it meets the ANSI 12.1 American National Standard for Electric Meters Code for Electricity Metering Test No. 33 (Transportation Drop), and Test No. 35 (Transportation Vibration).

Quoted prices include the above packing. Special requirements for packing in addition to those above will be subject to extra charges. Any shipping dates quoted by Sensus are not guaranteed, but Sensus will make shipments in quantities that allow the meter installation schedule referenced in the SOW (Exhibit C) to be met.

Additional Notes on Pricing:

1. Pricing for installation assumes that two percent (2%) of electric meters are located indoors, and that all water meters are located in outdoor pits. Any increase in the percentage of electric meters located indoors or water meters not located in outdoor pits will result in additional costs to Customer.

2. Existing Form 5S and Form 45S meters will be replaced with Form 35S meters. Existing Form 14S and Form 15S meters will be replaced with Form 16S meters.
3. Pricing assumes Sensus will not be required to provide meter testing prior to installation. Such testing will result in additional costs to Customer.
4. Pricing assumes full replacement for all water meters with no retrofits. Retrofits will result in additional costs to Customer.
5. [INTENTIONALLY OMITTED]
6. Pricing assumes no meter box replacements are required. Replacing meter boxes will result in additional charges to Customer.
7. All water meter exchanges will be like-for-like; there will be no changes in pipe diameter. Resizing will result in additional charges to Customer.
8. Repairs are service-side only. Neither Sensus nor its subcontractors are responsible for maintenance-side repairs.
9. Pricing assumes a non-union workforce and no prevailing wage requirements.
10. There will be no work stoppages or interruptions imposed by Customer or Sensus.
11. Project duration is from January 1, 2014 to June 30, 2017. It is estimated that one month will be devoted to startup, and the remaining time to meter replacement. If startup is not achieved in the first month, it will continue until completed, with remaining time devoted to meter replacement. Extension of project duration beyond June 30, 2017, in addition to the possible trigger of the Escalator described above, will involve additional deployment costs to be paid by Customer, unless the extension is not Customer's responsibility or Force Majeure.
12. Sensus to provide all seals, gaskets, mounting brackets, nuts and bolts, and any other miscellaneous materials needed for installations. Any lock rings, meter covers, disconnect boots, meter bands or locking devices will be provided by Customer.
13. Sensus will provide handheld installation devices (Trimble LE900), Command Links, and software to be used for module programming in the quantities listed in the table above. The handheld devices will come preloaded with all required software. Sensus will provide any additional handheld devices for water meter programming at an additional cost to Customer.
14. Pricing assumes no strainers or pipe modifications for 1.5" and 2.0" water meters.
15. [INTENTIONALLY OMITTED]
16. Repair of water and electric meter sites is not included in the per unit price.
17. Pricing assumes that CIS data provided by Customer is ninety-five percent (95%) accurate, including meter location address. Less accurate CIS data will result in increased costs.
18. Pricing assumes that, for third-party meters, except for the Elster meters listed in the Schedule of Values, Customer is buying only the communication module from Sensus.
19. Pricing assumes each work order will require a recording GPS unit. Sensus' standard pricing includes GPS reading at an accuracy of \pm three (3) meters distance. Sensus will provide optional pricing for sub-meter accuracy upon request. GPS readings will be provided as close to the meter site as possible and where adequate signal is available.
20. A standby rate of \$87.31 per hour applies when any Sensus staff member or subcontractor must stay at a meter site due to hazardous conditions or while awaiting Customer's staff.
21. Clean-up of routes outside the current service area will be billed at a rate of \$87.31 per hour.
22. If Sensus' subcontractor is unable to perform an installation, it shall leave a door hanger to be provided by Customer asking to arrange an appointment. Sensus will be paid for this initial visit at the applicable meter-exchange rate. Sensus' subcontractor shall then attempt to contact the end user two times by phone to arrange meter installation. If Sensus' subcontractor is able to make an appointment with the end user to perform the installation, Customer will pay Sensus for the installation at the applicable meter-exchange price.
23. Pricing assumes that one percent (1%) of installed endpoints may need to be revisited to ensure proper network communications. Additional visits will result in additional costs to Customer.
24. Pricing assumes meters will be available in the warehouse one (1) month prior to installation.

Exhibit F
Product Roadmap Items

The Parties have identified in the Schedule of Values certain product enhancements which Sensus has identified on its product roadmap for future availability but for which no formal development is yet underway. Sensus utilizes formal product lifecycle management processes in order to assess the prioritization of product enhancements and modifications on a regular basis. The list of the currently identified items which are of interest to FPWC are set forth in the Schedule of Values . Each quarter following the effective date of the Agreement, Sensus agrees to provide updates to FPWC on the status of each of these items until the later of December 31, 2015 or the end of full system deployment, which ever occurs first at which time this information will be shared in the same general manner as Sensus updates it's other customers.

Exhibit G- Form for Spectrum Manager Lease Notification

In order for Sensus to apply to the FCC on the Customer's behalf for a spectrum manager lease, Customer must complete the information below in boxes one (1) through nine (9) and certify via authorized signature. Customer's signature will indicate that Customer authorizes Sensus to file the spectrum manager lease notification on FCC Form 608 with the Customer as spectrum Lessee, as well as ownership disclosure information on FCC Form 602.

Customer / Lessee Information

1	Customer/Lessee Name:		
	Attention To:		Name of Real Party in Interest:
	Street Address:		City:
	State:	Zip:	Phone:
	Fax:		Email:

Is Customer contact information same as above? ☐ Yes ☐ No (If No, complete box 2 below)

Additional Customer/Lessee Contact Information

2	Company Name:		
	Attention To:		
	Street Address:		City:
	State:	Zip:	Phone:
	Fax:		Email:

3	If known, Customer's FCC Registration Number (FRN):
	Customer Tax ID:

4	Customer/Lessee is a(n) (Select one): <input type="checkbox"/> Individual <input type="checkbox"/> Unincorporated Association <input type="checkbox"/> Trust <input type="checkbox"/> Government Entity <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Consortium <input type="checkbox"/> Other _____
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Individual Contact For FCC Matters

5	Please designate one individual (the Director of Public Works or similar person) who is responsible to the FCC for the operation of the FlexNet radio system. This person would need to obtain his or her own personal FRN (FCC Registration Number) by going to the link below and completing the individual FRN registration.	
	Name	
	Title:	
	Email:	Phone:
	Personal FRN:	
	Link for obtaining personal FRN: https://apps.fcc.gov/coresWeb/regEntityType.do	

Ownership Disclosure Information

6	If Customer/Lessee is a government entity, list the names of the Mayor and all Council Members below, as well as verify citizenship and ownership interests in any entity regulated by the FCC. Such ownership must be disclosed where a mayor/council member owns 10% or more, directly or indirectly, or has operating control of any entity subject to FCC regulation. If any answer to Ownership question is Yes, or any answer to Citizenship question is No, provide an attachment with further explanation.		
		US Citizen?	Ownership Disclosure?
	Mayor:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Council Member:	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Alien Ownership Questions (if the answer is Yes, provide an attachment explaining the circumstances)

7	1) Is the Customer/Lessee a foreign government or the representative of any foreign government?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Basic Qualification Information

8	1) Has the Customer or any party to this application had any FCC station authorization, license, or construction permit revoked or had any application for an initial, modification or renewal of FCC station authorization, license or construction permit denied by the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	2) Has the Customer or any party to this filing, or any party directly or indirectly controlling the Customer or any party to this filing ever been convicted of a felony by any state or federal court?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	3) Has any court finally adjudged the Customer or any party directly or indirectly controlling the Customer guilty of unlawfully monopolizing or attempting to unlawfully monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement, or any other means or unfair methods of competition?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Customer/Lessee Certification Statements

9	1) The Customer/Lessee agrees that the Lease is not a sale or transfer of the license itself.	<input type="checkbox"/> Yes
	2) The Customer/Lessee acknowledges that it is required to comply with the Commission's Rules and Regulations and other applicable law at all times, and if the Customer/Lessee fails to so comply, the Lease may be revoked, cancelled, or terminated by either the Licensee or the Commission.	<input type="checkbox"/> Yes
	3) The Customer/Lessee certifies that neither it nor any other party to the Application/Notification is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C § 862, because of a conviction for possession or distribution of a controlled substance (<i>See</i> Section 1.2002(b) of the rules, 47 CFR § 1.2002(b), for the definition of "party to the application" as used in this certification.)	<input type="checkbox"/> Yes
	4) The Customer/Lessee hereby accepts Commission oversight and enforcement consistent with the license and lease authorization. The Lessee acknowledges that it must cooperate fully with any investigation or inquiry conducted either by the Commission or the Licensee, allow the Commission or the Licensee to conduct on-site inspections of transmission facilities, and suspend operations at the direction of the Commission or the Licensee and to the extent that such suspension of operation would be consistent with applicable Commission policies.	<input type="checkbox"/> Yes
	5) The Customer/Lessee acknowledges that in the event an authorization held by a Licensee that it has association with it a spectrum leasing arrangement that is the subject of this filing is revoked, cancelled, terminated, or otherwise ceases to be in effect, the Customer/Lessee will have no continuing authority to use the leased spectrum and will be required to terminate its operations no later than the date on which the Licensee ceases to have any authority to operate under the license, unless otherwise authorized by the Commission.	<input type="checkbox"/> Yes
	6) The Customer/Lessee agrees the Lease shall not be assigned to any entity that is not eligible or qualified to enter into a spectrum leasing arrangement under the Commission's Rules and Regulations.	<input type="checkbox"/> Yes
	7) The Customer/Lessee waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by spectrum lease or otherwise.	<input type="checkbox"/> Yes
	8) The Customer/Lessee certifies that it is not in default on any payment for Commission licenses and	<input type="checkbox"/> Yes

that it is not delinquent on any non-tax debt owed to any federal agency.	
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The Customer/Lessee certifies that all of its statements made in this Application/Notification and in the schedules, exhibits, attachments, or documents incorporated by reference are material, are part of this Application/Notification, and are true, complete, correct, and made in good faith. The Customer/Lessee shall notify Sensus in writing in the event any information supplied on this form changes.

Type or Printed Name of Party Authorized to Sign

First Name:	MI:	Last Name:	Suffix:
Title:		Customer Name:	
Signature:			Date:
FAILURE TO SIGN THIS APPLICATION MAY RESULT IN DISMISSAL OF THE APPLICATION AND FORFEITURE OF ANY FEES PAID.			
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1)) AND/OR FORFEITURE (U.S. Code Title 47, Section 503).			

Exhibit H
Content for Customer Purchase Orders

Address for Purchase Orders. All purchase orders shall be sent to the address listed below. Sensus may change this address at any time, upon written notice to the Customer (such notice may be provided via email).

Sensus USA Inc.
PO Box 487
Uniontown, PA 15401
Attn: Customer Service
Fax: 800-888-2403
Email: icon.support@sensus.com

Content for Purchase Orders. All purchase orders shall contain only the Sensus project number, item (goods and/or services) number and item description, from the Schedule of Values, the quantity of each item being ordered, and the anticipated date of shipment. No purchase order shall include any payment, warranty, indemnity, shipping or other terms of any nature whatsoever that are inconsistent with the terms of this Agreement. Each purchase order shall be dated and signed by someone authorized with the Customer to issue the purchase order. It is the Parties' mutual and express intent that "boilerplate" or other terms in Purchase Orders do not have the effect of altering this Agreement.

CITY COUNCIL ACTION MEMO

TO: Mayor & City Council
FROM: Kristoff Bauer, Deputy City Manager
DATE: November 18, 2013
RE: **Policy of the City Council Regarding Payment of Assessments**

THE QUESTION:

What is the appropriate interest rate to be charged on unpaid assessment installments.

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

The Council amended its policy (Policy 105.2) regarding assessments in April 2006 to indicate that the maximum statutory rate, currently 8%, should be charged on any unpaid installments. The Council has discussed changing this rate on a number of occasions. The previous version of this policy gave the Council the discretion to set this rate between the rate on a ten-year Treasury Note and the statutory maximum.

ISSUES:

The next three agenda items on tonight's agenda are proposed assessment rolls for three Phase 5 Annexation Areas. The Council can disregard its policy and set a rate that is below the statutory maximum, but this raises three issues:

1. A lower rate will reduce the revenue collected through the assessment process and PWC staff assert that this reduction should be reimbursed from the planned utility transfer to the City's General Fund;
2. The interest rate has been consistently applied to previous assessment, so how will revising the rate impact prior assessments if at all; and
3. Acting inconsistent with the existing policy indicates an interest in a different policy begging the question what is the Council's goal or interest in setting the interest rate on outstanding assessments.

Staff has not had the opportunity to fully brief Council regarding these issues and Council has not had an opportunity to discuss each and provided direction. Staff recommends that these issues be the subject of a future Council Work Session.

BUDGET IMPACT:

OPTIONS:

1. Defer items 8.3, 8.4, and 8.5 and direct staff to bring this Council policy to a Work Session for discussion.
2. Take no action on this item and approve items 8.3, 8.4, and 8.5 as recommended.

RECOMMENDED ACTION:

Staff recommends that Council move to defer items 8.3, 8.4, and 8.5 until January 27, 2014, and direct staff to bring Council Policy 105.2 to the January 6, 2014, Work Session for discussion.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Steven K. Blanchard, PWC General Manager/CEO
DATE: November 18, 2013
RE: **PWC - Phase 5 Annexation Area 11WS**

THE QUESTION:

Providing utility services to Area 11WS of the Phase 5 Annexation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: More Efficient City Government – Cost-Effective Service Delivery.

BACKGROUND:

I am enclosing the Resolution Confirming Assessment Roll and Levying Assessments for inclusion on the November 18, 2013 City Council agenda. The Preliminary Assessment Roll was made available at the City Clerk's office for review by property owners and the public hearing was held on October 28, 2013.

As outlined in the public hearing and set forth in information previously provided property owners in the affected area, the sanitary sewer assessment rate for single family residential lots is recommended at \$5,000 which includes both the main and lateral charges. For non-single family residential properties, a per front foot rate of \$55.56 with a 90 foot minimum plus the area average lateral charge of \$1,571 is recommended.

ISSUES:

BUDGET IMPACT:

OPTIONS:

1. Approve the Assessments but reduce the interest from 8%. (Note: For every 1% of the interest rate reduction, a one-time deduction of \$1,994.63 from the Operating Transfer to the City will be transferred to the Phase V Annexation Capital Project Fund.)
2. Approve the Assessments but reduce the \$5,000 assessment. (Note: For every \$1,000 reduction from \$5,000, a one-time deduction of \$36,011.11 from the Operating Transfer to the City will be transferred to the Phase V Annexation Capital Project Fund.)
3. Approve the Assessments but increase the \$5,000 assessment. (Note: If legal, for every \$1,000 increase above \$5,000, a one-time increase of \$36,011.11 to the Operating Transfer to the City will be transferred to the City's General Fund.)
4. Approve the Assessments but change the interest rate and assessment amount. (Note: The impact would be a summation of the impacts in 1 and 2, or 1 and 3 above.)
5. Postpone taking action. (Note: Any delay in the approval of the assessment will affect the cash flow for the Phase V Annexation Capital Project Fund and will likely result in a corresponding delay in the project schedule for the remaining areas to receive sewer service.)

RECOMMENDED ACTION:

Staff recommends Council move to pass the Resolution Confirming Assessment Roll and Levying Assessments.

ATTACHMENTS:

Resolution Confirming Assessment Roll and Levying Assessments

RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS

WHEREAS, the City Council of the City of Fayetteville has on October 28, 2013 held a public hearing, after due notice as required by law, on the Preliminary Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of the Area 11WS known as Arran Circle and Bingham Place to include adjoining streets and development; and

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Fayetteville, that:

1. The Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of Arran Circle and Bingham Place is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228 of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216 of the General Statutes of North Carolina and following sections, does hereby levy assessments as contained in the said Assessment Roll. The basis for the utility assessment being as shown on the attached schedule labeled Exhibit "A". A copy of the said Assessment Roll is on file with PWC's Deputy Tax Collector.
3. The City Attorney is hereby directed to deliver to the PWC Deputy Tax Collector the said Assessment Roll.
4. The PWC Deputy Tax Collector is hereby charged with the collection of said assessments in accordance with the procedure established by Chapter 160A, Sections 232 and 233 of the General Statutes of North Carolina.

5. The PWC Deputy Tax Collector is hereby further directed to publish on the 9th day of December, 2013 the notice required by Chapter 160A, Section 229 of the General Statutes of North Carolina.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 18th day of November, 2013; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

Anthony G. Chavonne, Mayor

ATTEST:

Pamela J. Megill, CMC, City Clerk

Exhibit "A"

Assessment Rate: 8%

Typical single family residential lots computed on per lot basis of \$5,000.

For all other properties, a per front foot rate of \$55.56 with a 90' minimum plus the area average cost for service lateral of \$1,571 shall apply.

Term: To be repaid over a period not to exceed 10 years at an interest rate of ____%.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Steven K. Blanchard, PWC General Manager/CEO
DATE: November 18, 2013
RE: **PWC - Phase 5 Annexation Area 9 (Bedford Road/Roundtree Drive)**

THE QUESTION:

Providing sanitary sewer service to Area 9 of the Phase 5 Annexation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: More Efficient City Government – Cost-Effective Service Delivery.

BACKGROUND:

I am enclosing the Resolution Confirming Assessment Roll and Levying Assessments for inclusion on the November 18, 2013 City Council agenda. The Preliminary Assessment Roll was made available at the City Clerk's office for review by property owners and the public hearing was held on October 28, 2013.

As outlined in the public hearing and set forth in information previously provided property owners in the affected area, the sanitary sewer assessment rate for single family residential lots is recommended at \$5,000 which includes both the main and lateral charges.

ISSUES:

BUDGET IMPACT:

OPTIONS:

1. Approve the Assessments but reduce the interest from 8%. (Note: For every 1% of the interest rate reduction, a one-time deduction of \$2,608.36 from the Operating Transfer to the City will be transferred to the Phase V Annexation Capital Project Fund.)
2. Approve the Assessments but reduce the \$5,000 assessment. (Note: For every \$1,000 reduction from \$5,000, a one-time deduction of \$7,977.78 from the Operating Transfer to the City will be transferred to the Phase V Annexation Capital Project Fund.)
3. Approve the Assessments but increase the \$5,000 assessment. (Note: If legal, for every \$1,000 increase above \$5,000, a one-time increase of \$7,977.78 to the Operating Transfer to the City will be transferred to the City's General Fund.)
4. Approve the Assessments but change the interest rate and assessment amount. (Note: The impact would be a summation of the impacts in 1 and 2, or 1 and 3 above.)
5. Postpone taking action. (Note: Any delay in the approval of the assessment will affect the cash flow for the Phase V Annexation Capital Project Fund and will likely result in a corresponding delay in the project schedule for the remaining areas to receive sewer service.)

RECOMMENDED ACTION:

Staff recommends Council move to pass the Resolution Confirming Assessment Roll and Levying Assessments.

ATTACHMENTS:

Resolution Confirming Assessment Roll and Levying Assessments

RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS

WHEREAS, the City Council of the City of Fayetteville has on October 28, 2013 held a public hearing, after due notice as required by law, on the Preliminary Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of the Summerhill area; and

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Fayetteville, that:

1. The Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of Bedford Road and Roundtree Drive within Area 9 is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228 of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216 of the General Statutes of North Carolina and following sections, does hereby levy assessments as contained in the said Assessment Roll. The basis for the utility assessment being as shown on the attached schedule labeled Exhibit "A". A copy of the said Assessment Roll is on file with PWC's Deputy Tax Collector.
3. The City Attorney is hereby directed to deliver to the PWC Deputy Tax Collector the said Assessment Roll.
4. The PWC Deputy Tax Collector is hereby charged with the collection of said assessments in accordance with the procedure established by Chapter 160A, Sections 232 and 233 of the General Statutes of North Carolina.

5. The PWC Deputy Tax Collector is hereby further directed to publish on the 9th day of December, 2013 the notice required by Chapter 160A, Section 229 of the General Statutes of North Carolina.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 18th day of November, 2013; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

Anthony G. Chavonne, Mayor

ATTEST:

Pamela J. Megill, CMC, City Clerk

Exhibit "A"

Assessment Rate: 8%

Typical single family residential lots computed on per lot basis of \$5,000.

Term: To be repaid over a period not to exceed 10 years at an interest rate of ____%.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Steven K. Blanchard, PWC General Manager/CEO
DATE: November 18, 2013
RE: **PWC - Phase 5 Annexation Areas 10 and 11**

THE QUESTION:

Providing sanitary sewer service to Areas 10 and 11 of the Phase 5 Annexation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: More Efficient City Government – Cost-Effective Service Delivery.

BACKGROUND:

I am enclosing the Resolution Confirming Assessment Roll and Levying Assessments for inclusion on the November 18, 2013 City Council agenda. The Preliminary Assessment Roll was made available at the City Clerk's office for review by property owners and the public hearing was held on October 28, 2013.

As outlined in the public hearing and set forth in information previously provided property owners in the affected area, the sanitary sewer assessment rate for single family residential lots is recommended at \$5,000 which includes both the main and lateral charges. For non-single family residential properties, a per front foot rate of \$55.56 with a 90 foot minimum plus the area average lateral charge of \$1,571 is recommended.

ISSUES:

BUDGET IMPACT:

OPTIONS:

1. Approve the Assessments but reduce the interest from 8%. (Note: For every 1% of the interest rate reduction, a one-time deduction of \$77,943.96 from the Operating Transfer to the City will be transferred to the Phase V Annexation Capital Project Fund.)
2. Approve the Assessments but reduce the \$5,000 assessment. (Note: For every \$1,000 reduction from \$5,000, a one-time deduction of \$413,455.55 from the Operating Transfer to the City will be transferred to the Phase V Annexation Capital Project Fund.)
3. Approve the Assessments but increase the \$5,000 assessment. (Note: If legal, for every \$1,000 increase above \$5,000, a one-time increase of \$413,455.55 to the Operating Transfer to the City will be transferred to the City's General Fund.)
4. Approve the Assessments but change the interest rate and assessment amount. (Note: The impact would be a summation of the impacts in 1 and 2, or 1 and 3 above.)
5. Postpone taking action. (Note: Any delay in the approval of the assessment will affect the cash flow for the Phase V Annexation Capital Project Fund and will likely result in a corresponding delay in the project schedule for the remaining areas to receive sewer service.)

RECOMMENDED ACTION:

Staff recommends Council move to pass the Resolution Confirming Assessment Roll and Levying Assessments.

ATTACHMENTS:

Resolution Confirming Assessment Roll and Levying Assessments

RESOLUTION CONFIRMING ASSESSMENT ROLL AND LEVYING ASSESSMENTS

WHEREAS, the City Council of the City of Fayetteville has on October 28, 2013 held a public hearing, after due notice as required by law, on the Preliminary Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of the Areas 10 and 11 known as Arran Hills/Arran Park to include adjoining streets and development; and

WHEREAS, the City Council has heard all those present who requested to be heard, and has found the said Assessment Roll to be proper and correct.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Fayetteville, that:

1. The Assessment Roll for the extension of a sanitary sewer collection system to serve all or a portion of Applecross Avenue, Artesian Court, Atwick Drive, Ayton Place, Bailey Lake Road, Barwick Drive, Berriedale Drive, Bostian Drive, Carloway Drive, Carloway Place, Cullen Drive, Darvel Avenue, Doncaster Drive, Dunham Drive, Elkins Drive, Gairloch Drive, Glanis Drive, Glanis Place, Kilmory Drive, Kincross Avenue, Larkhall Drive, Marykirk Drive, Mathau Court, Norton Drive, Rannock Court, Rannock Drive, Rutherglen Drive, Strathdon Avenue, Strickland Bridge Road, Tarbert Avenue, and Torchie Street is hereby declared to be correct, and is hereby confirmed in accordance with Chapter 160A, Section 228 of the General Statutes of North Carolina.
2. The City Council of the City of Fayetteville, pursuant to authority conferred by Chapter 160A, Section 216 of the General Statutes of North Carolina and following sections, does hereby levy assessments as contained in the said Assessment Roll. The basis for the utility assessment being as shown on the attached schedule labeled Exhibit "A". A copy of the said Assessment Roll is on file with PWC's Deputy Tax Collector.

3. The City Attorney is hereby directed to deliver to the PWC Deputy Tax Collector the said Assessment Roll.
4. The PWC Deputy Tax Collector is hereby charged with the collection of said assessments in accordance with the procedure established by Chapter 160A, Sections 232 and 233 of the General Statutes of North Carolina.
5. The PWC Deputy Tax Collector is hereby further directed to publish on the 9th day of December, 2013 the notice required by Chapter 160A, Section 229 of the General Statutes of North Carolina.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 18th day of November, 2013; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

Anthony G. Chavonne, Mayor

ATTEST:

Pamela J. Megill, CMC, City Clerk

Exhibit "A"

Assessment Rate: 8%

Typical single family residential lots computed on per lot basis of \$5,000.

For all other properties, a per front foot rate of \$55.56 with a 90' minimum plus the area average cost for service lateral of \$1,571 shall apply.

Term: To be repaid over a period not to exceed 10 years at an interest rate of ____%.

CITY COUNCIL ACTION MEMO

TO: Mayor & City Council
FROM: Theodore L. Voorhees, City Manager
DATE: November 18, 2013
RE: **PWC Governance Resolution Update**

THE QUESTION:

Resolution No. R2013-052 regarding the Public Works Commission adopted by Council on September 23, 2013, directs specific activities and this report will provide an update toward implementing that direction.

RELATIONSHIP TO STRATEGIC PLAN:

The FY14 Strategic Plan includes the following goal: The City of Fayetteville will have unity of purpose in its leadership and sustainable capacity within the organization. The relevant Target for Action under that goal is: Study PWC efficiencies/consolidation opportunities.

BACKGROUND:

The Resolution (attached) lists a series of tasks that are further summarized by the table of tasks (attached). The first 13 of the 14 tasks identified are assigned to staff with a variety of timing expectations. The 14th task is to initiate further study regarding "the realignment and consolidation, and improved coordination, of support services functions to include by way of example and not limitation: human resources, communications, finance and treasury, budgeting and capital planning, information technology, organizational development, strategic planning, audit, procurement, fleet management, call center, emergency management and disaster preparedness, and such other activities as may be in the best interest of the City."

In response to this direction, a Phase II contract has been executed with DavenportLawrence and their efforts are being guided by a Steering Committee consisting of the Mayor, Mayor Pro-Tem, Council PWC liaison, PWC Chair, PWC Vice-Chair, City Manager, and PWC General Manager. The Steering Committee has established an initial scope to focus on on project infrastructure support, Risk Management, Communications, and Call Center services. It has also been determined that it would be best if a new neutral project manager was tasked with moving the study process forward. The managers have been tasked with identifying this individual and the cost will be allocated 50% to utility funds and 50% to the general fund.

Four of the thirteen tasks have 90 day deadlines indicating Council's desire to complete each prior to year end. These include:

- A. City Attorney oversight
- B. Fleet Management Operations
- C. Purchasing Services
- D. Fiber Optic Communications

The City Attorney is already providing services to the City's utilities and is working to clarify service procedures and cost allocation to ensure effective service delivery.

Fiber Optic Communications: PWC staff has installed and operated significant fiber optic communications infrastructure (the "Network"). A feasibility study completed in 1997 examined options for expanding the Network to support the provision of cable television and telecommunications services to City residents and businesses. This discussion generated a number of legal questions addressed in a Poyner & Spruill memorandum in 2001 (attached). That document describes the Network as containing approximately 53 miles of fiber backbone at that time and served utility operational uses as well as connecting other City offices. It also served a number of County locations and had, or has since leased excess dark fiber to private parties.

The discussion of expanding the Network to provide broadband communication services continued with an update to the initial feasibility study and later legal analysis, but this discussion was ended by state action in the adoption of Senate Bill 511, 2011, which effectively precludes cities from providing these services “to the public.”

While the 2001 memorandum does not analyze the impact of the 2011 state law change, it does establish some basic conclusions of law regarding the City, PWC, and the Network:

- The City owns the Network,
- The City has the authority to operate the Network for its uses including utility operations,
- The City, through interlocal agreements, can provide Network services to other units of government, and
- The City, not PWC, has the authority and obligation to decide how the Network is managed.

The last point is discussed at the bottom of page 14 which states in part: “...PWC cannot act as the City’s agent... because the PWC is not a separate legal entity from the City. ...The legal entity that owns the Network, and is responsible for any liabilities or obligations arising from it, is the City. The fact that the City has constructed and managed the Network thus far through the PWC does not change that fact.”

It goes on to recommend that “...the City administration ...[issue] an internal memorandum documenting ...that management of the Network has been delegated to the PWC, and addressing ...details regarding that delegation.” Footnote 5 at the bottom of page 15 refers to a “Fiber Use Agreement,” and makes the point that it is not possible for the City to enter into a contract with the PWC.

On July 16, 2001, the City Council approved a “Fiber Lease Policy” (attached) providing some policy guidance to the PWC regarding leasing excess fiber capacity to third parties on a temporary basis. Such leases were supposed to be approved by the City, but staff has not been able to find any record of subsequent Council action doing so.

Fleet Management and Purchasing are discussed in the next section. Staff is continuing to pursue the other nine tasks consistent with the timing objectives identified and will update Council at future meetings.

ISSUES:

Fleet and Purchasing Services: staffs are in the process of developing Service Level Standards (SLS) memoranda. There are existing memoranda on these services (attached). A number of the issues that have arisen in regards to these services either are or should have been addressed by these existing agreements, but they have not been followed in some cases or fully implemented in others.

The purchasing agreement contains Attachment B, **Key Initiatives to Complete for City of Fayetteville Purchasing Manager**, which lists:

7. Formalize DBE Program
10. Provide Finance Procedures Training for User Depts.
11. Develop Service Level Agreement with COF & PWC

These efforts, if initiated, don’t appear to have been sustained, completed, or maintained.

Similarly the fleet agreement contains specific terms regarding the fees to be charged to City operations including the appropriate cost components, hourly rate, and required annual review and agreement for rate changes. It further contains a rudimentary service level agreement as Attachment D. These terms have not been followed and it is unclear how the current practices became so divergent from what was originally anticipated.

Learning from this past, staff is developing more detailed Service Level Standards memoranda and is proposing to include an emphasis on communication and accountability.

Fiber Optic Services: Staffs have also discussed a service level standards (SLS) memorandum regarding the provision of Fiber Optic Services. Proposed Deal Points are attached for Council review and consideration. This service is differentiated from fleet management and purchasing

services in two key ways:

1. The PWC is currently operating the Network like a utility, but its delegation under the City Charter does not include the development of a communications utility
2. Rather than use some form of cost allocation model to recover the costs of providing this service from the operations and entities served, the PWC has established a rate that is loosely based on comparative market rates

Fiber optic communications is unique as a service. The largest cost component is the capital installation cost for the fiber. Further, the cost difference between installing one fiber and 148 is very small. New communication standards have consistently increased the data that can be pushed down a single strand over time. This means that the Network has tremendous excess capacity installed at very low marginal cost.

The operational costs for the Network follow a similar paradigm; that is basic operations, necessary for utility use, have the ability to successfully manage additional access points at very low marginal cost. General fund operations have consistently paid the capital cost of extending fiber to new service locations. These practices and characteristics of service delivery support the Deal Points regarding cost recovery. The vast majority of the capital investment and ongoing operational costs for the Network are necessary for the system to fulfill the operational needs of electric, water, and wastewater operations. Charging the current market based rate to general fund operations subsidizes utility operations.

Staff recommends two actions in response to the issues above; first, the passage of the attached ordinance delegating development and operational authority for the Network to PWC under specific terms, and, second, the development of a SLS memorandum.

An ordinance is a clearly legally sufficient means of providing a durable delegation of authority to the PWC. There is no risk that this statement of policy will be lost and less risk that it will be ignored. The SLS will be consistent with the attached Deal Points and focus on issues, like repair priority, that are not addressed in the ordinance.

Next Steps: The Council's resolution delegated to the City Manager and PWC the work of clarifying and revising the operational relationships for existing shared services; fleet management, purchasing, and fiber services. Discussions have not progressed as hoped in a few key areas.

Staff will continue to work toward the development of SLS memoranda consistent with Council interests and best practices. It may be necessary, however, for the Council to clarify its policy direction to the PWC should this effort fail to achieve the desired results.

BUDGET IMPACT:

To date in FY 14, General Fund operations have been charged \$79,568 by PWC for monthly fiber charges. It is estimated that an additional \$159,136 will be charged by PWC to General Fund operations during the remainder of the fiscal year. Should Council pass the attached ordinance, this obligation would end. Alternative charges or payments may, however, be provided for in the SLS consistent with that ordinance and the Deal Points attached.

OPTIONS:

No Action Recommended

RECOMMENDED ACTION:

No Action Recommended

ATTACHMENTS:

PWC Governance Resolution
PWC Resolution Task Schedule
Fleet Management Agreement
Purchasing Agreement
Deal Points Fleet

Deal Points Purchasing
Poyner & Spruill 2001 Memorandum
PWC Fiber Lease Policy
Fiber Optic Deal Points
Fiber Network Ordinance

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF FAYETTEVILLE
REGARDING THE PUBLIC WORKS COMMISSION**

WHEREAS, the City of Fayetteville is authorized to own and operate utilities including water, wastewater, and electricity as set out in Article 16 of the North Carolina General Statutes (NCGS) § 160A; and

WHEREAS, the City has delegated a portion of its authority to operate these utilities to a Public Works Commission ("PWC") appointed by the City Council through terms specified in Chapter VI of the City of Fayetteville Charter ("Charter"); and

WHEREAS, the Charter of the City of Fayetteville grants Fayetteville PWC specific property management and rate setting authority with the charge of exercising that authority in the "best interest of the City;" and

WHEREAS, the City Council, by operation of law, is the policy making and financial oversight body for all municipal operations of the City of Fayetteville; and

WHEREAS, the City Council recognizes the opportunity for improved operational coordination between the entities, and desires to streamline support function so as to promote better coordination of policies and practices, as well as to identify and realize any potential cost savings and provide more complete support services to the entire City organization; and

WHEREAS, the Fayetteville PWC, in a letter from the members of the Commission signed and dated February 1, 2013, acknowledged and agreed "that both the City and PWC have a strategic goal to review and consider consolidation of duplicate functions"...declared a willingness "to work cooperatively with the City to jointly determine where further consolidation should be considered and would be beneficial to both the City and PWC"... and stated that "PWC has the same desires to act in the best interest of the taxpayers and ratepayers as the City Council does in terms of being good fiscal stewards, eliminating unnecessary redundancy and duplication, and operating as efficiently and cost effectively as practicable;" and

WHEREAS, the City initiated a study by DavenportLawrence to identify areas for potential change that would be beneficial to the City of Fayetteville through capturing efficiencies and improving operational coordination consistent with best industry and local government practices (the "Study");

WHEREAS, the City Council has determined that the actions set out in this Resolution are in the best interest of the City of Fayetteville and its citizens.

36 **NOW, THEREFORE, BE IT RESOLVED** on behalf of the citizens of Fayetteville, that the
37 City Council, through the actions described herewith, shall reinforce its oversight and policy
38 responsibilities inherent in its role as the governing body of the City of Fayetteville; shall reestablish the
39 City's treasury role as defined in the Charter; shall realign oversight for legal, communications and
40 branding; shall revise cost plans and Service Level Agreements for existing joint services; and shall
41 continue the study of support services to identify any efficiencies from possible realignment and
42 consolidation of support services.

43

44 **BE IT FURTHER RESOLVED** that the City Manager and Fayetteville PWC are directed to
45 work collaboratively to identify organizational, procedural, and other changes necessary to fully and
46 effectively provide for the City Council to satisfy its fiduciary responsibilities. A review of all accounts
47 held by the Fayetteville PWC shall be conducted to determine which accounts shall be transitioned over
48 to the control of the City's Treasurer (Chief Financial Officer) to manage for the benefit of the utility
49 and administered in accordance with the terms of the City's bond order. Such transition shall be made
50 within the current fiscal year, and shall be done in full consultation with appropriate local government
51 finance authorities, the City Attorney, bond counsel, and in accordance with Generally Accepted
52 Accounting Principles (GAAP) so as to offer full assurance of financial stability while maintaining
53 continuous and reliable utility operations.

54

55 **BE IT FURTHER RESOLVED** that the City Council has the statutory responsibility under
56 NCGS § 159-13 to annually adopt a budget ordinance making appropriations for the budget year in such
57 sums as the City Council may consider sufficient and proper, whether greater or less than the sums
58 recommended by the City Manager, or the Fayetteville PWC, for operations under the respective control
59 of each. To aid in the City Council's effort to pursue shared services and the elimination of duplication,
60 the City's Budget Officer shall present the budget for FY2015 in sufficient detail to identify proposed
61 appropriations for all support services by department, function or project, and for matters relating to
62 employee pay and benefits. The Fayetteville PWC is directed to provide this information in a format
63 acceptable to the City's Budget Officer to assist with the furtherance of this objective.

64

65 **BE IT FURTHER RESOLVED** that the statutory authority for the appointment of a City
66 Attorney rests with the City Council. The City Attorney is charged with the responsibility of providing
67 legal guidance to the City Council and all operations of the City of Fayetteville. As such, all legal
68 services, including any need for specialized legal services shall be provided through the City Attorney.

69 The City Attorney is directed to develop a Service Level Agreement to describe performance
70 expectations and identify operational and procedural changes necessary to ensure that all City Functions
71 are appropriately supported with legal services and to implement those changes within 90 days.
72

73 **BE IT FURTHER RESOLVED** that the City Council desires a consistent and coordinated
74 overall messaging and branding effort in the community and recognizes that it has an interest in
75 supporting a variety of cultural arts, recreation, and other programs that promote the general welfare,
76 and has the authority to do so under Article 21 and Article 18 of NCGS § 160A. Accordingly,
77 Fayetteville PWC is directed to develop a logo and utility name transition consistent with the overall
78 City of Fayetteville branding and communicate any new or alternative branding or logos to the City
79 Council for review and approval prior to adoption and implementation. Fayetteville PWC is directed to
80 seek authorization and direction from City Council on all "Legislative Advocacy" issues. Fayetteville
81 PWC is directed to identify and track essential utility public information and education expenditures that
82 are necessary to continue to support utility operations. In addition, Fayetteville PWC is directed to
83 identify and track "community support" and other non-essential expenditures and administer such funds
84 for the remainder of the fiscal year to avoid disruption. The City Manager shall recommend to the City
85 Council a new policy for budgeting such resources in the next fiscal year so that the responsibility for
86 these expenditures transfers to the City Council.
87

88 **BE IT FURTHER RESOLVED** that the City Council has determined that Fayetteville PWC's
89 current practice of operating a fiber optic communications network is not consistent with its delegation
90 of authority under the Charter. Additionally, the City Council has expressed concern that the existing
91 cost plans for Fleet Maintenance and Purchasing are not acceptable. The City Manager and the
92 Fayetteville PWC are directed to develop new Service Level Agreements and cost plans that eliminate
93 that inconsistency and unsupported overhead expenses and mark-ups and to implement those plans
94 within 90 days.
95

96 **BE IT FURTHER RESOLVED** that the City Council recognizes that it has an interest in
97 supporting economic development activities as set out in NCGS Chapter 158. The City Manager and
98 PWC Commission are directed to develop a transition plan updating the terms of the transfer of financial
99 resources budgeted for economic development activities as soon as practicable within the current fiscal
100 year. A Service Level Agreement should be developed to describe performance expectations. This
101 Agreement should include resource allocations appropriate to advance the utility's continued interest in

supporting economic development insofar as such development supports the continued growth and sustainability of the utility by expansion of the customer base and improvement in the City's overall economy.

BE IT FURTHER RESOLVED that an appropriate City Council Member(s) will be identified to serve as liaison to PWC and coordinate the study of support services. The City Manager and Fayetteville PWC are directed to work with the Council designee(s) and DavenportLawrence to review support services departments; to identify any efficiencies from possible realignment and consolidation in the following departments; and to identify and recommend a plan for the realignment and consolidation, and improved coordination, of support services functions to include by way of example and not limitation: human resources, communications, finance and treasury, budgeting and capital planning, information technology, organizational development, strategic planning, audit, procurement, fleet management, call center, emergency management and disaster preparedness, and such other activities as may be in the best interest of the City consistent herewith. Furthermore, the City Manager and the Fayetteville PWC are directed to cooperate with each other to initiate a second phase of the Study; and are authorized to execute a service contract within budgeted resources.

This Resolution shall be interpreted to authorize the City Manager, the City Attorney and Fayetteville PWC to broadly carry out the intent of the City Council, and any errors or omissions shall not be deemed to be limiting upon either in the furtherance of the policy objectives of the City Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 23rd day of September, 2013; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE



ATTEST:


ANTHONY C. CHAVONNE, Mayor


PAMELA J. MEGILL, City Clerk

Line #	Subject Area	Action	Deadline
46	Financial	Fiduciary Responsibilities	
50	Financial	Review of Accounts and Transfer	June 30, 2014
55-63	Financial	Budget Review	June 30, 2014
71	Legal Services	City Attorney Oversight	December 22, 2013
77	Communications	Branding / Logo	
78	Communications	Legislative Advocacy	
82	Communications	Information & Education (confirm tracking)	
83	Communications	Community Support (confirm tracking)	
85	Communications	Community Support Program/Policy	June 30, 2014
89	Fiber Optic	Operating Agreement	December 22, 2013
91-94	Fleet Operations	Service Level Agreement	December 22, 2013
91-94	Purchasing	Service Level Agreement	December 22, 2013
99	Economic Development	Funding Policy	ASAP June 30, 2014
116	Support Services	Study (execute contract)	

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

FLEET SERVICES
AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Fayetteville, a North Carolina municipal corporation duly organized and existing under the laws of the State of North Carolina, hereinafter referred to as the "City", and, the Public Works Commission of the City of Fayetteville, a commission of the City of Fayetteville, hereinafter referred to as "PWC";

WHEREAS, in order to more efficiently and effectively perform Fleet Functions previously performed separately by the City and PWC, the parties agree to consolidate these functions; and

WHEREAS, the consolidated Fleet Function shall be managed and operated by PWC as a single function located in the PWC Operations Complex at 1093 Public Works Drive, Fayetteville, NC; and

WHEREAS, these functions shall be provided by PWC for an amount agreed upon annually by the City Manager and PWC General Manager (see Attachment A); and

WHEREAS, the Fleet policies and procedures will be implemented using the PWC policies and procedures as a benchmark; City and PWC agree to pursue and implement process improvements as outlined in feasibility study (see Attachment B) within (12) months; and

NOW, THEREFORE, for the considerations hereinafter stated, the parties do agree as follows:

1. The City's Fleet Function shall be directly managed and operated by PWC.
2. The City Manager and PWC General Manager shall on an annual basis agree on an hourly labor rate to be charged by PWC for the management and operation of the City's Fleet Function. This labor rate is in addition to direct material and vendor costs.
3. All relevant full-time personnel of the City's Fleet Department shall be made an offer of employment by the PWC and given no less than fifteen days (15) prior to the effective date of this Agreement to accept such offer of employment. Said offer will be made subject to/with the following terms and conditions:

- a. A copy of the personnel file of each employee shall be provided to PWC.
 - b. Each employee will be offered as similar position as possible to the position held by the City and for which such employee is qualified.
 - c. The employee will not suffer any loss in accrued annual or sick leave. After acceptance of PWC's offer of employment by each such employee, the City shall transfer to PWC any and all funds necessary for the payment of any accrued annual leave and for the payment of accrued sick leave for each employee.
 - d. The employee will be immediately eligible for any benefits and promotional opportunities offered to PWC employees with equal time in service.
 - e. The employee will be paid a minimum hourly rate of pay equivalent to their hourly rate of pay, including longevity and ASE certification incentive from the City on the Date of Transfer. Effective upon the Date of Transfer, such employees shall be employees of PWC and shall be subject to all rules and regulations applicable to other employees of PWC. If an employee's salary is below the minimum of PWC's pay range for the position, that employee shall have his salary increased to the new minimum. In the event an employee's hourly rate of pay is higher than the similar position into which he is being transferred the employee's pay will be frozen at that level until such time as the maximum level for the particular position reaches or exceeds the employee's salary.
 - f. All provisions for participation in the Local Government Employee's Retirement System will apply.
 - g. Employees, including employee's dependants, will be accepted into the PWC's health/medical/dental insurance plans with no penalty associated with pre-existing conditions.
 - h. Date of hire will be assigned based on original date hired as an employee of the City. Date in class will be effective date of promotion/placement to position held at time of transfer to PWC.
 - i. City of Fayetteville personal property (as listed on Attachment C) shall become the property of PWC. PWC will compensate the City for the assets/items transferred at book value.
4. This Agreement shall become effective June 12, 2005, and shall remain effective until terminated. Either party to this Agreement may at any time terminate this Agreement effective on June 30 of any year upon giving twelve (12) months written notice to the other party of its intention to terminate same. Any

termination notice shall include an exit strategy and implementation plan. Upon mutual consent of parties, this agreement may be terminated at any time.

5. The City agrees that if this agreement is terminated within five (5) years from its effective date, it will accept back to City employment those employees who became employed with the PWC as a result of this agreement and who desire to return to City employment.

This the 31st day of May, 2005

CITY OF FAYETTEVILLE, NC

BY: 

City Manager

PUBLIC WORKS COMMISSION OF
THE CITY OF FAYETTEVILLE, NC

BY: 

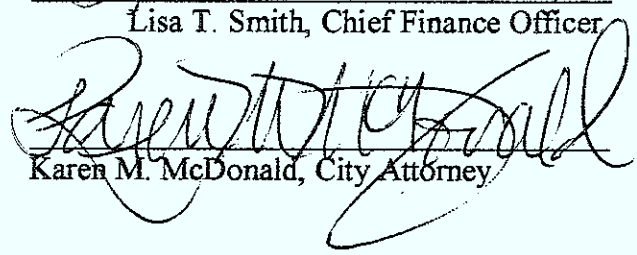
CEO/General Manger

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

 5/18/05

Lisa T. Smith, Chief Finance Officer

Approved as to form:


Karen M. McDonald, City Attorney

ATTACHMENT A

Fee Structure Statement

PWC will bill for services rendered on a monthly basis by work order, by department, using the following cost components:

1. Direct vendor costs.
2. Direct labor and overheads \$64.48/hr.
3. Direct materials.

NOTE: There may be some expenses that the City of Fayetteville will bear directly, such as license and tags, etc., that will be defined at a later date.

Attachment B

Key Initiatives to Complete for City of Fayetteville Fleet Merger	
1	Perform Customer Satisfaction Surveys
2	Develop Service Level Agreement with COF & PWC (see Attachment D)
3	Integrate COF fuel system and ancillary fuel processes to the PWC Faster Fleet Management System electronically.
4	PWC to provide electronic access of repair status information in the PWC Faster Fleet Management System to selected COF management representatives.
5	Management of COF Acquisition/Replacement/Disposal Project will include development of Replacement Schedules for the COF Fleet vehicles and equipment.

ATTACHMENT C

City of Fayetteville personal property to be transferred to Public Works Commission

Parts Inventory

Current value approximately \$164,000.

Transaction activity until implementation date will determine actual amount transferred/received.

Fleet Assets

91-0561 - Hyster Forklift
00-0127 - Vehicle Lift System - 12K Drive on
96-0200 - Air Operated End Lift - 7K Capacity
99-0019 - Ellis Saw
99-0053 - Piranha

Items without Asset #'s

Transmission Jack with accessories
Porter Cable Cordless Drill Kit w/case & accessories
Leak Finder Kit
3/4" Impacts (2 ea)
Harmonic Dampener and Pulley Puller Kit Complete
Scanner MKT 2500 w/ Cartridge Assortment Complete w/ Accessories
Accucut Org Torque Wrench 1-600 lb w/case
Sunnex 22 Ton Cap Air/Hydraulic Floor Jacks
Heavy Duty Jack Stands (6 ea)
Battery Charger / Starter System
30 Gal Fuel Caddy w/ Electric Pump
Waste Oil Containers, self drain (4 ea)
Miller Shopmaster w/ Jig Arm

Welding Shop Accessories w/ no Asset #'s

Safety Cart
14 Misc. Clamps
(2) Welding Helmets
Shop Made Welding Table (L shape)
Misc. Shop Supplies
Porta Power Blue Point - 4ton

**FLEET
SERVICE LEVEL AGREEMENT**

Between

The City of Fayetteville

&

The Public Works Commission

ATTACHMENT D

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ATTACHMENT D

1. INTRODUCTION

1.1. Purpose and Objectives

This Agreement outlines the terms and conditions under which Public Works Commission will provide specified Services (collectively referred to as "the Services") to The City of Fayetteville or its Affiliates. The objective is to provide a basis and framework for the delivery of high quality services that meet the needs of the City of Fayetteville.

1.2. Parties to the agreement

This Agreement is made between The City of Fayetteville Public Works Commission (PWC) (hereinafter referred to as "PWC"), and The City of Fayetteville (City) (hereinafter referred to as "City").

1.3. Commencement Date

This Agreement will commence on June 12, 2005.

1.4. Duration of Agreement

This Agreement shall become effective June 12, 2005, and shall remain effective until terminated. Either party to this Agreement may at any time terminate this Agreement effective on June 30 of any year upon giving twelve (12) months written notice to the other party of its intention to terminate same. The termination notice shall include an exit strategy and plan on implementation.

2. SCOPE OF WORK

2.1. Standard Services

PWC shall manage the City's Fleet Function (as outlined below), in accordance with PWC Fleet Policies and City Guidelines, if any:

- 2.1.1. Plan, prioritize and manage fleet activities.
- 2.1.2. Manage City of Fayetteville Acquisition/Replacement/Disposal project.
- 2.1.3. Manage the Maintenance and Repair program.
- 2.1.4. Develop a formal management reporting system.
- 2.1.5. Facilitate meetings between City and PWC staff.

ATTACHMENT D

3. PERFORMANCE, TRACKING AND REPORTING

3.1. Service Monitoring

Fleet Manager shall monitor and report to management on the following:

- 3.1.1. Equipment availability
- 3.1.2. Vehicle utilization
- 3.1.3. Equipment cost summary by department
- 3.1.4. Work order summary report by department, by vehicle/equipment
- 3.1.5. Work order summary report by department, by type of repair
- 3.1.6. On time preventive maintenance report

3.2. Performance Goals

To be established within 12 months of effective date of contract.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

PURCHASING
AGREEMENT

THIS AGREEMENT is made and entered into by and between the City of Fayetteville, a North Carolina municipal corporation duly organized and existing under the laws of the State of North Carolina, hereinafter referred to as the "City", and, the Public Works Commission of the City of Fayetteville, a commission of the City of Fayetteville, hereinafter referred to as "PWC";

WHEREAS, in order to more efficiently and effectively perform Purchasing Functions previously performed separately by the City and PWC, the parties agree to consolidate these functions; and

WHEREAS, the consolidated Purchasing Function shall be managed and operated by PWC as a single function located in the PWC Operations Center at 955 Old Wilmington Road, Fayetteville, NC, and

WHEREAS, these functions shall be provided by PWC for an amount agreed upon annually by the City Manager and PWC General Manager (see Attachment A and C); and

WHEREAS, the purchasing policies and procedures will be implemented using the PWC policies and procedures as a benchmark; City and PWC agree to pursue and implement process improvements as outlined in feasibility study (see Attachment B) within (12) months; and

NOW, THEREFORE, for the considerations hereinafter stated, the parties do agree as follows:

1. The City's Purchasing Function shall be directly managed and operated by the PWC.
2. The City Manager and PWC General Manager shall on an annual basis agree on an amount to be paid to PWC for the management and operation of the City's Purchasing Function.
3. All full-time personnel of the City's Purchasing Department shall, be made an offer of employment by the PWC and given no less than fifteen days (15) prior to the effective date of this Agreement to accept such offer of employment. Said offer will be made subject to the following terms and conditions:
 - a. A copy of the personnel file of each employee shall be provided to PWC.
 - b. Each employee will be offered as similar position as possible to the position held with the City and for which such employee is qualified.
 - c. The employee will not suffer any loss in accrued annual or sick leave. After the acceptance of PWC's offer of employment by each such employee, the City shall transfer to PWC any and all funds necessary for the payment of any accrued annual leave and for the payment of accrued sick leave for each employee.
 - d. The employee will be immediately eligible for any benefits and promotional opportunities offered to PWC employees with equal time in service.
 - e. The employee will be paid a minimum hourly rate of pay equivalent to their hourly rate of pay, including longevity, from the City on the date of transfer. Effective upon the Date of Transfer, such employees shall be employees of PWC and shall be subject to all rules and regulations applicable to other employees of PWC. If an employee's salary is below the minimum of the PWC's pay range for the position, that employee shall have his salary increased to the new minimum. In the event an employee's hourly rate of pay is higher than the similar position into which he is being transferred, the employee's pay will be frozen at that level until such time as the maximum level for the particular position reaches or exceeds the employee's salary.
 - f. All provisions for participation in the Local Government Employees' Retirement System will apply.

- g. Employees including employees' dependents, will be accepted into the PWC health/medical/dental insurance plans with no penalty associated with pre-existing conditions.
- h. Date of hire will be assigned based on original date hired as an employee of the City. Date in class will be the effective date of promotion/ placement to position held at time of transfer to the PWC.
- i. City of Fayetteville personal property located at 955 Old Wilmington Road, Fayetteville, NC, currently being utilized by City purchasing staff (as listed on Attachment D), shall become the property of PWC. PWC will compensate the City for the assets transferred at book value.

4. This Agreement shall become effective March 1, 2005, and shall remain effective until terminated. Either party to this Agreement may at any time terminate this Agreement effective on June 30 of any year upon giving twelve (12) months written notice to the other party of its intention to terminate same. Any termination notice shall include an exit strategy and implementation plan. Upon mutual consent of parties this agreement may be terminated at anytime.

5. The City agrees that if this agreement is terminated within five (5) years from its effective date, it will accept back to City employment those employees who became employed with the PWC as a result of this agreement and who desire to return to City employment.

Signed this the 10th day of February, 2005

CITY OF FAYETTEVILLE, NC


BY:


City Manager

City Attorney

PUBLIC WORKS COMMISSION OF
THE CITY OF FAYETTEVILLE, NC

BY:

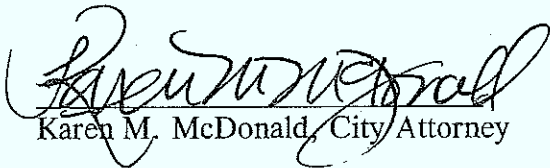

CEO/General Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

 2/9/05

Lisa T. Smith, Chief Finance Officer

Approved as to form:



Karen M. McDonald, City Attorney

ATTACHMENT A

Revised PWC Purchasing Projection Expenditures for Fiscal Year 2005

7/22/2004

PWC	%Allocation	Ann Hrs	Mon Hrs	Mon Fee	Mon Fee+OH	Annual	Annual + OH
Purchasing Supervisor	25%	520.00	\$ 43	\$ 1,391.87	\$ 2,129.56	\$ 16,702.40	\$ 25,554.67
Purchasing Agent	100%	2,080.00	\$ 173	\$ 4,778.80	\$ 7,311.56	\$ 57,345.60	\$ 87,736.77
MBE Coordinator	30%	624.00	\$ 52	\$ 1,048.84	\$ 1,604.73	\$ 12,586.08	\$ 19,256.70
Office Assistant	40%	832.00	\$ 69	\$ 978.99	\$ 1,497.85	\$ 11,747.84	\$ 17,974.20
Materials Mgmt Mgr	7%	145.60	\$ 12	\$ 488.37	\$ 747.20	\$ 5,860.40	\$ 8,966.41
Buyer	200%	4,160.00	\$ 347	\$ 5,411.47	\$ 8,279.54	\$ 64,937.60	\$ 99,354.33
Material Reclaim	0%	-	\$ -	\$ -	\$ -	\$ -	\$ -
Stock Clerk	0%	-	\$ -	\$ -	\$ -	\$ -	\$ -
Material Proj Analyst	0%	-	\$ -	\$ -	\$ -	\$ -	\$ -
COF Purch. Support Subtotal		2,121.60	176.80	3,908.06	5,979.33	46,896.72	71,751.98
Employee Subtotal		6,240.00	520.00	10,190.27	15,591.11	122,283.20	187,093.30
Total		8,361.60	\$ 697	\$ 14,098.33	\$ 21,570.44	\$ 169,179.92	\$ 258,845.28

COF Purchasing Budget and Projections for FY2005

Description	FY2003	Proposed %	Merged Budget
Supplies & Material	\$ 10,648	✓ 50%	\$ 5,324
Food	\$ 90	✓ 100%	\$ 90
Maintenance - Other	\$ 1,663	✓ 100%	\$ 1,663
Vehicle Maint	\$ 2,453	✓ 0%	\$ -
Vehicle Parts	\$ 267	✓ 0%	\$ -
Vehicle Expense	\$ -	✓ 0%	\$ -
Vehicle Expense	\$ 426	✓ 0%	\$ -
Vehicle Fuel	\$ 203	✓ 0%	\$ -
Telephone	\$ 3,925	✓ 50%	\$ 1,963
Postage	\$ 2,476	✓ 100%	\$ 2,476
Printing	\$ 642	✓ 100%	\$ 642
Advertising	\$ 6,633	✓ 100%	\$ 6,633
Travel, Training	\$ 4,984	✓ 70%	\$ 3,489
Memberships	\$ 1,024	✓ 70%	\$ 717
Rents	\$ -		\$ -
Lease-Purchase	\$ -		\$ -
Medical Services	\$ -		\$ -
Equipment - Office	\$ -		\$ -
Contingency	\$ -		\$ -
Expenses Subtotal	\$ 35,434		\$ 22,996
FY2005 projection	\$ 37,560		
PWC Staff Allocations			\$ 258,845
Building Rents			\$ 4,050
Fiber Rents			\$ 500
Telephone Line Rental			\$ 350
Common Area Allocations			\$ 900
Subtotal			\$ 264,645
Total	\$ 35,434		\$ 287,641
Proposed Monthly Fee			\$ 23,970
Estimated COF Purchasing Savings			

	FY2004	All charges
511	COFPURMGEO	
511	COFPURMWBE	
510	COFPURMGEO	
	Sub Total	
	Direct Labor Charges + Overhead	
	Space/Equip Rental Fee (3 empl)	
	Total	
	NU Bills to the COF FY 2004	
	Revenue loss to PWC	

2004 Work Load		
PWC	Purch Orders	2459
	Blankets	179
	Local #'s	66
PWC	Subtotal	2704
COF	Purch Orders	1902
Combined	Total	4606

PWC	FY 2005 Budgt	\$ 419,460.00
	PWC Emp Chg	\$ 71,751.98
	Adj 2005 Budgt	\$ 347,708.02
COF	Annual Charge	\$ 287,641.38
	Combined Cost	\$ 635,349.40

Attachment B

Key Initiatives to Complete for City of Fayetteville Purchasing Merger	
1	Evaluate Converting City Employees to PWC
2	Establish Formal Requisition process for all purchases
3	Implement Online requisitions in JDE
4	Perform Customer Satisfaction Surveys
5	Formalize Requisition process for Fleet
6	Track all purchasing activities
7	Formalize DBE Program
8	Resolve "Budget Hold" errors in the JDE system
9	Establish an "Internal JDE Users Group" @ COF/PWC
10	Provide Finance Procedures Training for User Depts.
11	Develop Service level agreement with COF & PWC
12	Establish formal Contract Administration processes

ATTACHMENT C

City of Fayetteville surplus assets to be transferred to PWC warehouse for disposal through Gov Deals Auction

Vehicle Cost - \$100.00 per vehicle

Miscellaneous surplus- 15% of sales

ATTACHMENT D

City of Fayetteville personal property to be transferred to Public Works Commission

Computers

Gateway CPU,monitor & keyboard	Asset# 0499-0457
Gateway CPU,monitor & keyboard	Asset# 990041
Gateway CPU	Serial# 0025219956
Gateway monitor	Serial# MU17046c0134039
Gateway keyboard	Pin# 7001049

Printer

IBM purchase order printer	Assest# 94-0430
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Typewriter

Panasonic typewriter	Asset# 89-0017
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File Cabinets

2-4 Drawer legal file cabinets
2-5 Drawer legal file cabinets
8-5 Drawer letter file cabinets

Bookcases

3-36 inch, 3 shelf bookcases
2-72 inch, 5 shelf bookcases

Chairs

Desk Chairs - 3
Side chairs - 6

Deal Points

Services: Fleet Maintenance

Service Level: (General fund operations get the same service as utility operations or better)

- Operational priority
 - Policies, procedures, and accountability should be focused on maximizing operational effectiveness
 - Equipment failures impacting current operations = highest priority
 - Preventative maintenance based on operational experience should be consistently accomplished utilizing practices that minimize impact to current operations
 - Priority levels should be established by class of service, e.g.:
 - Public Safety first responders Priority 1
 - Public Utility first responders Priority 2
 - Solid Waste Collection front line Priority 3
 - All other Public Utility and City Priority 4
- Utilization and inventory control
 - This is fundamental responsibility that should be performed across all operations (formal utilization review process established)
 - Account managers: Fleet staff should be the primary resource for identifying the best solution to meet operational needs
- Complete management (lifecycle management)
 - Inventory tracking, AVL, services provided to one operation should be standardized and available for all operations
 - Equipment installation – police has an entire staff focused on management, installation, and removal of vehicle equipment preparing vehicles for operations and surplus – operations should be supported in replacing wear parts, e.g. mower blades, but should not have to employ a fleet manager or fight fleet to transition equipment to changing operational demands
 - Duplicate or overlapping personnel should be rendered unnecessary through improved coordination and assignment of functional liaisons to ensure operational specific needs are adequately addressed
- Efficient service
 - Work time – the process of removing equipment from operations, repairing, and returning to operation should occur with minimal operational impact
 - One touch – all repair and preventative maintenance should occur before equipment is returned to operation

Accountability:

- Best management practices – operations should be organized and manned consistent with municipal fleet operations of similar size and responsibility
- Performance measures – workload, efficiency, and effectiveness measures should be established and tracked for all program areas and reported at least quarterly (Arrange for quarterly meeting to review with appropriate City leadership)
- Operational outcomes – performance measure should include operational impact of fleet operations

- Supervision– the performance evaluation process for key positions will include input from assigned operations
- Operational policy process – establish a process including input from served operations and leadership consensus to review or draft operational policies
- User Groups – consistent service coordination meeting will be held with operational personnel to share performance outcomes and address any service issues

Financial Terms:

- Overhead – no allocation of overhead from outside of the internal service fund
 - Internal service re-allocation – agreed methodology
 - No depreciation charges allocated to General Fund supported operations
- Cost containment–consultation and agreement prior to capital or other significant investments
- Service charges and fees – agreed schedule revised only upon agreement
- No mark-up on work “sub-lets” or work contracted to outside vendors

Other:

Deal Points

Services: Purchasing

Service Level:

- Purchasing policies
 - Work with customer operations, management, and, when appropriate, the City Council to establish consistent purchasing policies to be implemented organization wide
- Federal, state, and local regulations
 - Ensure compliance with all appropriate regulations
- Disadvantaged business programs (business education)
 - Operate the City's program and HFF as appropriate
 - Advise the Council on purchasing options and limitations
- Managing City-wide vendor relationships, e.g. MFD's
 - RFP's for services or equipment will include all operational needs
- Acquiring commodities, e.g. fuel
 - Establish and operate programs for effective lowest cost commodity acquisition equally for all operations
- Internal training
 - Lead training programs as appropriate to support operational compliance with purchasing policies and programs

Accountability:

- Performance measures – workload, efficiency, and effectiveness measures should be established and tracked for all program areas and reported at least quarterly
- Supervision – key positions performance evaluation process to include input from assigned operations

Financial Terms:

- Overhead – no allocation of overhead from outside of the internal service fund
 - Internal service re-allocation – agreed methodology

Other:

- Automated work flow for contract authorization

M E M O R A N D U M

CONFIDENTIAL ATTORNEY CLIENT COMMUNICATION

To: James Rose, Fayetteville Public Works Commission
Kai Nelson, City of Fayetteville
Robert Cogswell, City of Fayetteville

From: Keith H. Johnson and Michael S. Colo

Date: March 12, 2001

Re: Permitted Uses of the Broadband Fiber Optic Network (the "Network") Owned and Operated by the City of Fayetteville, Through the Fayetteville Public Works Commission

Introduction and Factual Background

Thank you for seeking our counsel regarding the above-referenced subject. We have reviewed: (a) all of the Business Plans and Feasibility Studies regarding the Network, which discuss the feasibility of various uses of the Network, (b) the various fiber use agreements the City of Fayetteville (the "City") has entered into, (c) the proposed lease for "lit" fiber with AIT, and (d) the "Fiber Project Update" given to the City Council and the Public Works Commission ("PWC") last December. Since the PWC is a commission of the City, we refer to the City and the PWC collectively herein as "the City," except when it is necessary to specifically refer to the PWC.

Our analysis as stated herein is based in part upon the following information provided to us about the Network:

The initial Feasibility Study on Municipal Ownership of the Network (the "Initial FS"), completed in September 1997, cites two general objectives for the City's construction of the Network. The first is to improve the City's ability to compete, through the PWC, in the utility industry. See Initial FS, Executive Summary, p. ix. The second objective stated therein is to position the City to enter into the cable television and telecommunications business, providing the full range of services that can be delivered through a broadband fiber optic system to commercial and residential users. Id. The authors state therein, "The challenge to PWC will be to successfully organize and operate what is effectively a new telecommunication business in a competitive environment." Id., p. viii.

That Initial FS calls for building the Network in two phases. Phase I would be designed in part to meet the City's internal needs. Phase I is described therein in part as involving 400 miles of fiber through the PWC's service area, which would connect PWC's various facilities,

and place fiber at the curb of most commercial consumers in the service area. *Id.*, pp. xi-xii. It indicates that Phase I will cost approximately \$33,000,000 to build. It notes, "There is a large lucrative [telecommunications] commercial market that could be penetrated with the Phase I plant." *Id.*, p. xii. Phase II would then be designed to reach "full buildout," extending fiber to every residence in the PWC's service area. *Id.* Phase II would cost approximately \$29,000,000, making the aggregate projected costs for constructing the Network approximately \$62,000,000. *Id.*, p. xxviii. Once phase II is completed, the PWC anticipates using the Network for automated meter reading, "demand side management," "time of use" and customer relations management applications.

The City is in the early stages of Phase I of constructing the Network. The City has to date spent approximately \$3,500,000 in building the Network, consisting of approximately 53 miles of fiber backbone. The Network thus far has been financed from PWC revenues. No debt has been incurred in the process. The Network's construction thus far has occurred incrementally, not subject to any approved, comprehensive plan. There is no projection in the Initial FS regarding how long it should take to construct either of the phases of the Network.

The City has to date run fiber to connect many of the PWC's facilities, and City Hall. The result is the PWC and certain City departments are using the Network for internal voice and other internal communications purposes. Fiber has also been installed linking the City with Cumberland County offices, through an "internal governmental fiber network" or "IGN," which allows for the sharing of data among local government offices. Part of Phase I currently underway involves a joint venture to hang fiber with the North Carolina Department of Transportation ("DOT"). DOT is hanging fiber throughout Cumberland County for traffic signal automation on state roads. Under the joint venture, DOT's fiber and fiber owned by the City will be hung on the same lines, but in separate ducts or jackets. This joint venture will expand the Network by an additional 100 miles, and will cost the City an additional \$1,100,000. The City is expanding the Network through this joint venture to connect more of the PWC's substations and lift stations to the Network. The City was going to undertake this expansion in any event. It joined forces with the DOT to save costs in doing so.¹

The Network backbone constructed to date is comprised of 144 fibers. This amount of capacity was determined to be appropriate based in part on what was typical for a system like this at that time, and the marginal costs involved in buying fibers, i.e., over a certain amount, it was cheaper to buy more fiber. Some consideration was also given to the needs of other local governmental units in determining the capacity of this backbone.

All of the current Network capacity is currently not being used. The Network's capacity thus far has been split into three parts for planning and deployment purposes. The first part, consisting of 48 fibers, is reserved for the PWC's current and future uses. Of those 48 fibers, the PWC is currently using 38 of them. The second part, consisting of 60 fibers, is reserved for

¹ The City proposed that it own all of the relevant fiber, and lease a portion to the DOT. The DOT ultimately rejected this option, resulting in the current plan that the City and DOT will each own fiber running along the same routes.

other governmental uses. Of those 60 fibers, 50 are currently being used, either by City departments, through the IGN, or by other local governmental units that have leased fiber. The last part, consisting of 36 fibers, is reserved for unforeseen needs of the PWC, and future needs of City departments. Of those 36 fibers, the City has leased 2 of them to KMC Telecom, a local telecommunications firm, as dark fiber. There is a proposal to lease some of these 36 fibers to AIT, another local company, as lit fiber.

The collective fiber leases mentioned above currently are generating approximately \$300,000 a year in revenue for the City. The terms in all of these fiber use agreements are for three to five year periods, with rights of renewal for similar periods for the lessee. However, these agreements also include reclamation provisions, which allow the City to take back the leased fiber at any time with 12 months prior notice. The terms of these agreements was based in part on the projection of when the project with the DOT will be completed. The logic being the City may need that leased fiber back at that point in time for its own uses.

KMC Telecom, the only private entity currently leasing fiber from the City, uses the fiber it leases to provide telecommunication services to its customers. The governmental units leasing fiber use it for their own internal communications needs.

If the City were to eventually use the Network for providing cable television services, which could only take place after Phase II (complete buildout) is finished, it would need the entire capacity of the Network for that and other authorized functions.

Summary

We believe the City has the authority to own and operate the Network to improve its ability to exercise its authorized governmental and proprietary functions, including the provision of utility services to its customers. We further believe that, if necessary, the City could successfully defend its practice of providing access to the Network to other governmental units for their communications needs, for agreed upon fees through "fiber use agreements."

Generally speaking, there is a distinction in the relevant laws between cable television services and telecommunications services. The City could use the Network to provide cable television services to consumers. Of course, providing such services will require completion of Phase II (i.e., "full buildout") of the Network as described in the Feasibility Study, and will not generate any revenue for the City during Phase I.

We do not believe that the City currently has the authority to enter into the telecommunications business. In our view, the City therefore cannot use the Network under current law to provide the array of telecommunications services that a system like the Network is capable of delivering (e.g., internet access, telephone service), and which are discussed in the various feasibility studies completed on the Network.

Further, we believe additional authority would be needed from the General Assembly for the City to position itself as a "fiber landlord" in the telecommunications field, leasing capacity on the Network to the actual service provider(s), on something other than a temporary basis. In the Initial FS, the authors made the following comment:

Excess capacity on this system could be leased by PWC to another telecommunications provider. It is only when PWC decides to provide end-use, retail telecommunication services as a core business that the legality of providing these services becomes an issue.

Id., p. xxx. We cannot agree with that broad statement, except as it applies to *temporary* excess capacity in the Network, which is discussed herein in Section I.G. The problem is telecommunications has yet to be recognized by the General Assembly as a “public enterprise” in which municipalities may engage. Simply put, we do not believe the City may, on a long-term basis, do something indirectly, through some lease or other “partnership” with a telecommunications service provider, that it is not authorized to do directly – namely, enter the telecommunications business.

The City may, however, lease capacity on the Network that it will eventually need for its authorized functions until such time as it is needed for those purposes. The length of any lease by which the City leases fiber should be based upon the City’s projection of when it will need the leased fiber back for its own uses.

Discussion of the Issues You Posed Regarding Possible Uses of the Network

You asked us to address five questions listed in the Position Paper on “Municipal Ownership of a Fiber Optic Communication System.” Four of those questions (Questions 1-2, 4 and 6) regard what uses the City can make of the capacity of the Network under applicable law. The other question (Question 3) regards whether Chapter VI of the City Charter that regards the PWC needs to be amended in light of the PWC’s role in financing, constructing and managing the Network.

We first address below the four questions regarding what uses the City can make of the capacity of the Network in a single discussion. We then address separately the question of whether Chapter VI of the City Charter needs to be amended.²

I. PERMITTED USES OF THE NETWORK UNDER CURRENT LAW.

The questions you posed relevant to permitted uses of the Network are:

1. NCGS 160A-311 authorizes municipal corporations to construct, own or operate various “public enterprises,” including cable television systems. Cable television systems are defined in 160A-319. Based on the North Carolina statutory definition, FCC and

² There was a sixth question in the Position Paper (Question 5) that regards what certifications the City would need to provide “Network Services” over the Network. Per our discussions, we will not address that question yet. The City first needs to determine what “Network Services” it has authority to provide under applicable law, which is addressed herein, before the issue of certifications is addressed.

judicial rulings, can the definition of “cable television system” be construed broadly to include the integrated System described above.

2. Does the City have the statutory authority to construct, own and operate the System for the:

- a. internal needs of the City and the PWC?
- b. Internal needs of State, local governments and agencies?
- c. Needs of utility and municipal customers for “Network Services”
- d. Needs of external users of dark/lit fiber pending requirements of the capacity by government?

4. Does the [federal] Telecommunications Act of 1996 and the provisions of Section 253(a) which read in part, “no state or local statute or regulation, or other state or local legal requirements, may prohibit or have the effect of prohibiting the ability of any entity [including local governments] to provide any interstate or intrastate telecommunication service” preempt North Carolina law that may prohibit municipal delivery of voice and data services?

6. Does NCGS 158, Local Development Act, provide the City and PWC with the authority to construct, own and operate the System if the City and the PWC can justify the System’s development as a public purpose promoting the general economic welfare of Fayetteville and the surrounding area?

A. **North Carolina Law Currently Controls What the City Can Do with the Network.**

There is nothing in the federal Telecommunications Act of 1996 and other relevant federal laws that prohibits municipalities from providing cable television and telecommunications services, through a fiber optic or some other system.

Generally speaking, however, federal cable and telecommunications laws do not preempt the states' sovereign right to dictate by state law what their municipalities can and cannot do. You specifically asked us whether Section 253(a) of the Telecommunications Act preempts any North Carolina law that prohibits municipalities from offering telecommunication services. (See Question 4). According to the Federal Communications Commission, the District of Columbia Circuit of the United States Court of Appeals, and the Iowa State Supreme Court, the answer to that question is "No." In fact, no court or agency has ruled otherwise. Section 253(a) of the Telecommunications Act provides in relevant part that, "***No State or local statute or regulation, or other State or local legal requirement***, may prohibit or have the effect of prohibiting the ability ***of any entity*** to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a)(emphasis added). The FCC and the two courts mentioned above have rejected arguments that "entity" as used in Section 253(a) includes municipalities. City of Hawarden, infra; City of Abilene, Texas v. FCC, 164 F.3d 49 (Jan. 1999).

To our knowledge, only one municipality has successfully argued that any provision in the Telecommunications Act preempts a state law that prohibited it from offering telecommunications services. The key in that case was the municipality was already offering cable television services, and wanted to diversify into providing phone service. This example therefore cannot immediately help the City, since it is not currently providing cable television service. Nevertheless, it is worthwhile to note what happened in that case, because it lends credence to a business plan calling for the City to first establish itself in the cable television business before attempting to provide any telecommunications services.

In the relevant case, the City of Hawarden, Iowa had established a utility to provide cable television service. Iowa Telephone Ass'n v. City of Hawarden, 589 N.W.2d 245 (Feb. 1999). It thus was a "cable operator" as defined under the Telecommunications Act, which is: "any person . . . who provides cable service over a cable system and . . . owns a significant interest in such cable system. Id., p. 253, citing 47 U.S.C. § 522(5). The city in that case desired to diversify into providing phone service. It accordingly applied with the state utilities board for the requisite certification to do so. Id., p. 248. An association of local telephone service providers, apparently upset by the threat of this new competition, filed suit, challenging the city utility's authority to operate a telephone system. Id. The plaintiff association relied upon a state statute that prohibited municipal utilities from competing with private industry in offering phone service. Id. The plaintiff association asked the court to enter a declaratory judgment that such a prohibition was in effect. Id.

The city in that case responded in part by relying upon a section in the federal Telecommunications Act that reads, "[a] ***franchising authority*** may not impose any requirement . . . that has the purpose or effect of prohibiting . . . the provision of ***telecommunications service***

by a cable operator . . . Id., p. 253-54, citing 47 U.S.C. § 541(b)(3)(B)(emphasis added). The city argued this provision in the federal law preempted the Iowa state law that prohibited the city's utility from offering telephone service.

The Iowa Supreme Court agreed with Hawarden. In doing so, that state supreme court reasoned that the State of Iowa qualified as a "franchising authority" as that term was used in this Section 254(b)(3)(B) of the Telecommunications Act. *Id.*, p. 253. In fact, the plaintiff association did not dispute that fact in the case. The term "franchising authority" is defined in the Telecommunications Act as "any governmental entity empowered by Federal, State or local law to grant a [cable] franchise." *Id.*, citing 47 U.S.C. § 522(10). A "franchise" includes any "authorization . . . , whether such authorization is designated as a franchise, permit, license . . . or otherwise, which authorizes the construction or operation of a cable system." *Id.*, citing 47 U.S.C. § 522(9). That state supreme court noted the State of Iowa, through its statutory regulation of the services that may be offered by municipal utilities, is the entity that authorizes the operation of cable systems by such utilities. *Id.* The state supreme court in that case concluded:

We agree, therefore, with the City that once the State permits city utilities to operate cable systems, as Iowa does, then federal law prevents the State from prohibiting city utilities who operate cable systems from also offering . . . telecommunications services, such as telephone service. *Id.*, p. 254.

This was a final ruling in that case. To our knowledge, the same preemption argument has not been made by any municipal cable operator in any other state. This is therefore to our knowledge the only court decision on this particular preemption argument.

If and when the City, through the PWC or otherwise, begins to offer cable television services, the logic stated by the court in the Hawarden case might apply here in North Carolina. Like the State of Iowa, the State of North Carolina is a "franchising authority" as that term is used in the Telecommunications Act that authorizes municipalities to operate cable television systems. See N.C. Gen. Stat. § 160A-311, 319. It therefore should not be allowed to impose any requirement that has the effect of prohibiting the provision of telecommunications services by a municipality that is a cable operator. The one difference is, unlike in Iowa, we have no State statute that expressly prohibits municipalities from providing telecommunications services. As discussed below, municipalities in North Carolina only exercise those powers granted to them by the General Assembly, or those powers that are fairly implied in or incident to the powers expressly granted to them by the General Assembly. Further, there has been no express grant of authority by our General Assembly to municipalities to enter the telecommunications business. Nevertheless, if the City were to establish itself as a cable operator, and then attempt to diversify into providing telecommunications services, it could argue that Section 241(b)(3)(B) of the Telecommunications Act prevents the State from prohibiting the City from offering telecommunications services.

Until the City becomes a cable operator, however, absent a change in the law, there is no grounds to argue that federal law preempts State law regarding what uses the City can make of the Network.

B. Under North Carolina Law, Municipalities are Created by the State and Derive All of their Authority from Grants of Power by the General Assembly.

Municipalities in North Carolina have no inherent power. Under the Dillon's Rule applicable in North Carolina, which is cited in some of the studies or plans for the Network:

[A] municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words [by the General Assembly]; second, those necessarily or fairly implied in or incident to the powers expressly granted [by the General Assembly]; third, those essential to the accomplishment of the declared objects and purposes of the [municipal] corporation . . .

E.g., Green v. City of Winston-Salem, 287 N.C. 66, 72, 213 S.E.2d 231, 235 (1975).³

The general powers granted to municipalities in North Carolina by the General Assembly are set forth in Chapter 160A of the North Carolina General Statutes. In G.S. 160A-4, entitled, "Broad construction," the General Assembly stated:

It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect; Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

The General Assembly has authorized the City in Chapter 160A of the General Statutes to perform certain police powers, such as providing police and fire protection, and land use regulation through zoning. The General Assembly has also authorized the City to engage in certain proprietary functions. Providing electricity, water and sewer service, which the City does through the PWC, are proprietary functions.

³ The contrary "home rule," which applies in some other states, is that municipalities can undertake any activity except those that they are expressly prohibited from engaging in by the state legislature or state constitution.

C. We Believe the City Has the Authority to Own and Operate the Network to Improve its Utility Services and Governmental Functions, and Otherwise for its Internal Needs.

The first question to address is whether the City has the requisite authority to finance, own and operate a broadband fiber optic system (like the Network) to improve its ability to provide utility services, to fulfill its governmental functions, and to otherwise meet the internal communication and data storage needs. (See Question 2a.). Our appellate state courts have never addressed this question in any reported opinion. However, under Dillon's Rule, as modified in G.S. 160A-4 cited above, we believe that our state appellate courts, if ever faced with the question, would find that municipalities have such authority.

If the issue ever arose in this case, the City should easily be able to show a court that it is using the Network through the PWC to improve the utility services it provides, at lower overhead costs. The City should also be able to show a court how its use of the Network for internal communication and data storage has improved its ability to fulfill many governmental and proprietary functions that it is clearly authorized to undertake. We suspect the City's ability to make such a showing is so obvious that it is unlikely anyone will ever challenge its ability to use the Network for such internal purposes. Indeed, one commentator has noted that most energy utilities have already developed or have planned installation of fiber optic systems which "... are considered essential for regulating cost-saving energy delivery systems." Note, "Competing with City Hall: Local Government Entry Into the Telecommunications Marketplace," 17 Computer & High Tech L. J. 169, 181 (Dec. 2000).

D. We Believe the City, if Necessary, Would Be Able to Successfully Defend its Practice of Providing Access to the Network to Other Local Governmental Units for Their Own Communication Needs Through "Fiber Use Agreements."

The next question is whether the City can enter into leases or other contracts by which other local government units have access to use some portion of the capacity of the Network for their own communication needs. (See Question 2b.) The City can do so by giving other governmental units access to use either dark or "lit" fiber.

In answering this question, we should first note that we believe two local governmental units would have the requisite statutory authority to enter into a joint venture with each other to finance, own and operate a broadband fiber optic system, to be used for their respective internal communication and data storage needs. If, as we believe is the case, municipalities can construct, own and operate a fiber optic system for their internal needs, then likewise they should be able to partner with another local governmental unit with the same authority to do so together. Article 20 of Chapter 160A of the General Statutes is entitled, "Interlocal Cooperation." In that Article, the General Assembly authorized local governments to enter any contract to execute any "undertaking." N.C. Gen. Stat. § 160A-461. An "undertaking" is defined therein as: "the joint exercise by two or more units of local government, or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government." N.C. Gen. Stat. § 160A-460(1).

In this case, the City wholly owns and operates the Network, through the PWC, but has entered certain lease agreements with other local governmental units, by which it provides those units with the right to use dark or lit fiber for fees. Our state appellate courts have not addressed whether this is a permissible use of fiber owned by a municipality. However, if our state appellate courts were ever asked to address this question, we believe they would find that authority to enter such leases does exist. We believe so for several reasons.

First, an “undertaking” that can be accomplished through an interlocal agreement includes one by which one local government by contract fulfills an authorized function for other units of local government. See N.C. Gen. Stat. § 160A-460(1). The City, through the PWC, arguably is doing just that by these fiber lease agreements with other local governments – maintaining the Network for their joint uses of its capacity for authorized governmental and proprietary purposes.

Second, in Article 12 of Chapter 160A of the General Statutes, entitled “Sale and Disposition of Property,” there is a statute entitled, “Sale, lease, exchange and joint use of governmental property.” N.C. Gen. Stat. § 160A-274. In subsection (b) of that statute, the General Assembly authorized that:

Any governmental unit may, upon such terms and conditions as it deems wise, with or without consideration, exchange with, lease to, lease from, sell to, purchase from, or enter into agreements *regarding the joint use* by any other governmental unit *of any interest in real or personal property that it may own*. (emphasis added).

This provision in G.S. 160A-274 cannot be reasonably construed to authorize the City to provide any type of telecommunication or other service to any other governmental unit. That provision merely allows the City the right to enter arrangements for the joint use of property. To the extent that the City, through the Network, endeavors to provide any telecommunication service to any other local governmental unit, it should do so through an interlocal agreement under G.S. 160A-460 et seq. referenced above, which clearly authorizes the City to do so.

For these reasons, we believe if necessary the City could successfully defend its practice of leasing capacity on the Network to other governmental units.

E. The City Could Use the Network to Provide Cable Television Services.

One of the possible commercial uses of the Network would be providing cable television service. Generally speaking, there is a distinction in the law between cable service, and telecommunications services. The Telecommunications Act defines “cable services” as the *one-way* transmission to subscribers of video programming or other programming service, and subscriber interaction, if any, required for the selection or use of such programming. 47 U.S.C. § 522(6)(emphasis added). As one recent federal appellate court noted, “The essence of cable service [under this federal law] . . . is one-way transmission of programming to subscribers generally.” AT&T Corp. v. City of Portland, 2000 WL 796708 (9th Cir. June 22, 2000). “Telecommunications” on the other hand are defined in the Telecommunications Act as the

transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(43). "Telecommunications service" is defined as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used. 47 U.S.C. § 153(46).

In discussing what commercial ventures the City might undertake using the Network, it is therefore useful to distinguish between cable television services and telecommunications services.

The City clearly has the authority to provide cable television services for fees, through the Network. Article 16 of Chapter 160A of the General Statutes is entitled "Public Enterprises." The General Assembly therein listed the public enterprises that municipalities in this state may finance, own and operate. See 160A-311-312. One of the authorized public enterprises listed therein is a cable television system. The Network clearly meets the definition of such a system, at least for purposes of providing cable television service.⁴

F. We Do Not Believe the City Currently Has the Requisite Authority to Enter Into the Telecommunications Business Through Use of the Network.

The next question is whether the City has the authority under current State law to use the Network to enter into the telecommunications business. There are several ways the City might do so. The first would be for the City to position itself to become an actual telecommunications service provider (in addition to providing cable television service). The other, relatively less ambitious way the City could try to enter the telecommunications business through the Network would be to lease capacity on the Network to telecommunications service providers. Under this option, the City would be the "fiber landlord," but not the actual telecommunications service provider. The City would under this option, however, profit from the provision of telecommunications services delivered through the Network as the owner/lessor of its capacity.

We do not believe the City currently has the authority to enter into the telecommunications business in either of these ways. The "public enterprise" statutes in Article 16 of Chapter 160A mentioned above do not include any reference to any municipal authority to operate any system for delivering telecommunication services. In those statutes, municipalities are authorized to issue franchises for telephone systems. N.C. Gen. Stat. § 160A-319(a). But a telephone system is not among the public enterprises municipalities are authorized to engage in. N.C. Gen. Stat. § 160A-311. This is a clear indication the General Assembly has not authorized municipalities to operate traditional phone systems. Regarding other telecommunication services that can be provided through broadband fiber optic technology besides voice or telephony (e.g.,

⁴ A "cable television system" is defined therein as:

Any system or facility that, by means of a master antenna or wires or cables, or by wires or cables alone, receives, amplifies, modifies, transmits, or distributes any television, radio, or electronic signal, audio or video or both, to subscribing members of the public for compensation. N.C. Gen. Stat. § 160A-319(b)(emphasis added).

data transfer, internet access), there is simply no reference in the “public enterprise” statutes to any of these new systems, or such services. These statutes have not been revised since broadband fiber optic technology became available. Arguably they should be updated to account for such new technology. But until those statutes are updated, we believe the authority for municipalities in North Carolina to provide any telecommunication services, through a broadband fiber optic system or otherwise, is lacking. As mentioned above, the public enterprises municipalities are authorized to own and operate include “cable television systems.” When the definition of a “cable television system” in those statutes is read literally, it would cover a broadband fiber optic system. However, it is too much of a leap to extrapolate from that definition authorization by the General Assembly for municipalities in North Carolina to offer any telecommunication services through a broadband fiber optic system. Such systems were not in existence when the General Assembly gave municipalities authority to operate “cable television systems.” Also, we find no authority outside the “public enterprise” statutes for municipalities to provide any telecommunication services.

An argument could be made that the City has the authority to lease capacity on the Network for agreed upon fees to telecommunication service providers, playing the limited role of the “fiber landlord.” The argument would be based upon the definition of a “cable television system,” which municipalities are authorized to own and operate. As stated, a broadband fiber optic system falls within the scope of a literal reading of what constitutes a “cable television system” in the “public enterprise” statutes. See N.C. Gen. Stat. § 160A-319(b). If a municipality merely owns such a system, and contracts for a telecommunication firm to operate it and to provide telecommunication services through it, arguably the municipality is acting within its authority to own a “cable television system,” and is not entering the telecommunications service business.

We think this argument more than likely would fail in court, however. The problem is telecommunications has yet to be recognized by the General Assembly as a “public enterprise” in which municipalities may engage. We do not believe the City may, on a long-term basis, do something indirectly, through some lease or other “partnership” with a telecommunications service provider, that it is not authorized to do directly – namely, enter the telecommunications business.

One of the questions that you asked us to address is whether the Local Development Act (“LD Act”) provides the City with the requisite authority to construct, own and operate the Network if it can be justified as a public purpose promoting the general economic welfare of Fayetteville and the surrounding area? (See Question 6). There is very little guidance from the courts regarding the LD Act. On its face, the LD Act would support the City’s past expenditure of funds to construct the Network, and future expenditures for expanding it. In the LD Act, the General Assembly authorized all local governments in North Carolina to “make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises . . . and locating industrial and commercial plants in or near such city . . . or other purposes which, in the discretion of the governing body of the city . . . , will increase the population, taxable property, agricultural industries and business prospects of any city . . .” *Id.* at § 158-7.1(a). Such appropriations may be funded by property taxes and by allocation of any other unrestricted revenues. *Id.* In the LD Act, the General Assembly also listed seven permissible economic

projects, which were not intended to be an exclusive list of permitted projects. Those permissible economic projects include: (a) constructing, extending or owning utility facilities or providing for or assisting in the extension of utility services to be furnished to an industrial facility, whether the facility is publicly or privately owned, and (b) extending or providing for or assisting in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned. *Id.* at § 158-7.1(b)(5)-(6).

Arguably constructing and expanding the Network is analogous to extending utility services to industrial facilities, which is referenced as a permissible activity in the LD Act. A case could probably be made that Fayetteville was not likely to get the necessary fiber infrastructure unless the City/PWC financed it, notwithstanding DOT's proposed fiber, and that having that fiber infrastructure increases the population (residents like the services broadband technology offers) and business prospects for the area. The benefits broadband fiber optic systems have yielded for other urban areas would probably provide good evidence on these points.

We do not believe, however, that a court would construe the LD Act to authorize the City, once the Network is built (wholly or partly with public funds), to use it to enter into the telecommunications business, either as a service provider or a "fiber landlord." To answer the question of whether the City could do so, a court would look to the "public enterprise" statutes discussed above, which we believe, for the reasons stated above, do not reflect any grant of authority to municipalities to enter the telecommunications business.

G. Notwithstanding the Lack of Authority to Enter the Telecommunications Business, the City May Lease Capacity on the Network That Will Eventually Be Needed for Authorized City Functions Until it is Needed for Those Purposes.

We do not believe the requisite authority currently exists under State statutory law for a municipality to construct a broadband fiber optic system with the intent at the outset of becoming a "fiber landlord," i.e., leasing capacity on the system for fees. This would be true regardless of whether the potential lessees were private or public entities, and regardless of what the lessees did with any leased capacity. For the reasons stated in the prior section, we simply find insufficient statutory authority for a municipality to use a fiber optic system as a source of long-term revenue under current North Carolina law, except as a cable television service provider.

To the extent that the City financed the construction of a backbone to the Network with more capacity than what was needed for authorized governmental purposes, it did so at some risk of a legal challenge to the project. Fortunately, that risk is probably no longer present, since the Network's backbone has now been constructed. The more pertinent question now is not whether the City can build the Network, but what it can do with it. Nevertheless, it is worth noting what happened in a leading case on "excess capacity." In that case, the North Carolina Supreme Court held it was *ultra vires*, i.e., outside its permitted authority, for High Point to use revenue bonds to finance the construction of a electric power plant that was designed to have three times the capacity necessary to serve that city's permitted customer base. See *Williamson v. High Point*, 213 N.C. 96, 109, 159 S.E. 90 (1938). High Point intended to use the excess capacity to expand

its electrical distribution system through three counties, providing service to other cities, and commercial and residential customers.. The Supreme Court’s decision was based upon a finding that the relevant revenue bond act did not permit such an undertaking. That revenue bond act allowed municipalities, in addition to any other powers they may have, “to operate and maintain any undertaking for its own use or for the use and benefit of its inhabitants.” *Id.*, 213 N.C. at 108. The Supreme Court determined that, “[t]he excess power is not incidental to a plant operated “for [High Point’s] own use or for the use and benefit of its inhabitants.” *Id.*, 213 N.C. at 109.

Now that the backbone to the Network has been constructed, *if* there is currently unused capacity on the Network, *that the City can show it will eventually use for its own purposes, but is and will remain unused for some temporary period of time*, we believe the City has the authority to lease that unused capacity, to any entity, be it private or public, until such time as the City needs it. On this point, we do not see any material distinction between dark or lit fiber being leased. Whether the fiber leased is lit, and thus, partially in use already, or completely dark, it represents unused capacity on the Network.

So how long should be the terms of any fiber lease agreements? That depends upon when the City projects it will need the leased fiber back for its own uses. There is no set rule on this point, and it depends upon the facts of each situation. Municipalities may lease any property they own for periods up to 10 years. N.C.Gen. Stat. § 160A-272. We view that as an outside limit for such leases, not a standard rule. In this case, the City thus far has limited the terms of fiber leases to the projected date when the DOT project would be finished. The logic being at that point the City may need that leased fiber back. That type of rational planning in leasing fiber should continue.

There is some possibility that someone may try to challenge any fiber use agreement the City enters with any telecommunications firm, even if it is not a long-term lease, on the grounds that the City is not authorized to engage in telecommunications and by such a lease is “partnering” with a telecommunications service provider. The lease to KMC Telecom is the only applicable lease entered into thus far. We think the City should be able to withstand such a challenge provided it can show that it will eventually need the leased fiber, which it is only leasing on some temporary basis.

II. CHAPTER VI OF THE CITY CHARTER DOES NOT NEED TO BE AMENDED REGARDING THE NETWORK.

The other question you asked us to address (Question 3 in the Position Paper) is:

If Fayetteville has the statutory authority to construct, own and operate the [Network], can Fayetteville direct the PWC, as Fayetteville’s agent, to operate the System without the necessity of amending Chapter VI of the City Charter?

First, the PWC cannot act as the City’s agent in the true legal sense of what it means to be an agent. That is because the PWC is not separate legal entity from the City. An agent must be a distinct person or entity from its principal. The legal entity that owns the Network, and is responsible for any liabilities or obligations arising from it, is the City. The fact that the City has

constructed and managed the Network thus far through the PWC does not change that fact. If a third party were to file suit to challenge any use of the Network, or to collect for work done on the Network, the proper defendant in such a suit would be the City. For that reason, the possibility that some third party might claim that the PWC is operating ultra vires, outside its authority under Chapter VI of the City Charter, does not cause us concern. The general question is not what the PWC may do with the Network pursuant to the City Charter. The question is what may the City do with the Network under applicable law, including the City Charter, through the PWC or otherwise.⁵

Nevertheless, as a business matter, the City administration might consider issuing an internal memorandum documenting the fact that management of the Network has been delegated to the PWC, and addressing therein certain details regarding that delegation. For instance, that memorandum could address who can execute any contracts for providing others with access to the Network.

Recommendations

- Make at least an initial strategic, long-range decision regarding use of the Network. Does the City aspire to be a cable and/or telecommunications service provider? Does the City aspire to be a “fiber landlord,” owning the infrastructure and contracting with service providers who use the Network to deliver services? Generally speaking, those are the two strategic options. There are pros and cons with each of these choices. We suspect being the actual service provider would be relatively more lucrative than just being a “fiber landlord.” On the other hand, the City is likely to meet relatively more resistance if it seeks the authority to eventually use the Network to be a telecommunications service provider, rather than just a “fiber landlord.”
- If the City wishes to use the Network for generating revenues on any long-term basis, seriously study the feasibility of first providing cable television services. It would be much easier from a legal perspective for the City to enter into the telecommunications business if it first establishes itself as a cable operator. Hawarden, Iowa’s case illustrates this point. Since cable revenues would not be generated until the Network is fully completed, we realize waiting that long before generating any significant revenues off the Network could pose a challenge in financing the completion of the Network.
- While establishing itself as a cable operator, which will take awhile, the City should seek the legislative authority to use the Network to provide at least some telecommunications services (e.g., internet access). The City should coordinate these efforts with the League of

⁵ For the same reason, the “Fiber Use Agreement” entered between the City and the PWC is not a contract in the true legal sense of what a contract is, because it is not entered between two distinct legal entities. It rather is, as a practical matter, an internal municipal document regarding allocating resources and related accounting issues. Similarly, the fiber leases entered with others should be amended to reflect that it is the City that owns the Network. The lessor in those contracts should be “the City, through the PWC.”

Municipalities, given other municipalities will be facing similar issues. We know from conversations with senior management at the League that they are interested in these issues.

- Based upon its strategic, long-range goal, the City should project when it will need all of the capacity of the Network. Document that projection in a fiber leasing policy. Pursuant to that policy, lease fiber until that projected date, with reclamation clauses continuing to be in any fiber lease agreement. Place a priority in leasing fiber to other governmental units over private entities. We understand that the revenue stream such leasing provides would be somewhat helpful in financing completion of the Network. On the other hand, keep in mind that, unless more express authority is granted by the General Assembly, the more fiber leases that are entered, the more risk there is that someone is going to challenge the practice as an unauthorized entry into the telecommunications field.

PROCEDURE:

FIBER LEASE

SECTION NUMBER:

1.C.4

FIBER LEASE POLICY

P1.C.4

It shall be the policy of the Public Works Commission to lease excess fiber capacity on a temporary basis to interested third parties.

I. PURPOSE

The purpose of this procedure is to establish guidelines on the lease of excess fiber capacity in accordance with provisions of applicable North Carolina General Statutes.

II. APPLICABILITY

This procedure applies to the PWC fiber optic communication system.

III. RESPONSIBILITY

- A. **General Manager:** Responsible for enforcing the provisions of this procedure.
- B. **Information Systems Department:** Responsible for operating and maintaining fiber and all associated networks, equipment and agreements related to network services.

IV. BACKGROUND INFORMATION

A. **System Architecture**

The PWC fiber optic communication system is a fully digital, high-speed switching and transmission system ("System") that can deliver voice, data and video services ("Network Services") on the same integrated system. This can be implemented in local area networks (LAN), metropolitan area networks (MAN), and wide area networks (WAN). A mix of terminal and networking equipment is utilized in the network to meet a specific design objective and includes such products as switches, routers, hubs, multiplexers and network cards. Currently, PWC has deployed four (4) switches that are configured to provide bandwidth across the 10 GB fiber

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APPROVED: _____

APPROVED BY: _____



GENERAL MANAGER

backbone. The System is scalable to a higher level bandwidth as the need arises.

Currently, the fiber backbone consists of approximately 230 miles of 144 single mode All Dielectric Self Support (ADSS) fibers in a redundant loop configuration. It primarily serves City, County and PWC facilities in the downtown and surrounding influence area.

B. System Use

The pilot project for the fiber endeavor centered around the need for sharing geographic information among several City, County and PWC facilities and the reduction of the cost associated with duplicate efforts in the generation and dissemination of such information. There is a joint venture among the three entities to collaborate efforts to share geographic and property record data in a mutual and timely manner which will aide in operating their respective business functions. An Intra-governmental Network was built linking the following governmental facilities for this purpose:

- PWC Operations Complex
- Fayetteville City Hall
- Cumberland County New Courthouse
- Cumberland County Old Courthouse
- Cumberland County Law Enforcement Center
- Fayetteville Fire Station #1
- Fayetteville Police Station
- Fayetteville Traffic Engineering Building

The Intra-governmental Network has been extended to connect all of PWC facilities needing access to the network.. This extension allows PWC to take full advantage of transmitting voice and data requirements over the system to include, but not limited to, the following applications:

- Financial System
- Customer Information System
- SCADA System
- Internal Telephony
- Internet/Intranet Access

As PWC continues the build out of its backbone system, it is in a position to offer connectivity to all of its facilities (manned and un-manned) as well as facilities owned by the City, County, Cape Fear Valley Medical Center, local businesses, and other government units.

C. Excess Capacity

The Network backbone is comprised of a 144 fiber count cable. System capacity was determined by taking into consideration the needs of PWC, the City of Fayetteville, and other local government units. This was accomplished through formal municipal interviews. Consideration was also given to diminishing marginal costs associated with fiber material pricing. The Network's capacity is split into three parts for planning and deployment purposes. The first part, consisting of 48 fibers, is reserved for the PWC's current and planned future uses. The second part, consisting of 60 fibers, is reserved for City of Fayetteville and other governmental unit uses. The last part, 36 fibers, is reserved for unforeseen needs of the PWC and future needs of City of Fayetteville departments. It is anticipated that PWC could reclaim these fibers (third party) over the next 15 years (from the original adoption date of this procedure in 2001) for its internal needs.

V. GUIDELINES

- A. PWC may lease fiber capacity to other governmental units through execution of interlocal agreements.
- B. PWC may lease excess fiber capacity to other interested third parties on a temporary basis; terms of the lease agreement may not extend beyond ten years; reclamation clauses must be integrated into lease agreement.
- C. All fiber lease agreements must be awarded by PWC and the City of Fayetteville.

VI. EFFECTIVE DATE

This procedure will become effective upon approval by the Public Works Commission and City Council.

Original: (City) Adopted July 16, 2001
(PWC) Adopted June 27, 2001

Deal Points

Services: Fiber Services

Service Level:

- Infrastructure installation and maintenance
 - Installation to be provided to all operations on an equal basis
 - Installation request, marginal cost quote, and authorization process will be established to avoid miscommunication, but to allow the installation to proceed without undue delay
 - Installation will not be delayed by purchasing processes
 - Maintenance activities for the system serving non-utility operations will be at least of the same quality and nature as that serving utility operations
- Operational priority
 - Outages impacting public safety operations will receive the highest priority response (appropriate response teams will be on-call 24-365)
- PWC should consult the City at least annually with a fiber network CIP/extension plan for review, coordination with operational needs, and approval

Accountability:

- Performance measures – workload, efficiency, and effectiveness measures should be established and tracked for all program areas and reported at least quarterly

Financial Terms:

- Capital, operations, and maintenance activities allocated to the electrical utility to greatest degree possible
- Non-utility operations charged for the marginal direct costs of installing connections not supportive of utility operations
- No per connection fee for City operations
- Fees for non-City customers to be set by the City Council
- Operating costs not allocated to utility operations or covered by fees for service will be distributed based on percentage of physical plant – all plant utilized to support utility operations will be allocated to those operations

Other: Clarify operational authority

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
FAYETTEVILLE AMENDING PART II, CHAPTER 2,
ADMINISTRATION, TO ADD ARTICLE VI, UTILITY OPERATIONS,
OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE,
NORTH CAROLINA**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that the ADMINISTRATION Ordinance adopted as Chapter 2 of The Fayetteville Code of Ordinances be amended as follows:

Section 1. Amend Chapter 2 ADMINISTRATION to add new ARTICLE VI – UTILITY OPERATIONS and subsections to Chapter 2 as follows:

ARTICLE VI – UTILITY OPERATIONS

Section 2-200. Operation of Fiber Optic Network.

The Public Works Commission is hereby authorized to develop and operate a Fiber Optic Network in support of utility and governmental operations consistent with this Article.

- (a) The City Manager shall designate service locations, capacity, reliability and recovery standards, and any other relevant specifications for service to be provided by the Fiber Optic Network to City operations other than electric, water, and wastewater utilities.
- (b) The Public Works Commission shall operate the Fiber Optic Network for the benefit of all City operations ensuring that:
 - a. The needs of all operations are considered in the design and capital planning for the Network;
 - b. That new service requests are addressed within a reasonable time; and
 - c. That reliability, recovery, and other service standards appropriate to the needs of each operation are established and satisfied.

Section 2-201. Fiber Optic Network Service Extension, Rate Setting.

The purpose of the Fiber Optic Network shall be to serve the operational needs of the City. All rates or fees for use of or service from the Network will be set by the City Council. Use of the Network or any element or asset thereof will only be provided:

- (a) To City of Fayetteville operations consistent herewith;
- (b) To other units of government subject to the terms of an interlocal agreement approved by the City Council; and
- (c) To private parties consistent with state law and under terms and conditions established by the City Council.

Section 2-202. Effective Date / Prior Actions.

This Article is effective upon adoption by the City Council. All prior actions, including

but not necessarily limited to, statements of policy, operational memoranda, agreements, leases, or similar statements regarding the City's Fiber Optic Network occurring, executed, or in operation prior to the effective date of this Article and not ratified City Council within ninety (90) days of that date, are repealed, superseded and replaced by this Article. The City Manager is directed to develop replacement memoranda consistent herewith as needed to support efficient and effective operation of the Network.

Section 2. The City Clerk is hereby authorized to revise formatting, correct typographical errors, verify and correct cross references, indexes, and diagrams as necessary to codify, publish and/or accomplish the provisions of this ordinance as long as doing so does not alter the material terms of Chapter 2 of the Fayetteville Code of Ordinances.

Section 3. It is the intention of the city council, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

Adopted this ____ day of _____, 2013

CITY OF FAYETTEVILLE

ANTHONY G. CHAVONNE, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council Members
FROM: Ronald McElrath, Director Human Relations
DATE: November 18, 2013
RE: **Fayetteville's Community Conversation**

THE QUESTION:

What are the expected outcomes for developing and instituting communitywide dialogues with emphases on inclusiveness of Fayetteville's very diverse (demographics) community and in addition will provide youth an opportunity to have their own separate groupings?

RELATIONSHIP TO STRATEGIC PLAN:

The City of Fayetteville will be a highly desirable place to live, work and recreate with thriving neighborhoods and a high quality of life for all citizens.

BACKGROUND:

City Council appropriated \$19,500 to the Human Relations Department (and Commission) to initiate a version of community engagement/dialogue program (formerly known as Study Circles and presently known as Everyday Democracy). The Human Relations Department contracted with Michael Hines of Illumine, Inc. Fayetteville, NC. And Gwen Wright of Change Matters Fayetteville United who has been trained to set up Study Circles by the national organization. Ms. Wright also worked for The National League of Cities and the Colin Powell Foundation after having worked with Fayetteville's Study Circles and Human Relations project from 1999-2002.

There are several steps leading up to the community-wide conversation kickoff in January 2014. The initiative, led by the Human Relations Commission, is underway with citywide partnerships being formed with higher learning institutions, Greater Fayetteville United, United Way, Fayetteville Cumberland County Ministerial Council, WIDU radio and various other organizations. Several persons from these groups and other citizens will be formally trained to participate as facilitators and recorders for an upcoming focus group session. The goal of the focus group step is to prepare for the community conversation by identifying and gaining insight and understanding about community issues. The focus group is scheduled for Thursday, November 21, 2013 at Fayetteville Technical Community College from 6:00 pm -7:30 pm.

The community conversation kick-off, "Working Together for Fayetteville's Success" is scheduled to coincide with the Martin Luther King, Jr. celebration on January 20, 2014 at the Crown Coliseum from 11:30 am to 2:00 pm.

A final report of the findings from the community conversation will be presented to City Council in February 2014.

ISSUES:

How to effectively engage citizens in the problem solving facing elected and appointed officials who want to make our City a great and safe place to live, work, raise a family, and enjoy a great quality of life standard.

BUDGET IMPACT:

\$19,500 already appropriated many inkind services and volunteer work will be given by partners and citizens.

OPTIONS:

RECOMMENDED ACTION:

Informational only and no action required.

ATTACHMENTS:

Community Dialogue and Engagement

Fayetteville's Community Conversation
“Working Together For Fayetteville's Success”
2013

What is Fayetteville's Community Conversation – “Working Together For Fayetteville's Success”?

“Working Together For Fayetteville's Success” is an inclusive, public engagement, dialogue process consisting of carefully constructed conversations that includes a diverse and broad representation of Fayetteville Residents. The ‘Conversation’ process supports the City's strategic plan and vision by establishing the City as a partnership with its residents and engaging them in ways that will help make progress on various issues and concerns facing the community.

Why is this ‘Community Conversation’ needed for our community?

Building upon positive results from past efforts of Fayetteville's Study Circles process that focused on various issues, including; improving race relations, enhancing community wellness, strengthening police and community relations, and student success; this new effort will work towards creating and implementing a sustainable public engagement process that can be consistently utilized for effective and efficient public discourse.

Who will be involved?

The ‘Community Conversation’ will bring together a broad representation and a significant number of diverse Fayetteville residents, local officials, law enforcement, community organizations and others to participate in honest and transparent conversations that will discuss and identify solutions and actions on how we can work together for Fayetteville's success.

When will the ‘Community Conversation’ take place?

The ‘Community Conversation’ kick-off is scheduled for Monday, January 20th as a Martin Luther King, Jr. Day of Service; on-going followup activities will continue throughout 2014.

How will the ‘Conversations’ be Developed and Sustained?

The Fayetteville ‘Community Conversation’ process is being coordinated and implemented by the Fayetteville-Cumberland Human Relations Department, in partnership with other local organizations. The overall desired outcome is to create the framework for a sustainable public engagement process that will allow community stakeholders to become involved early-on, often, creatively and authentically in local governance problem-solving and positive outcomes.

Fayetteville's Community Conversation
“Working Together For Fayetteville’s Success”
2013

I would like to serve on the following workgroup: Please print name, phone number and e-mail. Thank you!

Recruiting Participants

Recruiting Facilitators and Recorders

Logistics (Nuts & Bolts)

Communications and Follow-up

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of Council
FROM: Michael Gibson, Parks, Recreation and Maintenance Director
DATE: November 18, 2013
RE: **Parks and Recreation - Outdoor Adoption Program/Gateways**

THE QUESTION:

Should Council approve the Outdoor Adoption Program and the public information campaign?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2 - More Attractive City - Clean and Beautiful

BACKGROUND:

The department received a request from an organization to adopt a bridge in memory of a child and the current Adopt-A-Street and Adopt-A-Facility program was updated to include an Adopt-A-Gateway and Adopt-An Area provision. Adopt-A-Gateway allows groups or individuals to provide landscaping and maintenance on gateways into the City limits and into neighborhoods; safety regulations must be followed for these areas. Adopt-An Area Program allows groups or individuals to adopt a component of a park or gateway in memory, or in honor of someone or as a community service; areas that can be adopted include a bench, playground, picnic shelter, a section of a trail, or a bridge on a trail.

Once the adoption fee is paid, an agreement is signed with FCPR to provide general care and maintenance around the adopted area. Adoption fees are not charged for gateways. Signage (sign, plaque or plate) will be provided by FCPR and attached to the component for the adoption period. Adopt-A-Street and Adopt-A-Gateway signs shall be placed consistent with the City of Fayetteville and NC Department of Transportation regulations.

The adoption fee includes application/administration fee that could be used by FCPR should, in the sole opinion of the department, an area need additional maintenance or cleanup. Individuals/groups will be able to "adopt" via the FCPR website, which will include application forms, interactive maps and ability to pay fees. The "Fee Ordinance" will be amended if approved. This is a separate ordinance amendment action, and will need to come back before Council.

The public information campaign includes

- Parks & Recreation Outdoor Adoption Program webpage linked from City website
- Descriptions of each program area
- Program requirements
- Safety guidelines
- Social media posts
- Op-ed by staff, Council member or Observer staff
- Brochure
- Information packet for participants
- Media release
- FAYTV7 spot, radio interviews, newspaper advertisements
- Church bulletins (through ministerial council)
- Civic group email, newsletters and outreach efforts
- Work with Chamber and Downtown Alliance on business outreach

Provided in this marketing plan are a brochure, NCDOT Adopt-a-Highway webpage sample to model City program after, each program's description, program guidelines and safety guidelines.

Each program description will appear as links on Outdoor Adoption Program webpage.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

Approve the Outdoor Adoption Program and public information campaign.

Do not approve the Outdoor Adoption Program and public information campaign.

RECOMMENDED ACTION:

Staff recommends Council move to approve the Outdoor Adoption Program and public information campaign.

ATTACHMENTS:

Outdoor Adoption Marketing Plan (3)

Outdoor Adoption Program

Outdoor Adoption Program brochure

Outdoor Adoption Program Marketing Strategy

Adopt-A-Street/Adopt-A-ParkFacility/Adopt-A-Gateway/Adopt-An-Area

The Adoption Program provides Fayetteville-Cumberland Parks & Recreation a means to:

- Improve the appearance of Fayetteville's City streets, gateways and Parks and Recreation facilities
- Provide citizens (groups or individuals) an opportunity to honor others
- Enhance the parks experience for the public
- Encourage community involvement
- Foster appreciation for Parks and Recreation facilities
- Improve facility conditions without increasing operational or maintenance cost
- Create an additional revenue stream.

This program is not the first of its kind, so staff has looked at other programs to understand best practices:

- Modeled after NCDOT Adopt-a-Highway
- The Outdoor Adoption Program's purpose is to beautify Fayetteville.

Tactics:

- Parks & Recreation Outdoor Adoption Program webpage linked from City website
 - Descriptions of each program area
 - Program requirements
 - Safety guidelines
- Social media posts
- Op-ed by staff, Council member or Observer staff
- Brochure
- Information packet for participants
- Media release
- FAYTV7 spot
- Radio interviews
- Newspaper advertisements
- Church bulletins (through ministerial council)
- Civic group email, newsletters and outreach efforts
- Work with Chamber and Downtown Alliance on business outreach.

Provided in this marketing plan are a brochure, NCDOT Adopt-a-Highway webpage sample to model City program after, each program's description, program guidelines and safety guidelines. Each program description will appear as links on Outdoor Adoption Program webpage.

The Adopt-A-Street/Adopt-A-Park Facility Programs

(As it will appear on program webpage)

The Adopt-A-Street/Adopt-A-Park Facility Programs operate on a calendar year (Jan. 1 to Dec. 31). The terms of this agreement should be followed from the approval date until Dec. 31. The number of cleanups required in the first year will be adjusted according to the approval date. After the first year, applicants should complete six cleanups between Jan. 1 and Dec. 31 each year they remain in the programs. Participants must obey the Program Requirements and Safety Guidelines.

The Adopt-A-Gateway Program

(As it will appear on program webpage)

The Adopt-A-Gateway Program allows groups, organizations, individuals or businesses to adopt City and Neighborhood Gateways to provide landscaping and maintenance as a community service or in honor or memory to someone.

- City Gateways are entrances into the City limits and located on a major thoroughfare. The landscaping needs in these areas are greater and reflect the desire of the City to improve its gateways. Acknowledgement signs are \$250-\$500 per year based on size and material
- Neighborhood Gateways are entrances into neighborhoods. There is no charge for the adoption; a sign naming the organization must be approved by NCDOT and shall be placed consistent with City of Fayetteville and NC Department of Transportation regulations. Standard signs are 9"-15" in height and 30"-42" in width with a maximum of 19 spaces per line.

The Adopt-A-Gateway Program operates on a calendar year, and the terms of this agreement should be followed from the approval date until Dec. 31. The number of cleanups required in the first year will be adjusted, according to the approval date. After the first year, applicants should complete 12 cleanups for City Gateways and six cleanups for Neighborhood Gateways between Jan. 1 and Dec. 31 each year they remain in the programs. Participants must obey all Program Requirements and Safety Guidelines.

The Adopt-An-Area Program

(As it will appear on program webpage)

The Adopt-An-Area Program allows groups or individuals to adopt a component of a park in memory of or honor to someone. Adoption areas include a bench, playground, picnic shelter, a section of a trail or a bridge on a trail. Once an adoption fee is paid, an agreement is signed with FCPR to provide general care and maintenance around the adopted area once per quarter for a period of five years. Individuals/groups can designate the specific area they wish to adopt or allow FCPR to assign an area. A plaque/plate will be provided by FCPR and attached to the component for five years. Adoption fees are:

Element	Annual Fee	Total – 5 Years
Bench	\$25	\$125
Brick Planter	\$75 + plant material	\$375
Bridge	\$100	\$500
Playground	\$75	\$375
Picnic shelter	\$75	\$375
Trail section	\$150	\$750

The “Brick Planter” adoption allows for a memorial plaque/plate to be affixed to a planter located on Hay Street in downtown Fayetteville. However, in addition to an adoption fee, the individual/organization will purchase plant materials from a list approved by FCPR; the organization can choose one of three designs. FCPR will be responsible to plant the material and maintain the planter.

The adoption fee includes application/administration fee that could be used by FCPR should, in the sole opinion of the department, an area need additional maintenance or cleanup. Individuals/groups will be able to “adopt” via the FCPR website, which will include application forms, interactive maps and ability to pay fees. FCPR will review additional adoption opportunities as they become available.

FCPR will review additional adoption opportunities as they arise; some adoptions may not include the maintenance or cleanup requirements.

Applicants will automatically renew each year, unless they fail to complete the required number of cleanups or they request to be removed from the program. Failure to complete obligations will prevent future adoptions by your organization. The City of Fayetteville reserves the right to cancel this privilege at any time.

A coordinator should be appointed from each organization that participates in the Outdoor Adoption Program. It is the coordinator’s responsibility to ensure the group follows the program requirements and safety guidelines. Each coordinator should take a few minutes before each cleanup to conduct a brief review of the following safety tips with the group. Safety is the number one concern, so please be alert and safety conscious at all times.

The coordinator can pickup trash bags and safety vests from the FCPR Parks Division at 280 Lamon St. during normal business hours of Monday – Friday; 8 a.m.-5 p.m.

PROGRAM REQUIREMENTS:

- A coordinator must be appointed from each organization to ensure program requirements are followed and oversee cleanups
- An adult supervisor over the age of 18 must be present at all times during any cleanup
- No one under the age of 12 is allowed to participate in a roadside cleanup
- Any participant involved in a cleanup must wear a high visibility safety vest if within 10 feet of a roadway; vests are provided by the City of Fayetteville
- Adopt-A-Street/Adopt-A-Park Facility/Adopt-A-Gateway: Each group must complete at least six cleanups during the calendar year (Jan. 1 – Dec. 31); the total number of required cleanups will be adjusted the first year, according to the months remaining after the date the project is approved
 - Gateways: Due to safety concerns, some gateways are not available for adoption since they are located in high traffic and/or congested areas
- Adopt-An-Area: Each group must complete at least four cleanups during the calendar year (Jan. 1–Dec. 31); the total number of required cleanups will be adjusted the first year according to the months remaining after the date the project is approved
- Progress reports must be submitted within one week of each cleanup; failure to submit the appropriate number of reports prior to Dec. 31 of each year will constitute a breach of the agreement. If a group breaches the agreement or requests to be discontinued, signs will be removed and the area will be made available for another group to adopt. Failure to complete obligations will prevent future adoptions by your organization.

SAFETY GUIDELINES:

- Stop work if the weather gets bad
- Do not over exert yourself, especially on hot days
- Avoid noxious weeds (e.g., poison ivy)
- Wear light colored clothing, heavy gloves, sturdy shoes or boots and a hat
- Have a first aid kit on-site
- Use a buddy system – look out for each other
- Have a cellular phone on hand.

ADOPT-A-STREET/GATEWAYS:

Follow all guidelines above plus:

- Take as few cars as possible to the site
- Park vehicles clear of the roadway
- Work facing on-coming traffic
- Work during non-peak traffic hours when there are fewer vehicles on the road
- Do not attempt to handle hazardous substances (e.g., car batteries, pesticide containers)
- Do not pick up litter on bridges, tunnels, or overpasses
- Stay clear of construction activities
- Refrain from picking up trash on the street pavement (street sweepers will clean the road surface)
- Use caution as you work near any street
- Never step out into the street
- Cross streets only at crosswalks
- Wear high visibility safety vests when working within 10' of roadway.

ADOPT-A-STREET							
Organization/Name		Street Adopted	Phone Number	Date Packet Sent	E-Mail	Date started in program	
Air Force ROTC DET607		Edgecomb Ave from Murch Rd to Langdon St	910-813-8112		kjenkin3@broncos.uncfscu.edu	5/17/2010	
American Society of Military Comptroller/Virginia Kemp		Robeson Street from the musuem to MLK Bridge	432-8733		jeffrey.robinson@us.army.mil	1/1/1997	
Berean Baptist Church Academy/Steven Wilson		Glensford Drive from Brighton to Morganton Road	868-5156		bbcfaync@aol.com	4/1/2001	
Boy Scout Troop 746/Kent Listoe		Hope Mills Rd to Fisher and Cumberland	630-5243/423-5492		kent-listoe@goodyear.com		
Boy Scouts of America/Henry Scriven		Old Bunce Road from 71st School to Bunce Road	527-1144 or 424-2731		bigdadrik@aol.com	10/1/2000	
Boys & Girls Club/Anita Ivery		Bow Street/Maiden Lane	483-6504		None noted	2/1/2002	
Cape Fear Harleys Owners/Charles Kennedy		Scyamore Dairy Road from Bragg Blvd to McPherson Ch	286-6498		charles1k@aol.com		
Cape Fear Valley Health System/William Avenel		Village Drive from Ireland to Robeson	609-6249		None noted	11/1/2001	
Carolina Ballers		Morganton Road from Bonanza to Reilly Road	273-2230		ewashington.ballers@gmail.com	4/19/2010	
CelTech Inc.		Blount from Robeson to Gillespie					
Central NC Atheists							

Cerney Family (The)/Brian Cerney	Dundle Road from Stoneypoint down	551-6669	2/22/2006	bcerney@nc.rr.com	2/1/2006
Cingular Wireless/Janine Lightner	Owen Drive from Raeford Road to corner @ 316 Oyster Bar	626-7816 or 425-6129	2/15/2006	janine.lightner@cingular.com	2/1/2006
Combined Community Watch of Murchison Road/Moses Best	Murchison Road from Langdon St to Rowan	488-9142		cord33@nc.rr.com	
Concord, Gentry, Harvard, Wolfe & Lynch/April Gentry	Redwood Street (2miles)	424-5695		None noted	3/1/2005
Core Computer Tech/Franco Web	Legend Avenue from Skibo road to Sycamore Dairy Road	860-8492		None noted	6/1/2002
Creasy Proctor Masonic Lodge #679/Kenneth Lewis	Marlboro Road from Raeford Rd to Village Dr.	484-4669 or 488-9338		danceman531@earthlink.net	1/1/1997
Cumberland Heights Community/Mary Fletcher	Mckimmon Road, Chester Circ and Anarine Road	484-5921		None noted	3/1/1999
Devone/McDougald/Marc Devone	Hawley Lane from Grove St to Cool Spring St.	858-0981		marc.e.devone@us.army.mil	10/1/2003
District 16 Order of the Eastern Star	Cain Road	488-2933		None noted	4/1/2003
Eccles Park Neighborhood Watch/Alphonso Ferguson	Eccles Park	488-6398		None noted	5/1/2002
Edward Jones/Kristi Ivey	McPherson Church Road from Cliffdale to Skibo Road	424-7244		NO LONGER PARTICIPATING	8/1/2005
Epsilon Rho Lambda Chapter Alpha/Bobby Wynn	Langdon Street from Murchison Road to Ramsey Street	(252)326-1126		None noted	4/1/2002
Ewell Family/Bobby T. Ewell	Abilene & Rancho Drive	864-1936		bj82@aol.com	
Exchange Club of North/Randle Dobbins	Rosehill Road to Ramsey Street to Country Club Dr.	488-2173		randedob@aol.com	1/1/2006
Fair Weather Fish Camp	Rayconda Drive from Raeford Road to Siple	432-4292		bert.kinkead@us.army.mil	9/25/2012
Fast Service Food Mart/Spurgeon Watson	Jasper Street from Murchison Rd to W. Cochran	488-9740ph fax: 488-0998	FAXED ON 3/1/06	None noted	

Fayetteville Area - OOT/Mary Rambert	Bradford Avenue and Woodside Avenue	425-7389			None noted	3/1/2005
Fayetteville Cumberland Youth Council/Erica Brady	Purdue Drive	433-1505			ebrady@ci.fay.nc.us	
Fayetteville-LaFayette Rotary Club	Churchill Road	257-1291	11-Jul		mhbailey@uncfsu.edu	7/5/2011
First Baptist Youth/McKinley Johnson	Moore Street from Ramsey St to Murchison Road	483-6505			None noted	5/1/2001
FSU AIR FORCE ROTC DET 607	Cascade Street	273-4444			eporteel@bronzos.uncfsu.edu	11/10/2010
FTCC Criminal Justice/April Yates	Fort Bragg Road from Devers to Haymount Triangle	678-8452			yatesa@faytechcc.edu	1/1/2004
GB Myers Community Association	Commerce Street from Robeson to Turnpike Road	438-9076			czyfaith77@aol.com	11/9/2009
Gilmore KODA Club	Purdue Drive	433-1000			jscruggins@ci.fay.nc.us	1/10/2010
Goad, Brent-In Memory Of	Roy G. Turner Park					
Good Hope Baptist Church & Community/Jlames Strother	Deep Creek Road & Shad Bush Lane				None noted	5/1/2004
Haire, W.J. Sr.(Dr.) Memorial/D.J. Haire	Filter Plant from Murchison Road to Bragg Blvd	485-8219			djhaire@msn.com	2/1/2001
Harvest Family Church	Plymouth Street	433-3036			deshawn.spellman@bfenc.org	11/27/2012
Hollywood Heights Association/Gloria McDonald	Rosehill Road to Ramsey Street to Country Club Dr.	488-2173			None noted	3/1/2002
International Association of Black Professional Fire Fighters/Willie Thompson	Flynn Street from Bow Street to Gray Street	988-3113			None noted	8/1/1997
Jun E Caniel Boutique	Robeson St from AAA to Village Drive	920-3051				7/2/2012

Kitty Hawk Air Society/Col Kernist Stovall/E.E. Smith ROTC	Broadell Street & Seabrook Road	323-8456		nc-034@af.rotc.net	1/1/1995
Kiwanis Club of Cape Fear/Mike Gould	Devers Street from Fort Bragg Road to Morganton Road	578-2831		mmallon@nc.rr.com	7/1/2001
Korean Presbyterian Church/Jae Young	Ireland Drive from Cumberland Road to Raeford Road	864-8494		seynam@earthlink.net	7/1/2003
Lowered Atmosphere Car & Tk Club	Stansfield Drive	728-6440		lowered.atmosphere@yahoo.com	1/10/2010
Lowered Atmosphere Car & Tk Club	Fort Bragg Road from Terry Sanford				
Lutte L. Erwin	Phillies Circle	425-3919		lutenw@aol.com	10/1/2006
Manna Church	Bunce Road and Blanton Road	867-9151		bamims@juno.com	5/8/2009
Masey Hill Recreation center Teen/Bobby Sparks	Camden Road from Whitfield to Southern	433-1569		Bsparks@ci.fay.nc.us	1/1/2003
Massey Hill Lion's Club/Ray Lewis	Progress St from Center, Craven to Delcros and Powell	483-8124		None noted	8/1/2003
Methodist University Forensic CSI Program	Country Club from Ramsey Street to Rosehill Road	263-4720		dpauly@methodist.edu	2/9/2009
Methodist College Women's Basketball/DeeDee Jarman	Rivercliff & Eastwood Avenue			djarman@methodist.edu	4/1/2001
Miracle Temple Church	Winslow Street	703-9961		deondagreene@yahoo.com	9/10/2013
Mt Gilead Baptist Church/Tina Dawson	Offing Drive from Cliffdale Road to Eaglechace Road	864-5888		dawson4cs1t@earthlink.net	2/1/2005
Mt. Sinai Baptist Church College Ministry	Coley to Carver and Murchison Roads	822-3811		mtimeytell@aol.com	
New Bethal Pentecostal Holiness/Antonio Day	Rosehill Road from Country Club to Foster Drive	424-6120		None noted	2/1/2001
New Life Covenant Fellowship/Steve McMillan	Wall Street, North Street & Neville	483-6778	p-u on 2/16/06	None noted	2/1/2006

Nu Gamma PSI Fraternity, INC.	Sherman Drive	222-4517				4/23/2012
PI MU Chapter of Sigma Frat	Ramsey Street -1 mile up and down from Methodist College	(203) 913-1236			mteed@student.metho-dist.edu	2/9/2009
Reid Ross Classical National Honor Society/ Priscilla Covington	3200 block of Ramsey Street	488-8415			priscillacovington@ccs.k12.nc.us	9/6/2006
Ruff Riders	Green Street from Russell to Rowan	907-4924			_tashabolden@aol.com_m_	10/9/2009
S&M Bryant/Marsha Bryant	Helen Street	433-1416			None noted	8/1/2002
Schuller Ferris Lindstrom & Associates/Lee Shuller	Hay Street from Ray Avenue to MLK	484-4989			lschuller@sfla-architects.com	1/1/1995
Shepherd's Haven Youth Mentor Program	Campground Road from Ruritan to Glensford Drive	(305) 793-9756			Founder@Shepherdshavennc.org	10/10/2010
Sipio Burton/Moses Best	Murchison Road from Jasper to Rowan	488-1942			cord33@nc.rr.com	3/6/2006
Small Miracle (A)	Fort Bragg Road to Morganton Road to include Hull And Marin	(910) 672-0272			marceller.riddick@asmallmiracle.com	11/7/2011
Smelcer Contractors/Blake Smelcer	Ruritan Club Dr.	425-1769			smelcerco@aol.com	
St. Ann Youth Group	Ann St & North Cool Spring	483-3216			marybeth@stanncatholicchurch.org	7/7/2010
St. Luke AME Church	Hillsboro By Vicks Drive-In	485-7794			saintlukeamechurch@embargmail.com	7/9/2009
St. Patrick's Catholic Church/Don Bray	Person Street from Bow to 301	323-2410			donbray@stpatnc.org	5/1/1998
Target/Valerie White	S. McPherson Ch Rd from Cliffdale to Raeford	860-4400			None noted	6/1/1997
Taking Youth Seriously	Raeford Rd from 71st - 2 miles west	916-1911				

Trinity United Methodist Church	Raeford Rd from 71st - 2 miles west	988-7370		emkinsey@mindspring.com	
Tischer's Troops DSN	Skibo/Pamalee from Yadkin to Commonwealth	339-3696		fischerstroops@gmail.com	6/11/2012
Up and Coming/Bryanna Nelson	Ray Avenue	484-6200		Bryanna@upandcomin_gmag.com	4/1/2004
VFW Post 6018 & Auxiliaries/Moses Best	Chance Street & Mechanic Street	488-9142		cord33@nc.rr.com	5/1/2006
Village Christian Academy/Brenda Martin	McPherson Church Road from Raeford Rd to Cliffdale Rad	483-0720		None noted	4/1/2002
West Fayetteville Recreation Association	Ireland drive from Coventry to Raeford	229-1369			2/2/2012
Wilmington Road Heritage Assoc	Old Wilmington Rd from Person Street to 301	864-8426		None noted	11/1/2001
Workforce Development Center/Ray Avenue	Ray Avenue from Moore Street to Winslow	323-3421		sonja.thompson@ncmail.net	9/1/2003
World Fellowship Church/Larry J. Parker Jr.	Boone Trail from Owen Drive to Village Drive	482-0500		None noted	7/1/2005
18th Weather Squadron	Tokay & Glenoa	210-912-2376			5/17/2012

ADOPT-A-SITE

Air Force Sergeants Association Chapter 367/Jim Hollister	Myers Park	867-1938	hollister@afsa367.org	Jun-03	
Bob Dees Moonstone Jewelry & Gifts	Planter @ 306 Hay St	323-3711	MoonstoneJewelry@aol.com		
C. John Malzone Marketing/John Malzone	Cotton Exchange	261-2736 or 433-1119 or 485-0002	jmalzone@nc.rr.com	Sep-04	
Communications Squadron (43rd)/Tech Sgt Russ Spencer	Mazarick Park #1 and 2	394-2410	jerrard.croppps@pope.af.mil	Jan-02	

Air Force Sergeants Association Chapter 367/Jim Hollister	Myers Park	867-1938	hollister@afsa367.org	Jun-03	
Cross Creek Young Professional/Kelly Miller	Haymount Triangles	323-1069	NO LONGER PARTICIPATING	Jan-02	
Delta Sigma Theta/Ashley Poole	Seabrook Park	(252) 268-4065	aopook01@uncfsu.edu	Sep-05	Request sign be relocated from the parking lot of the recreation center to the edge of the park on Langdon Street so it can be seen.
Delta Sigma Theta/Isabella Hicks	Amtrak Train Station	424-8829	bellhicks@earthlink.net	Jun-97	
Fayetteville Arsenal Camp Sons of Confederate Veterans/Bruce Tyson	Arsenal Park	485-4286	taller30@nc.rr.com	Jan-01	left message at 484-6277 for Bruce Tyson to call me back and inform me if still active in clean- ups. No activity on file since 2005.
Fayetteville Appearance Commission/Jimmy Teal	Landscaped area behind CVS on Robeson	433-1996	none noted	Jan-00	
Gilbert Theatre/John Townsend	Cape Fear River Trail	678-7186	gilberttheater@aol.com	Jan-05	
Goad, Albert M. (memory)	Roy G. Turner Park	(910) 728-6440	lowered.atmosphere@yahoo.com	Jan-10	
Jennifer R. Cooney/Haymount Triangle	Haymount Triangles	860-8080	cooney@cooneylawfirm.net		
Lafayette Cardinals/Carla Hildebrand/Luther Jeralds Middle School	Cross Creek Cementary #1	822-2517	none noted	Oct-06	Application on File - Will keep same name and sign currently in place
Libertarian Party of Cumberland/Pete Camp	Cross Creek Park	875-3983	NO LONGER PARTICIPATING	Jul-00	
Moonlight Communications	Woodcrest, Pinevalley Loop & Branson Street	486-9036	video@moonlight1.com	Sep-06	
Reid Ross Classical School National Honor Society/Priscilla Covington	3200 Block of Ramsey Street	488-8415		Sep-06	
Reid Ross Classical School/Teresa Hutchinson	Veteran's Park	488-8415	none noted	Aug-01	

Air Force Sergeants Association Chapter 367/Jim Hollister	Myers Park	867-1938	hollister@afsa367.org	Jun-03	
Rzonca's Rzesources/Julianna Rzonca	Rainbow Park @ Stamper Rd & McGougan Rd	485-3395	sejorz@peoplepc.com	Apr-04	
St. James Lutheran Church/Jim Rosser	Honeycutt Park	484-8052	none noted	Jan-01	
Steel Magnolias/Brothers Keeper/Lucretia McKoy	Martin Luther King Park	822-9077	none noted	Jan-01	
Sun & Moon Productions/Tammy Simmons-Morse	Rowan Park	485-5670	galabaset@aol.com	Apr-01	
Terry Sanford AFJROTC/Chief Bridges	Woodrow Street Park	485-3526	nc-032@afjrotc.net	Feb-00	
TRS Detachment 373rd/Steve Conkin	Westover Park	394-4893	none noted	Mar-05	Check - No activity in folder (3/15)
Waste Industries/Mike Collins	Creek @ Winslow & Blount	423-4122	gregmay@waste-ind.com	Mar-06	Faxed application and information on 3/16/06.
Up and Coming/Bryanna Nelson	Ray Avenue	484-6200	Bryanna@upandcomingmag.com	Apr-04	
Lowered Atmosphere Car and Truck Club	Ft Bragg Road to Hull at Terry Sanford Sch	728-6440	ered.atmosphere@yahoo.com	Apr-10	Submitted work Order for sign - 4/19/10
In Memory of Mr. And Mrs. Fred Welch	General Lee Park	728-6440	ered.atmosphere@yahoo.com	Apr-10	Submitted work Order for sign - 4/19/10
Tristan & Melinda Harrington	Pine Hill Park	286-7027	blinda.harrington@us.army.mil	Apr-10	Submitted work Order for sign - 4/19/10
ADOPT-AN-AREA					
ORGANIZATION / INDIVIDUAL	AREA ADOPTED	AMOUNT	DATE PAID	PLAQUE ORDERED	DATE INSTALLED
Fayetteville Area Tri Warriors / Cross Creek Cycle Club	Cape Fear River Trail Bridge mile marker 22-23	\$ 500	7/23/2013	N/A	N/A
Friends of Officer Bundy	Cape Fear River Trail Covered Bridge	\$ 500	8/26/2013	8/26/2013	9/2/2013
Judge Jim Ammons	Flag mural @ Festival Park	\$ 200	10/16/2013	10/17/2013	

[illegible]

Take down sign for adopt-a-street														
Cascade Street from Seabrook Street up two														
Maintained by Mr. Brent Goad of Lowered														

Has agreed to change from Jasper Street to															
INACTIVATED															
2/23/10 - Left message to call with e-mail address:															
Wants sign placed on Wall Street and Neville Street															

														Ms. Lisa Levy-Project Coordinator

* INACTIVE - SEE: "TAKING YOUTH SERIOUSLY"									

Bridges: (on the Cape Fear River Trail)

- Sandy Dam Bridge
- Covered Bridge & Trestle Boardwalk (Officer Bundy)
- Big “V” Wooden Bridge
- Three Ravines Bridge (“Emma’s Bridge)
- Evans Creek Bridge

Adopted

Trails: (Cape Fear River)

- Section 1 – Jordan Soccer Complex to Mile Marker #1
- Section 2 – Mile Marker #1 to Mile Marker #2
- Section 3 – Mile Marker #2 to Mile Marker #3
- Section 4 – Mile Marker #3 to Clark Park

Hay Street Landscape Box

- #1 100 Block (Small) By Market House
- #2 100 Block (Large) By Market House
- #3 100/200 Block (Large)
- #4 300/200 Block (Large)

Street Adopted	Sites Adopted
Robeson Street from the museum to MLK Bridge	Myers Park
Glensford Drive from Brighton to Morganton Road	Planter @ 306 Hay St
Hope Mills Rd to Fisher and Cumberland	Cotton Exchange
Old Bunce Road from 71st School to Bunce Road	Mazarick Park #1 and 2
Bow Street/Maiden Lane	Haymount Triangles
Scyamore Dairy Road from Bragg Blvd to McPherson Ch	Seabrook Park
Village Drive from Ireland to Robeson	Amtrak Train Station
Dundle Road from Stoneypoint down	Arsenal Park
Owen Drive from Raeford Road to corner @ 316 Oyster Bar	Landscaped area behind CVS on Robeson
Murchison Road from Langdon St to Rowan	Cape Fear River Trail
Redwood Street (2miles)	Haymount Triangles
Legend Avenue from Skibo road to Sycamore Dairy Road	Cross Creek Cementary #1
Marlboro Road from Raeford Rd to Village Dr.	Cross Creek Park
Mckimmon Road, Chester Circ and Anarine Road	Woodcrest, Pinevalley Loop & Branson Street
Hawley Lane from Grove St to Cool Spring St.	3200 Block of Ramsey Street
Cain Road	Veteran's Park
Eccles Park	Rainbow Park @ Stamper Rd & McGougan Rd
McPherson Church Road from Cliffdale to Skibo Road	Honeycutt Park
Langdon Street from Murchison Road to Ramsey Street	Martin Luther King Park
Abilene & Rancho Drive	Rowan Park
Rosehill Road to Ramsey Street to Country Club Dr.	Woodrow Street Park
Jasper Street from Murchison Rd to W. Cochran	Westover Park
Bradford Avenue and Woodside Avenue	Creek @ Winslow & Blount
Purdue Drive	Ray Avenue
Moore Street from Ramsey St to Murchison Road	
Fort Bragg Road from Devers to Haymount Triangle	
Deep Creek Road & Shad Bush Lane	
Filter Plant from Murchison Road to Bragg Blvd	

The adoption fee includes application/administration fee that could be used by FCPR should, in the sole opinion of the department, an area need additional maintenance or cleanup. Individuals/groups will be able to “adopt” via the FCPR website, which will include application forms, interactive maps and ability to pay fees. FCPR will review additional adoption opportunities as they become available.

FCPR will review additional adoption opportunities as they arise; some adoptions may not include the maintenance or cleanup requirements.

Applicants will automatically renew each year, unless they fail to complete the required number of cleanups or they request to be removed from the program. Failure to complete obligations will prevent future adoptions by your organization. The City of Fayetteville reserves the right to cancel this privilege at any time.

A coordinator should be appointed from each organization that participates in the Outdoor Adoption Program. It is the coordinator’s responsibility to ensure the group follows the program requirements and safety guidelines. Each coordinator should take a few minutes before each cleanup to conduct a brief review of the following safety tips with the group. Safety is the number one concern, so please be alert and safety conscious at all times.

The coordinator can pick up trash bags and safety vests from the FCPR Parks Division at 280 Lamon St. during normal business hours of Monday–Friday; 8 a.m.–5 p.m.

Program Requirements

- A coordinator must be appointed from each organization to ensure program requirements are followed and oversee cleanups
- An adult supervisor over the age of 18 **must** be present at all times during any cleanup
- **No one** under the age of 12 is allowed to participate in a **roadside** cleanup
- Any participant involved in a cleanup **must** wear a high visibility safety vest if within 10 feet of a roadway; vests are provided by the City of Fayetteville

- **Adopt-A-Street/Adopt-A-Park Facility/Adopt-A-Gateway:** Each group **must** complete at least six cleanups during the calendar year (Jan. 1 - Dec. 31); the total number of required cleanups will be adjusted the first year, according to the months remaining after the date the project is approved

Gateways: Due to safety concerns, some gateways are not available for adoption since they are located in high traffic and/or congested areas

- **Adopt-An-Area:** Each group **must** complete at least four cleanups during the calendar year (Jan. 1 -Dec. 31); the total number of required cleanups will be adjusted the first year, according to the months remaining after the date the project is approved
- Progress reports must be submitted within one week of each cleanup; failure to submit the appropriate number of reports prior to Dec. 31 of each year will constitute a breach of the agreement. If a group breaches the agreement or requests to be discontinued, signs will be removed and the area will be made available for another group to adopt. **Failure to complete obligations will prevent future adoptions by your organization.**



280 Lamon Street
Fayetteville, NC 28301
910.433.1587/910.433.1102 Fax

Visit www.fcpr.us
for more information
about the Outdoor Adoption Program.

The City of Fayetteville, North Carolina does not discriminate on the basis of race, sex, color, age, national origin, religion, or disability in its employment opportunities, programs, services, or activities.

Outdoor Adoption Program



- Adopt-A-Street
- Adopt-A-Park Facility
- Adopt-A-Gateway
- Adopt-An-Area



Outdoor Adoption Program

The Adoption Program provides Fayetteville-Cumberland Parks and Recreation a means to:

- Improve the appearance of Fayetteville's City streets, gateways and Parks and Recreation facilities
- Provide citizens (groups or individuals) an opportunity to honor others
- Enhance the parks experience for the public
- Encourage community involvement
- Foster appreciation for Parks and Recreation facilities
- Improve facility conditions without increasing operational or maintenance cost
- Create an additional revenue stream.

Adopt-A-Street/Adopt-A-Park Facility Programs

The Adopt-A-Street/Adopt-A-Park Facility Programs operate on a calendar year (Jan. 1 to Dec. 31). The terms of this agreement should be followed from the approval date until Dec. 31. The number of cleanups required in the first year will be adjusted according to the approval date. After the first year, applicants should complete six cleanups between Jan. 1 and Dec. 31 each year they remain in the programs. Participants must obey the Program Requirements and Safety Guidelines.

Adopt-A-Gateway Program

The Adopt-A-Gateway Program allows groups, organizations, individuals or businesses to adopt City and Neighborhood Gateways to provide landscaping and maintenance as a community service or in honor or memory to someone.

1. City Gateways are entrances into the City limits and located on a major thoroughfare. The landscaping needs in these areas are greater and reflect the desire of the City to improve its gateways. Acknowledgement signs are \$250-\$500 per year based on size and material.

2. Neighborhood Gateways are entrances into neighborhoods. There is no charge for the adoption; a sign naming the organization must be approved by NCDOT and shall be placed consistent with City of Fayetteville and NC Department of Transportation regulations. Standard signs are 9"-15" in height and 30"-42" in width with a maximum of 19 spaces per line.

The Adopt-A-Gateway Program operates on a calendar year, and the terms of this agreement should be followed from the approval date until Dec. 31. The number of cleanups required in the first year will be adjusted, according to the approval date. After the first year, applicants **should complete 12 cleanups for City Gateways and six cleanups for Neighborhood Gateways** between Jan. 1 and Dec. 31 each year they remain in the programs. Participants must obey all Program Requirements and Safety Guidelines.

Adopt-An-Area Program

The Adopt-An-Area Program allows groups or individuals to adopt a component of a park in memory of or honor to someone. Adoption areas

include a bench, playground, picnic shelter, a section of a trail or a bridge on a trail. Once an adoption fee is paid, an agreement is signed with FCPR to provide general care and maintenance around the adopted area once per quarter for a period of five years. Individuals/groups can designate the specific area they wish to adopt or allow FCPR to assign an area. A plaque/plate will be provided by FCPR and attached to the component for five years. Adoption fees are:

Element	Annual Fee	Total – 5 Years
Bench	\$25	\$125
Brick Planter	\$75 + plant material	\$375
Bridge	\$100	\$500
Playground	\$75	\$375
Picnic shelter	\$75	\$375
Trail section	\$150	\$750

The "Brick Planter" adoption allows for a memorial plaque/plate to be affixed to a planter located on Hay Street in downtown Fayetteville. However, in addition to an adoption fee, the individual/organization will purchase plant materials from a list approved by FCPR; the organization can choose one of three designs. FCPR will be responsible to plant the material and maintain the planter.

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Bart Swanson, Housing and Code Enforcement Division Manager
DATE: November 18, 2013
RE: **Uninhabitable Structures Demolition Recommendations**
512 Fair Street
606 Matthews Street
1900 Slater Avenue

THE QUESTION:

Ordinances to demolish blighted structures.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 2: More Attractive City- Clean and Beautiful; Goal 3: Growing City, Livable Neighborhoods- A Great Place To Live

BACKGROUND:

512 Fair Street

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. The structure is a vacant residential home that was inspected and condemned as a blighted structure on June 27, 2012. A hearing on the condition of the structure was conducted on July 18, 2012, in which one of the heirs attended. A notice of the hearing was published in the Fayetteville Observer newspaper. A subsequent Hearing Order to repair or demolish the structure within 90 days was issued and mailed to the owner on July 19, 2012. To date there have been no repairs to the structure. The utilities to this structure have been disconnected since August 2011. In the past 24 months there have been 7 calls for 911 service to the property. There have been 15 code violation cases with no pending assessments. The low bid for demolition is \$2,900.00.

606 Matthews Street

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. The structure is a vacant residential home that was inspected and condemned as a blighted structure on June 19, 2012. A hearing on the condition of the structure was conducted on July 11, 2012 in which the owner did not attend. A subsequent Hearing Order to repair or demolish the structure within 60 days was issued and mailed to the owner on July 12, 2012. To date there have been no repairs to the structure. The utilities to this structure have been disconnected since January 2008. In the past 24 months there have been no calls for 911 service to the property. There have been no code violation cases and no pending assessments. The low bid for demolition is \$2,720.00.

1900 Slater Avenue

The City Inspector is required to correct conditions that are found to be in violation of the Dwellings and Buildings Minimum Standards. The structure is a vacant residential home that was inspected and condemned as a blighted structure on June 6, 2012. A hearing on the condition of the structure was conducted on June 21, 2012, in which the owner attended. A subsequent Hearing Order to repair or demolish the structure within 90 days was issued and mailed to the owner on June 22, 2012. To date there have been no repairs to the structure. The utilities to this structure have been disconnected since November 2010. In the past 24 months there have been 30 calls for 911 service to the property. There have been 10 code violation cases with no pending assessments. The low bid for demolition is \$1,900.00.

ISSUES:

All subject properties are sub-standard and detrimental to the surrounding neighborhood and promote nuisances and blight, contrary to the City's Strategic Plan.

BUDGET IMPACT:

The demolition of these structures will be \$7,520.00; there will be additional costs for asbestos testing and abatement if needed.

OPTIONS:

- Adopt the ordinances and demolish the structures (recommended).
- Abstain from any action and allow the structures to remain.
- Defer any action to a later date.

RECOMMENDED ACTION:

Staff recommends that Council move to ADOPT the ordinances authorizing demolition of the structures identified below:

512 Fair Street

606 Matthews Street

1900 Slater Avenue

ATTACHMENTS:

Aerial Map- 512 Fair Street

Docket- 512 Fair Street

Ordinance- 512 Fair Street

Photo 1- 512 Fair Street

Photo 2- 512 Fair Street

Photo 3- 512 Fair Street

Photo 4- 512 Fair Street

Photo 5- 512 Fair Street

Aerial Map- 606 Matthews Street

Docket- 606 Matthews Street

Ordinance- 606 Matthews Street

Photo 1- 606 Matthews Street

Photo 2- 606 Matthews Street

Photo 3- 606 Matthews Street

Photo 4- 606 Matthews Street

Photo 5- 606 Matthews Street

Aerial Map- 1900 Slater Avenue

Docket- 1900 Slater Avenue

Ordinance- 1900 Slater Avenue

Photo 1- 1900 Slater Avenue

Photo 2- 1900 Slater Avenue

Photo 3- 1900 Slater Avenue

Photo 4- 1900 Slater Avenue

Photo 5- 1900 Slater Avenue



Location: 512 Fair Street
PIN: 0436-06-6142

TO: Mayor
City Council Members
City Manager
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

Location	512 Fair Street
Property Owner(s)	Heirs of Annemarie Kraemer King c/o Tititania J. Hightower, Fayetteville, NC
Date of Inspection	June 27, 2012
Date of Hearing	July 18, 2012
Finding/Facts of Scheduled Hearing	Notice to repair/demolish the structure within 90 days mailed July 19, 2012
Owner's Response	None
Appeal Taken (Board of Appeals)	No
Other	Utilities disconnected since August 2011.
	Hearing was advertised in the Fayetteville Observer July 2012.
Police Calls for Service (past 2 yrs)	7

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 18th day of November, 2013.

Frank Lewis, Jr.

Sr. Code Enforcement Administrator (Housing)

**AN ORDINANCE OF THE CITY COUNCIL
OF
FAYETTEVILLE, NORTH CAROLINA**

**Requiring the City Building Inspector
to correct conditions with respect to,
or to demolish and remove a structure
pursuant to the
Dwellings and Buildings Minimum Standards
Code of the City**

The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

512 Fair Street
PIN 0436-06-6142

BEGINNING at a point in the northern right of way of Fair Street (50 foot right of way), said point being North 78 degrees 26 minutes 00 seconds East 227.00 feet, more or less, from the centerline of Deal Street at its intersection with Fair Street, and running thence with the northern right of way margin of Fair Street North 78 degrees 26 minutes 00 East 135.00 feet to an existing iron pipe in the northern margin of Fair Street; thence North 08 degrees 10 minutes 00 seconds West 160.30 feet to an existing iron pipe; thence South 78 degrees 06 minutes 00 seconds West 144.0 feet to a point in the W.P. Squires former eastern line South 09 degrees 43 minutes 00 seconds East 159.20 feet to the point of beginning.

The owner(s) of and parties in interest in said property are:

Heirs of Annemarie Kraemer King
c/o Tititania J Hightower
6517 Rhemish Drive
Fayetteville, NC 28304

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before October 19, 2012.
- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.

- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:

None.

- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$2,900.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed and shall have priority as provided by law, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

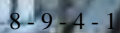
Adopted this __18th____ day of __November____, 2013.

CITY OF FAYETTEVILLE

BY: _____
Anthony Chavonne, Mayor

ATTEST:

Pamela Megill, City Clerk





8-9-5-1



8-9-6-1



8-9-7-1





Location: 606 Matthews Street
PIN: 0438-01-9588

TO: Mayor
City Council Members
City Manager
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

Location	606 Matthews Street
Property Owner(s)	Maye L. Walker, Spring Lake, NC
Date of Inspection	June 19, 2012
Date of Hearing	July 11, 2012
Finding/Facts of Scheduled Hearing	Notice to repair/demolish the structure within 60 days mailed July 12, 2012
Owner's Response	None
Appeal Taken (Board of Appeals)	No
Other	Utilities disconnected since January 2008.
Police Calls for Service (past 2 yrs)	2

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 18th day of November, 2013.

Frank Lewis, Jr.
Sr. Code Enforcement Administrator (Housing)

**AN ORDINANCE OF THE CITY COUNCIL
OF
FAYETTEVILLE, NORTH CAROLINA**

**Requiring the City Building Inspector
to correct conditions with respect to,
or to demolish and remove a structure
pursuant to the
Dwellings and Buildings Minimum Standards
Code of the City**

The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

606 Matthews Street
PIN 0438-01-9588

BEGINNING at a stake in the corner of Marshal McIver's line on Matthews Street and running westward with McIvers line 150 feet to a stake and thence 50 feet Southward to a stake and thence 150 feet parallel with the first line to Matthews Street, thence 50 feet along the western margin of said street to the beginning.

The owner(s) of and parties in interest in said property are:

Maye L. Walker
522 Chapel Hill Road Apt 106
Spring Lake, NC 28390-2173

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before September 12, 2012.
- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.
- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:

None.

- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$2,720.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed and shall have priority as provided by law, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

Adopted this __18th____ day of __November____, 2013.

CITY OF FAYETTEVILLE

BY: _____
Anthony Chavonne, Mayor

ATTEST:

Pamela Megill, City Clerk



606

DANGER



8-9-13-1



8-9-14-1







Location: 1900 Slater Avenue
PIN: 0428-94-5991

TO: Mayor
City Council Members
City Manager
City Attorney

Under provisions of Chapter 14, titled Housing, Dwellings and Buildings of the Code of the City of Fayetteville, North Carolina, the Inspection Department is requesting the docket of the owner who has failed to comply with this Code, be presented to the City Council for action. All proceedings that are required by the Code, Section 14-61, have been complied with. We request the Council take action under the provisions of Chapter 14 of the Code and applicable NC General Statutes.

Location	1900 Slater Avenue
Property Owner(s)	Ora D. McQueen and Robert Lee McQueen, Fayetteville, NC
Date of Inspection	June 6, 2012
Date of Hearing	June 21, 2012
Finding/Facts of Scheduled Hearing	Notice to repair/demolish the structure within 90 days mailed June 22, 2012
Owner's Response	None
Appeal Taken (Board of Appeals)	No
Other	Utilities disconnected since November 2010.
Police Calls for Service (past 2 yrs)	30

The Housing Inspector dispatched a letter to the owner(s) with information that the docket would be presented to the City Council for necessary action.

This is the 18th day of November, 2013.

Frank Lewis, Jr.

Sr. Code Enforcement Administrator (Housing)

**AN ORDINANCE OF THE CITY COUNCIL
OF
FAYETTEVILLE, NORTH CAROLINA**

**Requiring the City Building Inspector
to correct conditions with respect to,
or to demolish and remove a structure
pursuant to the
Dwellings and Buildings Minimum Standards
Code of the City**

The City Council of Fayetteville, North Carolina, does ordain:

The City Council finds the following facts:

- (1) With respect to Chapter 14 of the Dwellings and Buildings Minimum Standards Code of the City, concerning certain real property described as follows:

1900 Slater Avenue
PIN 0428-94-5991

BEGINNING at the intersection of the northwest margin of Normal Avenue (formerly Dogwood Avenue) with the northeast margin of Slater Avenue; and runs thence with the said northwest margin of Slater Avenue North 36 degrees 12 minutes West 50 feet to a stake; thence North 53 degrees 48 minutes East 150 feet to a stake; thence South 36 degrees 12 minutes east 50 feet to the northwest margin of Normal Avenue (formerly Dogwood Avenue); thence with the northwest margin of Normal Avenue South 53 degrees 48 minutes West 150 feet to the BEGINNING, and being Lots 15 and 16 in Block H of the Eva Marie Slater Subdivision known as Normal Heights, as per a plat of the same duly recorded in Book of Plats 9, Page 48 Cumberland County Registry.

The owner(s) of and parties in interest in said property are:

Ora D. McQueen & Robert Lee McQueen
3216 McChoen Drive
Fayetteville, NC 28301-3042

- (2) All due process and all provisions of the Dwellings and Buildings Minimum Standards Code of the City having been followed, the Inspections Director duly issued and served an order requiring the owners of said property to: repair or demolish the structure on or before September 22, 2012.

- (3) And said owners without lawful cause, failed or refused to comply with said order; and the Building Inspector is authorized by said Code, and NC General Statute 160A-443(5), when ordered by Ordinance of the City Council, to do with respect to said property what said owners were so ordered to do, but did not.
- (4) The City Council has fully reviewed the entire record of said Inspections Director thereon, and finds, that all findings of fact and all orders therein of said Inspections Director are true and authorized except:
- None.
- (5) That pursuant to NC General Statute 160A-443(6), the cost of \$1,900.00 shall be a lien against the real property upon which the cost was incurred.

Whereupon, it is ordained that:

SECTION 1

The Building Inspector is ordered forthwith to accomplish, with respect to said property, precisely and fully what was ordered by said Inspections Director as set forth fully above, except as modified in the following particulars:

This property is to be demolished and all debris removed from the premises, and the cost of said removal shall be a lien against the real property as described herein.

SECTION 2

The lien as ordered herein and permitted by NC General Statute 160A-443(6) shall be effective from and after the date the work is completed and shall have priority as provided by law, and a record of the same shall be available in the office of the City of Fayetteville Finance Department, Collections Division, 2nd Floor - City, 433 Hay Street, Fayetteville, NC 28301.

SECTION 3

This ordinance shall be in full force and effect from and after its adoption.

Adopted this __18th__ day of __November__, 2013.

CITY OF FAYETTEVILLE

BY: _____
Anthony Chavonne, Mayor

ATTEST:

Pamela Megill, City Clerk



8-9-20-1









8-9-24-1

CITY COUNCIL ACTION MEMO

TO: Mayor and City Council
FROM: Russ Rogerson, The Fayetteville Regional Chamber, Rebecca Rogers-Carter, The City of Fayetteville, Sally Shutt, Cumberland County
DATE: November 18, 2013
RE: **Report on the Federal Advocacy Program**

THE QUESTION:

RELATIONSHIP TO STRATEGIC PLAN:

This item supports the City's goal of Sustainable Organizational Capacity through federal advocacy to protect City interests and assets and the City's goal of Citizen Engagement and Partnerships through its partnership and collaborative efforts with Cumberland County and the Fayetteville Regional Chamber.

BACKGROUND:

The City of Fayetteville, Cumberland County and the Fayetteville Regional Chamber have a federal advocacy partnership that has worked collaboratively through a contracted lobbying firm to pursue federal legislative advocacy and funding assistance for strategic focus areas identified in an annual, collectively established federal agenda. Federal funding and policy decisions are critical to the growth and strength of our community. In the best interest of their constituents, the partners have prioritized infrastructure, technology and programmatic needs. The combined advocacy efforts protect and preserve essential community assets and resources, allowing Fort Bragg and its surrounding metropolitan and unincorporated areas to thrive.

Recently, the partnership adopted a new Federal Advocacy Partnership Memorandum of Understanding (MOU) to more effectively respond to the new federal funding paradigm, which reflects a change in focus from legislative earmarks to administrative allocation through competitive grants. The partnership's coordinating committee, Rebecca Rogers Carter, Russ Rogerson and Sally Shutt, have collaborated on the development of a Federal Advocacy Program based on the partnership's Memorandum of Understanding. The partnership's coordinating committee is seeking direction on how to proceed with the Federal Advocacy Program.

The Chamber issued a request for proposals for federal legislative consulting services and received two responses. FaegreBD quoted \$7,500 per month or \$90,000 for twelve month contract. The company would seek reimbursements for business-related reimbursable expenses. The Ferguson Group quoted \$144,000 per year for professional services and \$8,000 for business-related reimbursable expenses, the same fee it has been charging the partnership since 2008. The committee met several times to discuss and evaluate the two proposals.

Based on these discussions the committee recommends contracting with FaegreBD for six months starting in January or February 2014 to develop the community federal advocacy agenda and a strategy to achieve the goals set forth in the MOU and Federal Advocacy Program. The committee also recommends tying the federal advocacy agenda setting process to the fiscal year as opposed to the calendar year and holding the next federal agenda-setting workshop on or about February 18, 2014. This change will assist the partnership with future program performance evaluation and resulting budget and contract decisions.

The following attachments provide more detail about the Federal Advocacy Program and action plan moving forward.

ISSUES:

N/A

BUDGET IMPACT:

None.

OPTIONS:

1. Adopt the Federal Advocacy Program based on the partnership's Memorandum of Understanding and proceed with the action plan as presented.
2. Provide additional direction to the City Manager.

RECOMMENDED ACTION:

Adopt the Federal Advocacy Program based on the partnership's Memorandum of Understanding and proceed with the action plan as presented.

ATTACHMENTS:

MOU

13 Adopted Fed Agenda

Strategy for Program

Program

Action Plan

COPY



City of
Fayetteville
North Carolina



CUMBERLAND
* COUNTY *
NORTH CAROLINA



Fayetteville Regional
CHAMBER

THIS MEMORANDUM OF UNDERSTANDING, entered into this 28th day of May 2013, by and between the CITY OF FAYETTEVILLE ("City"), acting by and through its duly elected City Council, the COUNTY OF CUMBERLAND ("County"), acting by and through its duly elected Board of Commissioners and the FAYETTEVILLE REGIONAL CHAMBER ("Chamber"), acting through its Board of Directors, hereinafter "The Partners."

Whereas, the City, County, and the Chamber have successfully worked collaboratively through a common contractor to pursue federal funding for projects identified each year; and

Whereas, the federal funding system focus has changed from legislative designation to administrative allocation through competitive grants; and

Whereas, due to the importance of military spending to the local economy, federal funding and policy decisions are critical to the growth and strength of the City, County, and Chamber; and

Whereas, The Partners believe that it is in best interest of their respective constituents to collaborate on the pursuit of a federal advocacy agenda and federal designation and grant funding opportunities; and

Whereas, the operating practices and resources of the partnership must be revised to respond effectively to the new federal funding paradigm; and

Whereas, the City, County, and Chamber have partnered to create and support the Economic Development Alliance of Fayetteville and Cumberland County ("Alliance") for the purpose of serving job creation and development in the region;

NOW THEREFOR; City of Fayetteville, County of Cumberland, and the Fayetteville Regional Chamber agree as follows:

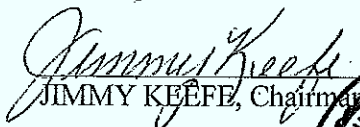
1. Priority areas for advocacy and pursuit of federal grant opportunities include
 - a. Military spending and policy; and
 - b. Transportation and infrastructure spending and policy; and
 - c. Public safety and community quality of life spending and policy; and
 - d. Education and training spending and policy.

2. The Partners will designate representatives for a coordinating committee that will be responsible for
 - a. Developing Partner legislative advocacy agenda; and
 - b. Responding to legislative issues as they arise; and
 - c. Resource allocation and prioritization ; and
 - d. Coordination and collaboration of federal grant opportunities.
3. Federal Advocacy Agenda:
 - a. Annual Priorities: The Partners will meet annually to establish a federal advocacy agenda that will identify up to ten (10) highest priority position statements to be the focus of their combined advocacy efforts.
 - b. Federal Representation Resource: The Alliance will contract for professional services to assist the Partnership with:
 - i. Development and pursuit of the legislative advocacy agenda focused on policy; and
 - ii. Administrative advocacy in pursuit of grant funding; and
 - iii. Identification, pursuit and advocacy of federal designation opportunities that meet the goals of the established legislative advocacy agenda.The cost of this contract will be divided equally between the Partners.
4. Federal Grant Funding:
 - a. Collaborative Efforts: The Partners will collaborate on seeking and pursuing opportunities for federal grant funding on issues and projects defined in the legislative advocacy agenda. This effort will include developing a unified resource for grant research focused on developing grant opportunities for existing programs and needs of any partner organization, grant writing assistance, and agency advocacy.
 - b. Federal Grant Support Resource: The Alliance will secure resources to research federal grant opportunities which will incorporate support for grant writing and may include contracting, FTE, or a combination thereof. The cost of this resource will be divided between the Partners as agreed by the parties.

THIS MEMORANDUM OF UNDERSTANDING renews automatically on an annual basis until such time that a member of the Partnership provides 60 day advance written notification of cancellation to all parties.

CUMBERLAND COUNTY BOARD OF COMMISSIONERS

CITY OF FAYETTEVILLE


JIMMY KEEFE, Chairman

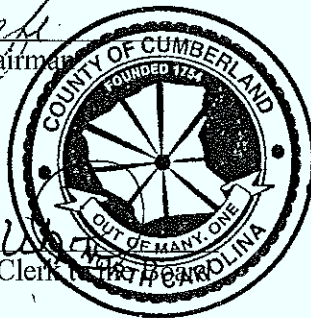

ANTHONY G. CHAVONNE, Mayor

ATTEST:

ATTEST:


CANDICE WHITE, Clerk


PAMELA J. MEGIEL, City Clerk



This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.



AMY CANNON, Finance Director

APPROVED AS TO FORM:



RICK MOREFIELD, County Attorney

FAYETTEVILLE REGIONAL CHAMBER



DOUGLAS S. PETERS, CEO

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

 6/10/13

LISA T. SMITH, Chief Financial Officer

APPROVED AS TO FORM:



KAREN M. MCDONALD, City Attorney



Calendar Year 2013 Federal Legislative Agenda

The City of Fayetteville, Cumberland County, and the Fayetteville Regional Chamber of Commerce have formed a strategic partnership to establish a federal advocacy agenda. Federal funding and policy decisions are critical to the growth and strength of our community. In the best interest of their constituents, the partners have prioritized infrastructure, technology and programmatic needs. The combined advocacy efforts will protect and preserve essential community assets and resources, allowing Fort Bragg and its surrounding metropolitan and unincorporated areas to thrive. Therefore, the partners call upon the advocacy of its Congressional delegation to support their highest priorities.

HOMELAND SECURITY, EMERGENCY RESPONSE AND PUBLIC SAFETY

Combating gun violence, gangs, domestic violence and human trafficking are top priorities. Our community operates under constant public safety danger based on the national security agenda, proximity to Fort Bragg, and our central location and accessibility to interstate highways. Interoperability improvements are a must for our community, yet there is no funding to do so. The military security component creates unique challenges in communications between first responders and the military. County public safety agencies, the city police and fire departments are in need of updating radio systems to be P-25 compliant. Additionally, radio interoperability between the city, county and Fort Bragg emergency services is very limited.

Position: Invest in our nation's homeland security, public safety and local first responders.

PRIORITY INITIATIVES

- Gun Safety
- Technology inter-operability
- Joint Emergency Operations Center
- Anti-Human Trafficking
- Innovative Family Justice Center
- Court programing for domestic violence and sexual assault prevention

ACTION STEPS

Legislative Advocacy:

- Design language for FY14 Justice Appropriations that gives the Justice Department the flexibility it needs to allow discretionary funding of a competitive grant for public safety technology
- Assist acquisition of communication systems for P-25 compliance between military, first responders, and public safety officers
- Incentivize joint emergency & crisis services; support government modernization
- Fund Homeland Security
- Support anti-human trafficking infrastructure funding; port, highway, and street development to provide effective police response

Federal Assistance:

- Smart Policing Initiative
- Project Safe Neighborhoods
- Violence Against Women Act
- Anti-gang initiatives
- Byrne Criminal Justice Innovation program



Calendar Year 2013 Federal Legislative Agenda

VETERANS, HEALTH & HUMAN SERVICES

North Carolina has a population of 760,000 veterans. Cumberland County has the third largest population of veterans for any county and ranks first for all categories of disabled veterans, including 100 percent disabled. Fayetteville and Cumberland County are proud to be the home of Fort Bragg, the second largest military installation in the world, and consider it a privilege to serve active-duty military and veterans. Yet the impact on local government, and our health and human services agencies, is significant. Increasingly limited resources are threatening the delivery of health-related and social services for veterans and our military population, who have been at war continuously for 12 years.

Position: Advocate for targeted funding and legislation to assist with veterans support services, mental health resources, homelessness, and military workforce development.

PRIORITY INITIATIVES

- Support court innovation programs with emphasis on veterans and mental health needs
- Crisis Intervention Training
- Emergency shelter & homeless prevention program support
- CDBG & HOME: Affordable Housing

ACTION STEPS

Legislative Advocacy:

- Advocate for veterans support services provided by local governments: transportation, mental health, crisis intervention, medical care, transitional housing and counseling, including creating new legislation where needed
- Work with national associations and coalitions to protect and sustain HOME and CDBG funding
- Support funding for Institute for Museum and Library Services

Federal Assistance:

- Veterans Treatment Court, grant application 2013.
- Seek capital funding for drop-off center and programmatic support for Crisis Intervention Training
- Street Outreach Program
- Urban and Non-Urban Homeless Veterans Reintegration
- Seek federal funding sources for a dedicated county law enforcement officer to work with homeless



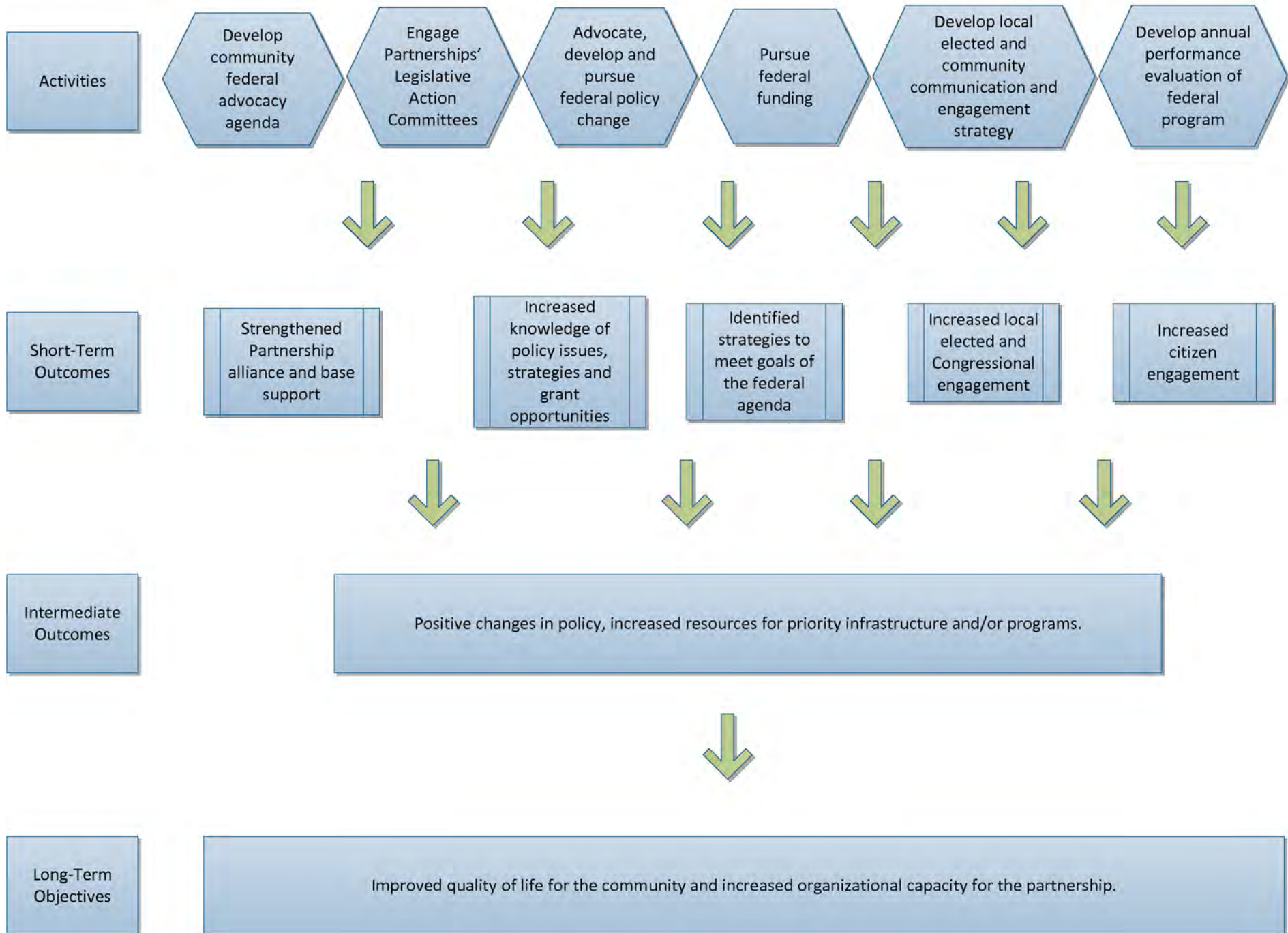
Calendar Year 2013 Federal Legislative Agenda

TRANSPORTATION, ENVIRONMENT & INFRASTRUCTURE	<p>Fayetteville's infrastructure network is vital to our community's safety, connectivity, economic development and growth. As local governments respond to fiscal challenges and existing infrastructure ages and lags behind growth, federal support is critical. Public transit is a Smart Growth environmental priority for the region. Fayetteville's public transit system has experienced an increase in public transit use of 80 percent since 2008. Airport funding must be protected and expanded as our military and business sectors greatly rely on the services provided by Fayetteville Regional Airport and are invested in the future growth of these services. It is imperative that we preserve our natural resources, and green spaces to create beautiful, walkable communities. Fayetteville's parks and recreation facilities lag behind the national standard and struggle to provide quality of life programs for all its citizens, including the military families our community supports.</p>
<p>Position: Advocate for the authorization of a well-funded, long-term, comprehensive surface transportation program. Advocate for enhanced congressional support for urban design, air quality improvement, traffic calming, street widening, and pedestrian safety improvements on roadways and corridor projects that will promote business development and necessary military transit. Advocate for infrastructure funding to accelerate job growth, assist communities with declining infrastructure, including capital projects for Parks and Recreation facilities.</p>	
<p>PRIORITY INITIATIVES</p> <ul style="list-style-type: none"> • Protection of public transit system formula funding • Expanding public transportation programs (rural, startups, etc) • Protection and expansion of airport funding • Expansion of roadways and utilities for business development • I-295 accelerated schedule • Environmental protection • Community gateway and transportation corridor beautification funding • Capital funding for maintenance, upgrades and additional facilities 	<p>ACTION STEPS</p> <p><i>Legislative Advocacy:</i></p> <ul style="list-style-type: none"> • Draft FAST amendments for surface transportation (MAP-21) • Advocate for comprehensive regional master plan development funding • Engage in planning process to prepare for smart communities/smart growth strategies, funding and implementation • Support expanded authority in Water Resources Development Act under Section 219(f) for water and sewer upgrades and remove appropriation restrictions on Corps new starts • Support the Community Parks Revitalization Act and innovative financing of park and recreational infrastructure <p><i>Federal Assistance:</i></p> <ul style="list-style-type: none"> • Seek funding for traffic safety study • Help public transit system maximize federal resources • Help Fayetteville Area Metropolitan Planning Organization maximize federal resources • Seek funding to study I-95 corridor improvements • Explore ways to help NCDOT fund an accelerated construction schedule for the Fayetteville-Cumberland County I-295 Outer Loop • Seek grants to fund parks and recreational facilities



Calendar Year 2013 Federal Legislative Agenda

ECONOMIC & WORKFORCE DEVELOPMENT	<p>Economic and talent development, in light of sequestration, creates an urgent need for industry diversification in Cumberland County. We are seeking ways to support business growth and new industry development to combat the county's high unemployment rate. Additionally, attempts to attract large industry to the area have brought to light an infrastructure deficit. Economic development initiatives would benefit greatly from the purchase and development of a mega site.</p>
<p>Position: Advocate for additional legislative attention to promote small business development, assist the growth of the local food economy, and workforce innovation grant funding for internships/ work-based learning in high growth fields to support veteran employment and skilled workforce for businesses.</p>	
<p><u>PRIORITY INITIATIVES</u></p> <ul style="list-style-type: none"> • Foreign Direct Investment attraction • Mega site • Workforce training initiatives and hiring incentives • Farmers markets • Wounded Warrior employment assistance • Murchison Road Corridor Development 	<p><u>ACTION STEPS</u></p> <p><i>Legislative Advocacy:</i></p> <ul style="list-style-type: none"> • Support funding for U.S. Department of Labor Workforce Innovation Grant programs and High Growth Job Development Initiatives, as well as funding for work-based experiential learning, internships/ externships, apprenticeships, youth work programs and business hiring incentives for veterans and ex-offenders • Support funding for workforce development programs for veterans, military families and wounded warriors • Support Veterans Administration and Small Business Administration programs that provide small business loans <p><i>Federal Assistance:</i></p> <ul style="list-style-type: none"> • Seek funding for mega site infrastructure development funding • U.S. Economic Development Administration Public Works and Economic Adjustment Assistance Programs • U.S. Department of Agriculture's Farmers Market Promotion Program • Seek funding and leverage partnerships in an effort to promote economic development along the Murchison Road corridor
LOCAL GOVERNMENT SUSTAINABILITY	<p>Congressional support of fiscal tools that help ensure financial sustainability for local governments.</p>
<p><u>INITIATIVES</u></p> <ul style="list-style-type: none"> • Online Sales Tax • Municipal Bonds • Impact Aid 	<p><u>ACTION STEPS</u></p> <ul style="list-style-type: none"> • Support legislation that allows local governments to collect sales taxes from online sales • Oppose increasing costs of issuing municipal bonds • Oppose cuts to Impact Aid and support legislation that assists with school construction projects





City of Fayetteville, Cumberland County and the Fayetteville Regional Chamber

Framework for the Federal Advocacy Program

Goal:

To advocate for federal legislation, programs and funding that support the mission and priorities of the City of Fayetteville, Cumberland County and the Fayetteville Regional Chamber.

Background:

The City of Fayetteville, Cumberland County and the Fayetteville Regional Chamber have a federal advocacy partnership that works collaboratively to pursue federal legislative advocacy and funding assistance for strategic focus areas identified in an annual, collectively established federal agenda. This Federal Advocacy Program is an investment aimed at achieving policy gains which provide solutions to community issues and federal dollars to support priority projects and programs.

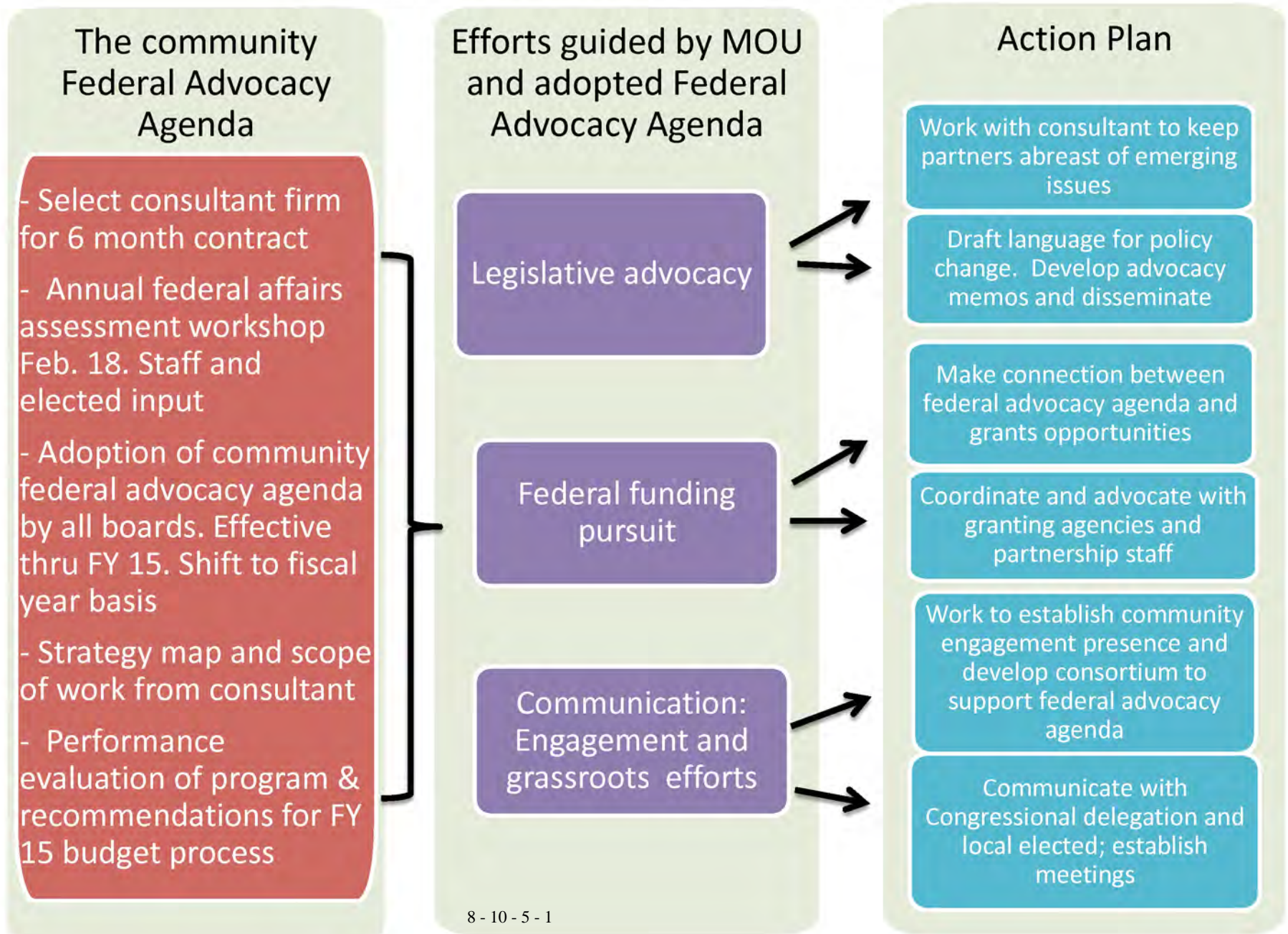
Federal funding and policy decisions are critical to the growth and strength of our community. In the best interest of their constituents, the partners have prioritized infrastructure, technology and programmatic needs. The combined advocacy efforts protect and preserve essential community assets and resources, allowing Fort Bragg and its surrounding metropolitan and unincorporated areas to thrive.

The program will work to ensure that policymakers are informed and engaged. We will deepen strategic alliances and public awareness as we find opportunities to bolster public support and engagement. Community groups are encouraged to collaborate on common policy and project priorities, which deepens our connection to public concerns.

Outcomes:

- Short-term outcomes (12 months): Strengthened partnership alliance, strengthened organizational capacity, increased partnership knowledge of policy issues and federal grant opportunities, identified strategies to meet goals, increased local elected and Congressional engagement, increased public awareness and engagement with federal issues impacting the community.
- Intermediate outcomes: Positive changes in policy, increased resources for priority infrastructure and/or programs.
- Long term outcomes: Increase the Partners' organizational capacity for core mission services and achieve a shift in social norms in our community that causes an improved quality of life for citizens.

ACTION PLAN MOVING FORWARD



CITY COUNCIL ACTION MEMO

TO: Mayor and Members of the City Council
FROM: Pamela Megill, City Clerk
DATE: November 18, 2013
RE: **Monthly Statement of Taxes for October 2013**

THE QUESTION:

RELATIONSHIP TO STRATEGIC PLAN:

BACKGROUND:

ISSUES:

BUDGET IMPACT:

OPTIONS:

RECOMMENDED ACTION:

ATTACHMENTS:

Tax Statement - October 2013




CUMBERLAND
★ COUNTY ★
NORTH CAROLINA

OFFICE OF THE TAX ADMINISTRATOR

117 Dick Street, 5th Floor, New Courthouse • PO Box 449 • Fayetteville, North Carolina • 28302
Phone: 910-678-7507 • Fax: 910-678-7582 • www.co.cumberland.nc.us

MEMORANDUM

To: Pamela Megill, Fayetteville City Clerk

From: Aaron Donaldson, Tax Administrator 

Date: November 1, 2013

Re: Monthly Statement of Taxes

Attached hereto is the report that has been furnished to the Mayor and governing body of your municipality for the month of October 2013. This report separates the distribution of real property and personal property from motor vehicle property taxes, and provides detail for the current and delinquent years.

Should you have questions regarding this report, please contact Catherine Carter at 678-7587.

AD/cc
Attachment

Celebrating Our Past....Embracing Our Future

EASTOVER - FALCON - FAYETTEVILLE - GODWIN - HOPE MILLS - LINDEN - SPRING LAKE - STEDMAN - WADE

TRUE

MACC: MONTHLY ACCOUNTING (TOTALS COLLECTED FOR MONTH)

CC: INCLUDES REAL & PERSONAL, LATE LIST, & PUBLIC SERVICE

FVT: FAYETTEVILLE VEHICLE TAX (\$5.00)

FAYETTEVILLE MACC LEDGER

2003-2013

October 2013

2013 FAY S WASTE FEE	2013 ANNEX	2012 CC	2012 VEH	2012 REVIT CC	2012 REVIT VEH	2012 FVT	2012 FTT	2012 SW	2012 FAY STORM WATER	2012 FAY RECYCLE FEE	2012 ANNEX
2,663.62	0.00	2,608.75	4,314.58	0.00	0.00	520.22	520.21	44.68	92.85	251.97	0.00
4,256.04	0.00	616.93	2,410.01	0.00	0.00	352.70	352.70	140.85	281.70	46.40	0.00
3,698.30	0.00	2,067.61	3,013.71	0.00	0.00	409.10	409.10	153.70	307.40	106.72	0.00
5,474.91	0.00	1,011.97	3,083.76	0.00	0.00	410.00	410.00	12.69	25.38	40.19	0.00
13,309.54	0.00	2,049.40	4,076.32	0.00	0.00	449.73	449.73	38.80	77.59	122.84	0.00
3,154.00	0.00	783.92	2,038.15	34.99	(0.84)	286.81	286.81	60.52	121.02	101.08	0.00
2,319.15	0.00	41.22	1,477.65	0.00	0.00	250.00	250.00	0.00	0.00	0.00	0.00
2,808.58	0.00	8,209.13	2,497.04	0.00	0.00	326.25	326.26	531.30	1,062.62	10.48	0.00
3,009.01	0.00	1,761.89	3,153.93	0.00	0.00	412.40	412.40	39.71	79.43	49.74	0.00
874.00	0.00	(131.93)	3,041.65	0.00	0.00	430.97	430.96	8.20	16.40	63.97	0.00
6,087.47	0.00	664.93	4,773.44	0.00	0.00	604.21	604.19	132.00	264.00	152.00	0.00
2,903.38	0.00	746.21	2,558.64	0.00	0.00	324.96	324.95	17.22	34.45	54.54	0.00
2,639.34	0.00	2,266.36	1,787.26	0.00	0.00	260.00	260.00	65.35	130.69	206.92	0.00
2,950.59	0.00	640.69	2,116.30	0.00	0.00	326.18	326.18	16.92	33.84	53.57	0.00
140,299.76	0.00	1,474.50	2,877.30	0.00	0.00	402.92	402.92	56.98	113.96	218.45	0.00
3,320.95	0.00	1,490.51	1,204.59	0.00	0.00	185.00	185.00	36.00	72.00	114.00	0.00
2,470.33	0.00	828.28	1,936.30	0.00	0.00	250.00	250.00	25.71	51.42	86.85	0.00
6,225.15	0.00	701.17	1,588.29	0.00	0.00	225.00	225.00	54.30	108.61	57.96	0.00
3,506.80	0.00	1,025.52	2,923.28	0.00	0.00	416.18	416.17	42.49	84.98	134.56	0.00
4,351.04	0.00	799.98	2,890.37	0.00	0.00	341.81	341.81	0.00	0.00	0.00	0.00
2,115.17	0.00	3,551.69	1,718.86	0.00	0.00	233.51	233.52	108.00	216.00	152.00	0.00
1,433.70	0.00	485.36	1,512.16	0.00	0.00	170.00	170.00	12.00	24.00	76.00	0.00
3,412.00	0.00	2,102.22	3,051.32	0.00	3.42	377.49	377.48	62.30	124.61	121.30	0.00
223,282.83	0.00	35,796.31	60,044.91	34.99	2.58	7,965.44	7,965.39	1,659.72	3,322.95	2,221.54	0.00

FAYETTEVILLE MACC LEDGER

October 2013

2003-2013

2011 CC	2011 VEH	2011 REVIT CC	2011 REVIT VEH	2011 FVT	2011 FTT	2011 SW	2011 FAY STORM WATER	2011 FAY RECYCLE FEE	2011 ANNEX	2010 CC	2010 VEH	2010 REVIT CC
299.35	216.10	0.00	0.00	40.26	40.25	0.00	0.00	0.00	0.00	43.38	29.95	0.00
0.00	(112.03)	0.00	0.00	5.00	5.00	0.00	0.00	0.00	0.00	0.00	59.50	0.00
517.52	108.41	0.00	0.00	35.00	35.00	12.00	24.00	38.00	0.00	34.33	31.83	0.00
81.56	191.76	0.00	0.00	42.15	42.16	0.00	0.00	0.00	0.00	45.51	7.66	0.00
130.87	88.05	0.00	0.00	28.66	28.66	0.00	0.00	0.00	0.00	88.69	4.52	0.00
148.91	30.40	0.00	0.00	10.00	10.00	11.01	22.02	34.86	0.00	16.71	(13.39)	0.00
0.00	25.60	0.00	0.00	10.00	10.00	0.00	0.00	0.00	0.00	31.92	13.50	0.00
55.70	55.96	0.00	0.00	10.00	10.00	0.00	0.00	0.00	0.00	0.00	28.41	0.00
61.90	58.27	0.00	0.00	21.20	21.20	0.00	0.00	0.00	0.00	50.12	(0.46)	0.00
(194.19)	79.48	0.00	0.00	15.00	15.00	0.00	0.00	0.00	0.00	(118.44)	0.00	0.00
218.88	218.18	0.00	0.00	23.56	23.57	12.00	24.00	38.00	0.00	143.78	124.56	0.00
30.14	44.35	0.00	0.00	10.00	10.00	0.00	0.00	0.00	0.00	0.00	47.24	0.00
945.19	65.79	0.00	0.00	15.00	15.00	35.67	71.33	112.95	0.00	229.82	0.00	0.00
391.35	77.00	0.00	0.00	25.22	25.22	12.00	24.00	38.00	0.00	4.50	21.25	0.00
27.26	88.98	0.00	0.00	17.84	17.84	0.00	0.00	0.00	0.00	26.19	68.85	0.00
481.02	45.18	0.00	0.00	5.00	5.00	12.00	24.00	38.00	0.00	340.47	95.97	0.00
0.00	71.38	0.00	0.00	20.00	20.00	0.00	0.00	0.00	0.00	0.00	70.92	0.00
119.95	98.37	0.00	0.00	25.00	25.00	0.00	0.00	0.00	0.00	42.78	0.00	0.00
1.76	135.89	0.00	0.00	39.28	39.27	0.00	0.00	0.00	0.00	41.40	40.16	0.00
181.47	78.56	0.00	0.00	49.70	49.71	0.00	0.00	0.00	0.00	62.75	48.03	0.00
195.96	127.58	0.00	0.00	33.29	33.29	0.00	0.00	0.00	0.00	160.76	5.83	0.00
85.65	82.69	0.00	0.00	7.54	7.55	0.00	0.00	0.00	0.00	59.03	27.91	0.00
567.72	(61.44)	0.00	0.00	5.00	5.00	24.00	48.00	76.00	0.00	387.78	(105.93)	0.00
4,347.97	1,814.51	0.00	0.00	493.70	493.72	118.68	237.35	375.81	0.00	1,691.48	606.31	0.00

FAYETTEVILLE MACC LEDGER

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2010 REVIT VEH	2010 FVT	2010 FTT	2010 SW	2010 FAY STORM WATER	2010 FAY RECYCLE FEE	2010 ANNEX	2009 & PRIOR CC	2009 & PRIOR VEH	2009 & PRIOR REVIT CC	2009 & PRIOR REVIT VEH	2009 & PRIOR FVT	2009 & PRIOR FTT
0.00	15.00	15.00	0.00	0.00	0.00	0.00	0.89	207.16	0.00	0.00	33.49	17.82
0.00	20.00	20.00	1.44	2.88	0.00	0.00	71.92	62.55	0.00	0.00	35.00	10.00
0.00	5.00	5.00	0.00	0.00	0.00	0.00	24.03	36.77	0.00	0.00	5.00	5.00
0.00	5.00	5.00	0.00	0.00	0.00	0.00	122.55	80.36	0.00	0.00	15.00	0.00
0.00	5.00	5.00	0.00	0.00	0.00	0.00	7.18	293.62	0.00	0.00	60.00	20.00
0.00	11.71	11.71	84.00	168.00	0.00	0.00	43.11	75.98	0.00	0.00	18.91	13.91
0.00	5.00	5.00	0.00	0.00	0.00	0.00	16.29	99.08	0.00	0.00	10.00	10.00
0.00	5.00	5.00	0.00	0.00	0.00	0.00	0.00	45.27	0.00	0.00	15.00	5.00
0.00	(5.00)	(5.00)	0.04	0.08	0.13	0.00	423.83	255.13	0.00	0.00	35.00	10.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
0.00	15.00	15.00	12.00	24.00	38.00	0.00	46.42	266.19	0.00	0.00	56.99	11.40
0.00	15.00	15.00	0.00	0.00	0.00	0.00	1.79	0.00	0.00	0.00	0.00	0.00
0.00	0.00	0.00	12.00	24.00	38.00	0.00	41.26	160.68	0.00	0.00	10.00	5.00
0.00	5.00	5.00	0.00	0.00	0.00	0.00	27.24	73.85	0.00	0.00	23.61	13.60
0.00	15.00	15.00	0.00	0.00	0.00	0.00	0.00	125.85	0.00	0.00	25.00	15.00
0.00	7.38	7.38	0.00	0.00	0.00	0.00	104.94	236.54	0.00	0.00	32.83	27.83
0.00	15.00	15.00	0.00	0.00	0.00	0.00	10.26	206.54	0.00	0.00	15.00	5.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00	12.47	9.44	0.00	0.00	10.00	0.00
0.00	10.00	10.00	0.00	0.00	0.00	0.00	4.97	271.28	0.00	0.00	10.00	5.00
0.00	15.00	15.00	0.00	0.00	0.00	0.00	93.84	239.03	0.00	0.00	25.00	5.00
0.00	0.00	0.00	0.00	0.00	0.00	0.00	79.39	185.19	0.00	0.00	30.00	25.00
0.00	5.00	5.00	0.00	0.00	0.00	0.00	67.84	129.44	0.00	0.00	20.00	5.00
0.00	(10.00)	(10.00)	12.00	24.00	38.00	0.00	0.00	81.64	0.00	0.00	19.86	9.86
0.00	159.09	159.09	121.48	242.96	114.13	0.00	1,200.22	3,141.59	0.00	0.00	505.69	219.42

FAYETTEVILLE MACC LEDGER

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2009 & PRIOR SW	2009 & PRIOR FAY STORM WATER	2009 & PRIOR FAY RECYCLE FEE	2009 & PRIOR ANNEX	FAY INTEREST	REVIT INTR	SW INTR	FAY STORM WATER INTEREST	Annex Interest	S WASTE INTEREST	FTT INTEREST	TOTAL TAX & INTEREST
0.00	0.00	0.00	0.00	1,395.96	1.24	4.18	8.65	0.00	22.99	117.46	139,274.83
0.00	0.00	0.00	0.00	695.48	0.00	9.33	18.64	0.00	3.36	70.58	114,991.55
6.09	0.00	0.00	0.00	889.26	0.02	13.88	27.54	0.00	13.10	74.77	147,718.40
0.00	0.00	0.00	0.00	786.48	0.00	2.53	5.06	0.00	8.00	73.39	163,891.82
0.00	0.00	0.00	0.00	1,154.37	0.05	3.83	7.66	0.00	12.14	84.94	309,518.87
0.00	0.00	0.00	0.00	905.19	3.12	31.91	63.82	0.00	23.20	67.90	122,881.90
12.00	0.00	0.00	0.00	482.25	0.77	5.37	0.00	0.00	0.00	55.56	68,353.49
0.00	0.00	0.00	0.00	1,299.63	0.00	46.45	92.89	0.00	0.72	61.26	136,061.44
0.00	0.00	0.00	0.00	1,163.61	0.00	2.78	5.57	0.00	2.13	78.49	154,013.58
0.00	0.00	0.00	0.00	531.90	0.00	0.10	0.20	0.00	3.69	73.84	38,032.16
0.00	0.00	0.00	0.00	1,526.12	0.00	12.98	25.96	0.00	19.83	116.40	219,376.06
0.00	0.00	0.00	0.00	580.62	0.00	2.13	4.25	0.00	6.73	62.69	87,993.61
0.00	0.00	0.00	0.00	1,004.54	0.00	14.61	29.18	0.00	46.22	62.36	94,609.77
0.00	0.00	0.00	0.00	586.35	0.00	3.21	6.41	0.00	10.15	61.54	136,655.62
12.00	0.00	0.00	0.00	815.88	0.43	10.12	9.12	0.00	17.81	77.71	2,560,226.23
0.00	0.00	0.00	36.75	538.83	0.00	7.34	10.95	1.34	17.37	39.59	80,746.82
0.00	0.00	0.00	0.10	621.73	0.00	2.13	4.26	0.00	6.79	41.24	91,700.25
0.00	0.00	0.00	0.00	392.11	0.00	4.23	8.45	0.00	3.41	35.82	193,160.04
0.00	0.00	0.00	0.00	717.21	0.00	3.97	7.96	0.00	12.61	59.84	148,939.68
0.00	0.00	0.00	0.00	846.35	0.00	0.00	0.00	0.00	0.00	69.06	163,988.36
0.00	0.00	0.00	0.00	752.45	0.00	9.54	19.03	0.00	13.47	44.28	54,305.49
0.00	0.00	0.00	0.00	392.06	0.00	1.06	2.12	0.00	6.70	25.90	55,132.71
0.00	0.00	0.00	0.00	872.56	0.10	12.86	25.73	0.00	34.02	54.19	126,053.63
30.09	0.00	0.00	36.85	18,950.94	5.73	204.54	383.45	1.34	284.44	1,508.81	5,407,626.31