

City of Fayetteville

433 Hay Street
Fayetteville, NC
28301-5537
(910) 433-1FAY (1329)

Meeting Agenda - Final City Council Regular Meeting

Monday, March 26, 2018

7:00 PM

Council Chamber

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

4.0 ANNOUNCEMENTS AND RECOGNITIONS

5.0 APPROVAL OF AGENDA

6.0 CONSENT AGENDA

6.01 [18-102](#) P18-11F City initiated rezoning of property from MR-5 - Mixed Residential to CC - Community Commercial Zoning, located at 135 Blount Street (E.E. Smith House) near the intersection of Blount and Chase, containing 1.19 acres and being the property of the City of Fayetteville.

Attachments:

[P18-11F zoning map](#)
[P18-11F Current Landuse Map](#)
[P18-11F Landuse Plan Map](#)
[Rezoning Application Smith House](#)
[Site Photo 1](#)
[Site Photo 2](#)
[Renovation Site Photo 3](#)
[Renovation Site Photo 4](#)

6.02 [18-107](#) Uninhabitable Structure Demolition Recommendation
603 Deep Creek Road

Attachments:

[Deep Creek Road, 603 - Aerial Map](#)
[Deep Creek Road, 603 - Photos](#)
[Deep Creek Road, 603 - Ordinance](#)

6.03 [18-124](#) Purchase Ballpark Scoreboard and Field Lighting for Baseball Stadium off Cooperative Agreements

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.

7.01 [18-010](#)

P18-01F The issuing of a Special Use Permit to allow a free standing cellular communications tower to be located in a MR-5 Mixed Residential district, the structure will be located at 1268 Ireland Drive near the intersection with David Street, containing 5.06 acres and being the property of REFUGE CHURCH.

Attachments:

[P18-01F zoning map](#)
[P18-01F Current Landuse Map](#)
[P18-01F Landuse Plan Map](#)
[Site Photos / Tower Simulations](#)
[Special Use Application](#)
[Letter Outlining UDO Requirements](#)
[Site and Equipment Plans](#)
[Determination of NO Hazard to Air Navigation](#)
[Left of Explanation](#)
[Beacon Tower's Collocation Policy](#)
[Antenna Structure Registration](#)
[Tower Removal Letter](#)

7.02 [18-055](#)

P18-08F rezoning of property from NC - Neighborhood Commercial to MR-5 Mixed Residential Zoning, located at the northwest corner of the intersection of Hoke Loop Road and Cliffdale Road, containing 2.7 acres (of 5.39 total acres) and being the property of HAROLD J & WIFE KIDD and HAROLD KIDD.

Attachments:

[P18-08F zoning map](#)
[P18-08F Current Landuse Map](#)
[P18-08F Landuse Plan Map](#)
[Map Amendment Application](#)
[Plot Plan](#)
[Site Plan](#)
[Site Photo 1](#)
[Site Photo 2](#)

- 7.03 [18-088](#) Small Cell Antennas Text Amendment to align the City's Unified Development Ordinance with the State General Statute recently adopted regarding reform of wireless communications infrastructure licensing and permitting to aid in the deployment of new technologies and Budget Ordinance Amendment 2018-22 to amend the fee schedule for related fees.

Attachments: [Proposed amendments to Article 30 to include ordinance small cell antennas - Fayetteville](#)
[Proposed amendments adding definitions for small cell towers - Final to Council Fayetteville - Small Cell Ordinance Table30-4.A2 Final to Council](#)
[BOA 2018-22 \(Fee Schedule Amendment\)](#)

- 7.04 [18-098](#) Code Amendments to clarify an Administrative Zoning Permit review and approval process within the following Code Sections: Review Procedures, Standards and Requirements for Development Applications, and Definitions

Attachments: [AMENDING ARTICLE; 30-2.A. adding Administrative Zoning Permit](#)
[AMENDING ARTICLE; Chapter 30 definition to include Administrative Permits](#)
[AMENDING ARTICLE; Section 30-2.C.12 Building Permits ok LH](#)
[Red Lined Changes - Chapter 30 - Administrative Zoning Permit](#)

- 7.05 [18-105](#) Resolution and Order for Closing a Portion of Merrimac Drive

Attachments: [Merrimac Order](#)
[Merrimac Dr Street Closing](#)

- 7.06 [18-118](#) Prince Charles Holding ("PCH") Parking Lease, for Hay Street Parking Garage

Attachments: [Prince Charles - Parking Lease Agreement \(New Garage\) Final](#)
[Prince Charles Hotel - Parking Lot Recognition and Nondisturbance Agreement](#)

8.0 ADJOURNMENT

POLICY REGARDING 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 NON-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.

CLOSING REMARKS

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 nonpublic 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

March 26, 2018 @ 7 p.m.
Spectrum Cable Channel 7

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 Human Relations at ynazar@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 of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-102

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.01

TO: Mayor and Members of City Council

THRU: Jay Reinstein, Assistant City Manager

**FROM: Craig Harmon, Senior Planner, AICP, CZO
Gerald Newton, AICP, Development Services Director**

DATE: March 26, 2018

RE:

P18-11F City initiated rezoning of property from MR-5 - Mixed Residential to CC - Community Commercial Zoning, located at 135 Blount Street (E.E. Smith House) near the intersection of Blount and Chase, containing 1.19 acres and being the property of the City of Fayetteville.

COUNCIL DISTRICT(S):

2

Relationship To Strategic Plan:

Growth and Development

Executive Summary:

The E.E. Smith House and the two properties behind it are owned by the City of Fayetteville. Efforts are underway to remodel and convert this home into an exhibit and office space. The City has initiated this rezoning for the remodeling to be done to the Smith House. This will allow the property to be used for a host of options and will fit with any future uses included in the business park.

Background:

This property is located at the intersection of Blount and Chase Streets, to the west of Gillespie Street. The rezoning would affect three parcels that total just over one acre. The two lots behind (to the south of) the house are currently vacant and will be converted into parking.

Applicant: City of Fayetteville

Owner: City of Fayetteville
Requested Action: MR-5 to CC
Property Address: 135 Blount St
Council District: 2
Status of Property: house & vacant
Size: 1.19 acres +/-
Adjoining Land Use & Zoning:
 North - CC - Commercial & Residential
 South - MR-5 - Vacant
 West - HI - Industrial
 East: MR-5 - Vacant
Letters Mailed: 39

2010 Land Use Plan - Downtown;

Strategic Plan:

Goals 2020: 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 residents.

Issues/Analysis:

In order to convert the existing house to a commercial/office use, the property must be rezoned. The proposed renovations will meet the State building code requirements for commercial use. This property will eventually become part of the Center City Business Park at the corner of Gillespie and Blount streets. The City's Economic & Community Development Department is in the process of developing plans for the remaining portions of the business park.

A future rezoning will take place for the remaining sections of the business park. The sections of the business park that are currently zoned for residential use will most likely change to some type of commercial zoning in the future. The proposed CC zoning will allow flexibility for any future uses of the house and the business park. The City's current land use plan designates this property for Downtown uses. The Downtown designation allows for a host of different land use types ranging from residential to commercial to industrial, making CC an appropriate district in this area.

On March 13, the Zoning Commission held a public hearing regarding this case. There were no speakers in favor or in opposition to this request. The Commission voted 5-0 to recommend approval.

The Zoning Commission and City staff recommend APPROVAL of the rezoning to CC based on:

1. The proposed rezoning is consistent with prior actions of the city council to identify this portion of the city as appropriate for commercial use.
2. The City's land use plan calls for Downtown and commercial/office uses are included with that land use.
3. This property is surrounded by other commercial, industrial and high-density

residential development and zoning.

Budget Impact:

This action may result in an increase in City services.

Options:

- 1) Approval of the rezoning to CC (recommended).
- 2) Rezone to a more restrictive district.
- 2) Deny the request.

Recommended Action:

The Zoning Commission and City staff recommend that the City Council move to APPROVE the rezoning to CC - Community Commercial Zoning District, as presented by the staff. The Amendment is consistent with applicable plans because: 1) the City's 2010 Plan calls for this area to be used for downtown development and 2) that the uses surrounding this property are all compatible with the proposed zoning and 3) the proposed zoning is reasonable and in the public interest because the proposed zoning does fit with the character of the development in this area.

Attachments:

- Zoning Map
- Current Land Use Map
- Land Use Plan Map
- Application
- Site Photos



Request: MR-5 to CC
Location: 135 Blount St.
Lot Size: 1.19 +/- acres

Zoning Commission: 3/13/2018
Pin: 0437-51-2885, 0437-51-2757
& 0437-51-2743

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

Current Land Use

P18-11F



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. P18-11F



Legend

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

2/13/2018

Subj.: 135 Blount Street, Property Rezoning

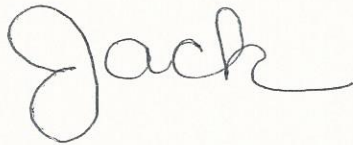
Mr. Craig Harmon

Mr. Jack Giacolone

Mr. Harmon,

Attached please find the map amendment application, required to rezone the indicated property from residential to commercial use for future development.

Best,

A handwritten signature in black ink that reads "Jack". The signature is written in a cursive, slightly slanted style.

Jack





Map Amendment Application Form

433 Hay Street, Fayetteville, North Carolina 28301

Submittal Date: 2/14/18 Approval/Denial Date: _____

910-433-1612 Fax # 910-433-1776

Fee: \$700.00 Received By: _____

ACC. DATA. 85705.8490 POC. A. THOMAS

910-433-1699

Notes:

1. A pre-application conference is mandatory prior to submission of an application for a map amendment.
2. Map amendment applications proposing re-classification from a Conservation (CD) zoning district to MR-5, OI, NC, LC, CC, MU, DT, LI, or HI require neighborhood meetings to be conducted prior to application submittal.
3. A map amendment application should be consistent with the comprehensive plan.
4. The City Council may not apply conditions of approval to a map amendment application.
5. All allowed uses within a proposed zoning district must be considered when considering a map amendment application, not just the particular use that the applicant is desiring to place on the property.
6. Applications seeking to "single out" a lot or site and applying for an exceptional zoning district designation may constitute illegal "spot zoning".

1. General Project Information

| | |
|--|---|
| Project Address: <u>135 BLOUNT ST, FAYETTEVILLE, NC 28301</u> | |
| Tax Parcel Identification Number: <u>0437-51-28850437-51-2757, 0437-51-2743</u> | |
| Project Name: <u>DR. E. E. SMITH HOUSE</u> | |
| Current Zoning District: <u>RESIDENTIAL</u> | Proposed Zoning District: <u>COMMERCIAL</u> |
| Does an overlay district apply to this site? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If so, which one(s)? _____ | |
| Has the land been the subject of a map amendment application in the last five years? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No When? _____ Case #? _____ | |
| Amount of land to be rezoned (in acres): <u>1.19</u> | Is this application related to an annexation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Existing/proposed water service: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private | Existing/proposed sewer service: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private |

A) Please describe all existing uses of the land and existing structures on the site, if any (attach additional sheets if necessary).

THIS STRUCTURE IS BEING RENOVATED TO PRESERVE THE RICH HISTORY OF A PROMINENT GENTLEMAN; DOCTOR E. E. SMITH.

B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.

(3) PARCELS REQUIRE REZONING FROM RESIDENTIAL TO COMMERCIAL, TO MEET THE REQUIEMENTS OF AN OFFICE APPLICATION.

2. Amendment Justification – Answer all the questions under this section. Attach additional sheets as necessary.

A) State the extent to which the proposed amendment is consistent with the comprehensive plan and all other applicable long-range planning documents.

EVENTUALLY ALL PROPERTY ON THE CITY BLOCK SHALL BE REZONED AS COMMERCIAL USE.

B) Are there changed conditions that require an amendment?

N/A

C) State the extent to which the proposed amendment addresses a demonstrated community need.

THIS PROPERTY WILL CONTAIN THE LIFE AND TIMES PRESERVING BLACK HERITAGE.

D) State the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and why it is the appropriate zoning district for the land.

FUTURE PLANS FOR ADJACENT PROPERTY INCLUDE SIMILAR USES.

E) State the extent to which the proposed amendment results in a logical and orderly development pattern.

THIS PROJECT SHALL SET THE EXAMPLE FOR FUTURE PROJECTS IN THE AREA

F) State the extent to which the proposed amendment might encourage premature development.

THIS PROJECT SHALL TRANSFORM THE AREA AND MAKE IS MORE INVITING.

G) State the extent to which the proposed amendment results in strip-style commercial development.

N/A

H) State the extent to which the proposed amendment results in the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.

N/A

I) State the extent to which the proposed amendment results in significant adverse impacts on the property values of surrounding lands.

UPGRADED COMMERCIAL DEVELOPMENT.

J) State the extent to which the proposed amendment results in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

N/A

3. Submittal Requirement Checklist

(Submittals should include 2 copies of listed items, unless otherwise stated.)

| | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Pre-application conference completed |
| <input type="checkbox"/> | Map Amendment Application Form |
| <input type="checkbox"/> | Copy of an approved Certificate of Appropriateness (COA) if located within the HLO |
| <input checked="" type="checkbox"/> | Rezoning Application Fee |
| <input type="checkbox"/> | Site Plan Application fee |
| <input type="checkbox"/> | A copy of the recorded deed, or a written legal description if application is for a portion of a larger tract |
| <input type="checkbox"/> | Scaled drawing showing all existing structures, site features, and setbacks |
| <input type="checkbox"/> | Elevations required if rezoning involves new construction or changes to an existing building |
| <input type="checkbox"/> | Transportation analysis, if required |

4. Primary Contact Information

Primary Point of Contact Name: JACK GIACOLONE FACILITY MANAGER

Mailing Address: 280 LAMON ST.

Fax No.:

Phone No.: 910-391-7843

Email: JGIACOLONE@CI.FAY.NC.US

Signature: Jack Giacalone

Date: 2/14/18

5. Property Owner Information (if different from the primary point of contact)

Property Owner Contact Name: COF

Mailing Address: 433 HAY ST.

Fax No.:

Phone No.: 910-433-1979

Email: DWIUFF@CI.FAY-NC.US

Property Owner or Authorized Signature: J. Giacalone

Date Signed: 2/14/18

city of Fayetteville representative

CONTACT INFORMATION: 910-391-784



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City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-107

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.02

TO: Mayor and Members of City Council

THRU: Jay Reinstein, Assistant City Manager

FROM: Bart Swanson, Housing and Code Enforcement Division Manager

DATE: March 26, 2018

RE:

**Uninhabitable Structure Demolition Recommendation
603 Deep Creek Road**

COUNCIL DISTRICT(S):

2

Relationship To Strategic Plan:

Goal 2: More attractive City - Clean and Beautiful; Goal 3: Growing City, Livable Neighborhoods - A Great Place To Live

Executive Summary:

Staff request for demolition ordinance approval on one residential building determined to be blight.

Background:

Four blighted or dangerous buildings were under City order to be repaired or demolished. The compliance dates for such actions were in February 2018. Three of the buildings were repaired by their respective owners. The following property failed to be repaired or demolished as required by an order of the City:

603 Deep Creek Road PIN 0446-38-7911

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

building that was inspected and condemned as a blighted structure on November 9, 2017. A hearing on the condition of the structure was conducted on January 17, 2018, which the owners failed to attend. A notice of the hearing was published in The Fayetteville Observer newspaper. A subsequent Hearing Order to repair or demolish the structure within 60 days was issued and mailed to the owners on January 19, 2018. To date, there have been no repairs to the structure and the structure has not been demolished. In the past 24 months, there has been 1 call for 911 service to the property. There have been 7 code violation cases with \$412.37 in City assessments and \$575.70 in outstanding taxes.

Issues/Analysis:

The subject property is dangerous, sub-standard and detrimental to the surrounding neighborhood and promotes nuisances and blight, contrary to the City's Strategic Plan Goal 1.

Budget Impact:

The demolition cost of the structure will be determined at a later date subject to a competitive bidding process to be conducted after adoption of the demolition ordinance. There may be additional unknown costs for asbestos testing and abatement, if needed.

Options:

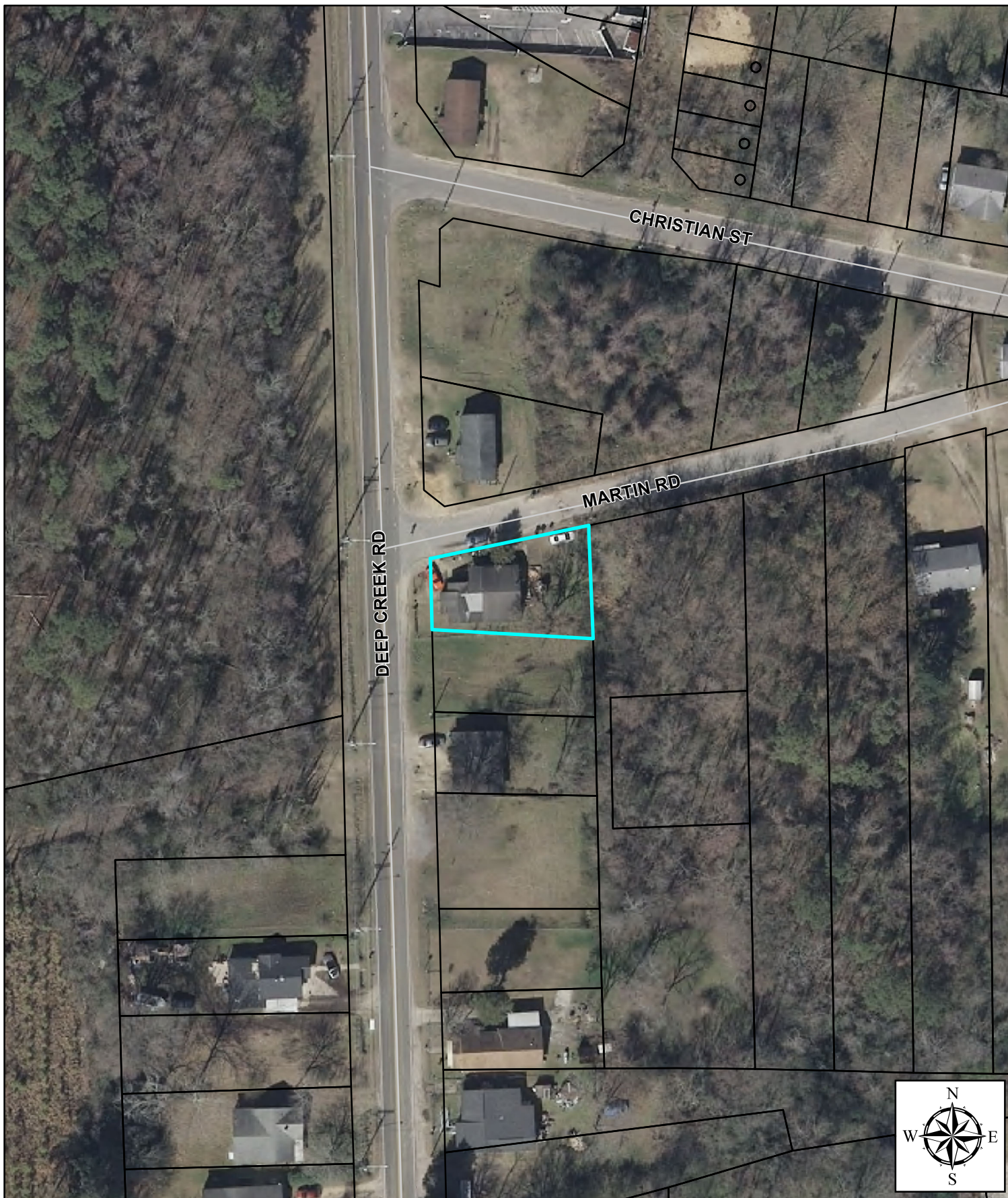
- Adopt the ordinance and demolish the structure.
- Abstain from any action and allow the structure to remain.
- Defer any action to a later date and provide direction to the City Manager.

Recommended Action:

Staff recommends that Council move to adopt the ordinance authorizing demolition of the structure. Council is advised that staff continues to work with property owners up until the actual City-ordered demolition date to either get the structure repaired and code-compliant, demolish the structure themselves or with a Community Development grant. In the event that the City is successful in resolving the issue, staff will bring Council a demolition rescission ordinance to clear the property of the cloud on the title from the original demolition order. We prefer to get demolition ordinances approved as Council action increases our leverage with property owners in obtaining code compliance. Only an action by the Council can stay or suspend demolition proceedings.

Attachments:

Aerial photo, violation photos, and proposed ordinance



Location: 603 Deep Creek Road

603 Deep Creek Road



603 Deep Creek Road



**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:

603 Deep Creek Road
PIN 0446-38-7911

LEGAL: Beginning at a stake at the intersection of the eastern margin of Cade Avenue and the southern margin of a small avenue, and running thence 50 feet to a stake; thence eastwardly, parallel to Haywood Avenue, 116 feet to a stake in a ditch; thence with the ditch North 50 feet to the southern margin of a small avenue; thence with the southern margin of said small avenue westwardly 116 feet to the beginning point.

Less and excepting that portion of the property deeded out in Deed Book 5203, Page 694.

The owner(s) of and parties in interest in said property are:

Brenda Cooper
6907 Flying Cloud Lane
Fayetteville, NC 28314-5325

Barbara Bryant
105 Salmon Drive
Fayetteville, NC 28306-9021

Maurice Malloy
418 Mammoth Drive
Fayetteville, NC 28311

Gwendolyn Lewis
603 Deep Creek Road
Fayetteville, NC 28301

Alton Jones
572 Minnesota Avenue
Buffalo, NY 14215-1232

Samantha Jones
1933 Westhill Drive
Fayetteville, NC 28304

Estates Division
117 Dick Street
Fayetteville, NC 28301
RE: 14E490

- (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 March 19, 2018.
- (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 the demolition 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 _____26th_____ day of _____March_____, 2018.

CITY OF FAYETTEVILLE

BY:

Mitch Colvin, Mayor

ATTEST:

Pamela Megill, City Clerk

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-124

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Work Session

File Type: Consent

Agenda Number: 6.03

TO: Mayor and Members of City Council

THRU: Kristoff Bauer, Deputy City Manager

FROM: Kimberly Toon, CLGPO-Purchasing Manager

DATE: March 26, 2018

RE:

Purchase Ballpark Scoreboard and Field Lighting for Baseball Stadium off Cooperative Agreements

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 4: Desirable Place to Live, Work and Recreate

Executive Summary:

The Purchasing Division is requesting authorization to access Inter-local Cooperative Purchasing agreements to obtain competitive pricing for the Ballpark Scoreboard and Field Lighting system

Background:

Musco is the national leader in manufacturing outdoor lighting for sporting and entertainment venues. Musco's field lighting system is currently on the National Joint Powers Alliance (NJPA) cooperative contract. Since the contracts awarded by NJPA are solicited in a competitive manner, the General Statutes allow municipalities in the state of North Carolina to take advantage of this pricing and purchase off of these cooperative contracts. Pending City Council authorization, the City is planning to purchase the baseball park field lighting fixtures, steel poles, visual effect adder and all other required hardware from Musco off NJPA contract number 082114-msl for a total price of \$465,000.

Daktronics is the world leader in electronic signage and information delivery. Daktronics' outdoor video display equipment (i.e.: Scoreboards) is currently on the National Intergovernmental Purchasing Alliance (NIPA) cooperative contract. Since the contracts awarded by NIPA are solicited in a competitive manner, the General Statutes allow municipalities in the state of North Carolina to take advantage of this pricing and purchase off of these cooperative contracts. Pending Baseball Committee approval, the City is planning to purchase an LED Video Display scoreboard with the necessary control and camera systems from Daktronics off NIPA Contract number R170101 for a total price of \$886,450.

Historically, the City has acquired services and goods through cooperative purchasing agencies like NJPA and NIPA that have competitive bidding processes with various manufacturers. The City's Purchasing Division is requesting authorization to enter into the above referenced cooperative agreements to purchase the Ballpark Scoreboard and Field Lighting.

Issues/Analysis:

Field Lighting

Musco is the national leader in manufacturing outdoor lighting for sporting and entertainment venues. Musco offers a variety of types of lighting including various light delivery methods and the actual number of lights or foot candles installed. Metal Halide (HID) and Light Emitting Diode (LED) are the two types of lighting delivery methods currently offered by Musco. Minor League (MiLB) has certain lighting requirements for all of its teams. For Single A team like the one coming to Fayetteville, the requirement is 70 foot candle in the outfield and 50 foot candles in the field.

- **Option 1:** The Metal Halide (HID) options are limited due to the aging nature of this technology, however the Metal Halide (HID) system Musco presented costs approximately \$375,000 to meet the MiLB requirements.
- **Option 2:** Musco has presented the City with a Light Emitting Diode (LED) field lighting system that will cost \$425,000. This proposed solution includes 80 foot candles in the outfield and 60 foot candles in the infield, therefore exceeding the MiLB requirements.
- **Additional Equipment:** Musco also offers an Adder system which allows for the lights installed to perform various visual effects. Should the baseball committee decide to purchase this additional equipment, it will cost \$40,000 for the ETC Mosaic DMX control system with touch screen to provide dimming and theatric effects. This offer includes a 25 year parts and labor warranty. This price does not include tax.

Baseball Committee voted unanimously on March 19, 2018 to recommend Option 2 and the Adder lighting control system.

Musco Field Lighting

Option 2: LED field Lighting System

118 Musco TLC-1150W LED Green Generation Event Lighting Fixtures

2 Valmont Steel Poles

6 Light-Structure Baseplate poles
All mounting Hardware and Custom Mounts for Fixtures.
10 Year Warranty and Service Agreement
80 footcandles infield and 60 footcandles outfield \$ 425,000

Additional Equipment: Adder

25 year parts and labor warranty along with control-link
ETC Mosaic DMX control system with touch screen to provide dimming and theatrical effects.
\$ 40,000

Total: \$ 465,000

Scoreboard

Daktronics is the world leader in electronic signage and is the preferred electronic signage provider of Minor League Baseball (MiLB).

- **Option 1:** 25 foot by 50 foot scoreboard costs \$615,965*
- **Option 2:** 25 foot by 70 foot scoreboard costs \$678,340*
- *Both scoreboards come with the Daktronics Control System which includes a content playback manager, video processor, system controls, DAKStats software specifically for MiLB and a speed of pitch system plus radar gun.
- **Optional Equipment:** The High Definition (HD) Video Production system is being recommended for purchase in the amount of \$208,110 to allow for baseball game/venue activities to be displayed on the scoreboard. This system includes one TriCaster 8000 switcher, one 3play 425 instant replay, two wired cameras, two wireless cameras, the intercom system and a video channel server.

Baseball Committee voted to recommend the purchase of Option 2, the 25 ft. x 70 ft. LED Video Display scoreboard with the necessary control, video and camera systems from Daktronics off NIPA Contract number R170101 for a total price of \$886,450. This price includes the manufacturing, freight and installation of the scoreboard as well as any service work required for the first year of operations.

Daktronics Scoreboard

Option 2: 25 foot by 70 foot digital display

One Outdoor Daktronics LED Video Display
Daktronics Control System
Content Playback
Video Processor
System Control
DAKStats for MiLB
Speed of Pitch System plus Radar Gun
All Sport 5000 Scoring Console
Spare Parts Package
Installation
\$ 678,340

Additional Equipment: High Definition Video Production

One 8 Input HD Video Production System
One TriCaster 8000 Switcher
One 3Play 425 Instant Replay
Two wired cameras

Two wireless cameras
Intercom System
Video Channel Server \$ 208,110
Total: \$ 886,450

Budget Impact:

These purchases along with the food service equipment also on this agenda for consideration are the first expenditures from the \$3.9 million “Owners Preference” allowance that is part of the total appropriation for the baseball stadium. Authorizing these purchases would use \$1,351,450 of that \$3.9 million allowance.

Options:

- 1) Authorize the City Manager to make the recommended purchases of the ballpark scoreboard and field lighting systems.

- 2) Do not authorize the City Manager to make these purchases and provide alternate direction.

Recommended Action:

The Council Baseball Subcommittee recommends that Council authorize the City Manager to purchase the ballpark scoreboard from Daktronics in the amount of \$ 886,450 and field lighting system from Musco in the amount of \$465,000.

Attachments:

None

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-126

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.04

TO: Mayor and Members of City Council

THRU: Kristoff Bauer, Deputy City Manager

FROM: Kimberly S. Toon, Purchasing Manager

DATE: March 26, 2018

RE:

Bid Recommendation - Ballpark Food Service Equipment and Installation Services

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 4: Desirable Place to Live, Work and Recreate

Executive Summary:

Proposals were received for the agreement for the Ballpark Food Service Equipment and Installation Services. The lowest responsive, responsible proposal received is from Stafford-Smith, Inc. in the amount of \$1,183,287. The Council Baseball Subcommittee is recommending and staff is seeking Council authorization to award to the low bidder.

Background:

The City has taken on the responsibility of acquiring certain fixtures and equipment needed to completely outfit the stadium for operation directly. This is referred to as "owner provided" or "owner preference" items. These purchases are made outside the construction contract with Barton Malow. The contractor does, however, continue to have an obligation to coordinate the installation of the owner preference items purchase and provided by the City. Concessions or food service equipment is included among these owner preference items.

The Council Baseball Subcommittee reviewed the proposals discussed in the next section on Monday, March 19, 2018, and acted to recommend that the Council award this contract to the lowest responsible responsive bidder, Stafford-Smith, Inc.

Issues/Analysis:

An RFP for Food Service Equipment and Installation Services was recently advertised by City purchasing. Three proposals were received from the following vendors (see attached bid summary and below):

| <u>Vendor</u> | <u>Total Bid</u> |
|------------------------|------------------|
| Thompson & Little Inc. | \$1,316,700 |
| Trimark Foodcraft | \$1,286,000 |
| Stafford-Smith Inc. | \$1,183,287 |

After thorough review and evaluation, the City is recommending this scope of work and contract be awarded to Stafford-Smith, Inc. for a not to exceed amount of \$1,183,287. This price includes the food concession equipment, the installation of that equipment, the training for operating that equipment and any start-up or maintenance issues that may arise for the first year after installation.

Budget Impact:

CPOA 2018-50 appropriated \$37,885,102 for the stadium project. This included an allowance of \$3,900,000 for owner preference items. If approved, this contract will be funded from that allowance in the amount of up to \$1,183,287.

Options:

- Authorize the City Manager to execute the contract with Stafford-Smith, Inc. to provide the service equipment and installation services for the baseball park construction project.
- Delay action and request additional information or otherwise provide direction to staff.

Recommended Action:

The Council Baseball Subcommittee recommends that Council authorize the City Manager to execute the agreement with Stafford-Smith, Inc. to provide this equipment and the installation services in the amount of up to \$1,183,287.

Attachments:

- Bid Tabulation Summary
- Stafford-Smith, Inc Proposal

Food Service Equipment and Installation Services

| Proposal Tabulation | Stafford-Smith | Trimark | Thompson & Little |
|----------------------------|-----------------------|--------------------------|------------------------------|
| | Denver, NC | Winston-Salem, NC | Fayetteville, NC |
| Equipment | \$ 1,084,167 | \$ 1,138,200 | \$ 1,180,600 |
| Installation | \$ 99,120 | \$ 139,800 | \$ 136,100 |
| Training | \$ - | \$ 8,000 | \$ - |
| Total | \$ 1,183,287 | \$ 1,286,000 | \$ 1,316,700 |



STAFFORD-SMITH, Inc.

COMMERCIAL REFRIGERATION - FOOD SERVICE EQUIPMENT - HEATING & AIR CONDITIONING
DESIGN - ENGINEERING - SALES - INSTALLATION - SERVICE

3414 S. BURDICK, KALAMAZOO, MI 49001 269-343-1240

Serving the World Since 1940

Cover Letter

Thank you for the opportunity to provide a competitive price for this new and exciting project. The proposal provided is inclusive of and does not deviate from the drawings, specifications and the RFP as issued by the city of Fayetteville.

The local office responsible for running this project and for direct dealings with the city of Fayetteville will be Stafford-Smith, Inc. North Carolina. This office is made up of our Regional Manager **Scott Field**, (4) project managers and one inside coordinator; with the continued support of our corporate office. (136 employees)

Stafford-Smith, Inc. North Carolina

4120 Sinclair Street, Suite A

Denver, NC 28037

704-498-0672 fax

704-240-1650 office/cell

Scott Field – Regional Manager –

sfield@staffordsmith.com

David M. Stafford is the president and CEO of the company and will be the person responsible for the signing of the contract. David is located at the office shown below.

Stafford-Smith, Inc.

3414 South Burdick St.

Kalamazoo, MI 49001

dms@staffordsmith.com

269-343-1240 - Ext. 1098

For questions on the proposal please reach out to:

Rich Harrison

V.P., Stafford-Smith, Inc.

(269) 343-1240 - Ext. 4016

(269) 998-6133 (Mobile)

rharrison@staffordsmith.com

ORIGINAL

Brief Company Overview:

Stafford Smith Inc. is a 77 year-old family-owned food service equipment dealer that has completed over 37 large venue projects (stadiums/arenas) in the last 20 years. SSI brings the experience and knowledge of what it takes to make these large venue projects successful. We have the internal staff in house needed to take care of the details of these large projects. These include experienced project managers, AIA billers, submittal specialists, inside coordinators, safety specialists, CAD staff including BIM, warranty coordinators, close out document processors, and LEED coordinators.

Risk Mitigation –

The key to a successful project is in the details. SSI will have a constant on site presence with our office centrally located to serve the needs of the project. The document review controls that we have in place ensure that all parties are working with accurate information. As with all larger projects SSI will provide equipment procurement lists and tracking information which will be maintained and updated on a weekly basis. The intent is to secure all equipment so that we may react to schedule and or direction changes as the project progresses.

Equipment is staged and stored in our local North Carolina warehouse so that when the site is ready, so are we. Our experience in running these projects with feet on the ground from the very beginning long before the first piece of equipment hits the site sets us apart from most equipment dealers. Local installers and local workforce make up our installation team. Scott Field has worked over the years to become a valued member of the local community by partnering with experienced subcontractors in the North Carolina market.

Thank you again for the opportunity and please reach out with any questions that you may have.



Rich Harrison

V.P., Stafford-Smith, Inc.

(269) 343-1240 -Ext. 4016

(269) 998-6133 (Mobile)

rharrison@staffordsmith.com



STAFFORD-SMITH, Inc.

COMMERCIAL REFRIGERATION - FOOD SERVICE EQUIPMENT - HEATING & AIR CONDITIONING
DESIGN - ENGINEERING - SALES - INSTALLATION - SERVICE

3414 S. BURDICK, KALAMAZOO, MI 49001 269-343-1240

Serving the World Since 1940

Proposed Solution

Section 3 "Scope of Services"

Stafford-Smith, Inc. will meet or exceed the scope of work and the goals of the project.

Description of work:

- A. SSI agrees to "this work shall be in strict accordance with the plans and specifications".
- B. SSI agrees that all coordination will be performed in a professional manner by SSI
- C. Exclusions – SSI agrees to the work performed by others – see "supplemental information page" for "responsibility matrix".
- D. Substitutions – proposal is based upon manufacturers listed. See "supplemental information" for "alternate manufacturers and savings".

Product handling:

- A. Equipment will be stored locally and made available for inspection. Equipment where possible will be assembled prior to delivery and set in place by SSI ready for final connections by others.
- B. Deliveries will be scheduled with the GC and fit the needs of the project schedule.

Applicable Codes:

- A. SSI will meet all applicable codes listed.

Quality Assurance:

- A. SSI agrees to points A-D. In addition, Stafford-Smith has their own Quality Assurance Plan by reviewing and inspecting all equipment prior to installation.

Submittals:

- A. SSI agrees to the submittal requirements as outlined in this section

Job Conditions:

- A. SSI agrees to the requirements under this section. In addition, as previously stated SSI takes a feet on the ground approach to these projects so we will be on site regularly from day 1.

Miscellaneous:

- A. SSI agrees to sections A-C

Part 2 "Products"

- A. Stafford-Smith, Inc. is familiar with the requirements outlined in this section and will adhere to them.

Part 3 "Execution"

- A. SSI will utilize only experienced and quality installers when working on this project
- B. SSI agrees to conform to the installation criteria as outlined in sections A-K

Start-Up and Testing

- A. All start-ups, testing and calibration will be performed by the authorized manufacturer's start up agent.

Clean Up:

- A. SSI will keep a clean and safe job site at all times
- B. SSI will perform a construction clean prior to the owner's final clean and sanitizing procedures.

Equipment Specifications:

- A. SSI confirms all equipment in the proposed base price are per the specifications with no deviations.
- B. SSI agrees to the details under this section as shown on A-J

Training Plan:

- A. A detailed training plan for the owner or the owner's operators is included with the pricing on the proposal.

Rich Harrison

V.P., Stafford-Smith, Inc.

(269) 343-1240 - Ext. 4016

(269) 998-6133 (Mobile)

rharrison@staffordsmith.com



Section 6
Required Forms

REQUIRED FORM 2 - ADDENDA RECEIPT CONFIRMATION

RFP # 603-COF1516240

Food Services Equipment and Installation

Please acknowledge receipt of all addenda by including this form with your Proposal. All addenda will be posted to the City of Fayetteville website and NC IPS website.

ADDENDUM #:

1
2

**DATE ADDENDUM
DOWNLOADED FROM NC IPS:**

2/26/2018
3/08/2018

I certify that this proposal complies with the Specifications and conditions issued by the City except as clearly marked in the attached copy.

Richard Harrison
(Please Print Name)

Authorized Signature
VP
Title
Stafford-Smith, Inc.
Company Name

3/14/2018
Date

Section 6
Required Forms

REQUIRED FORM 3 - PROPOSAL SUBMISSION FORM

RFP # 603-COF1516240

Food Services Equipment and Installation

This Proposal is submitted by:

| | |
|---------------------------|------------------------------|
| Company Name: | Stafford-Smith, Inc. |
| Representative (printed): | Richard Harrison |
| Address: | 3414 S. Burdick St. |
| | |
| City/State/Zip: | Kalamazoo, MI 49001 |
| Email address: | rharrison@staffordsmith.com |
| Telephone: | (269) 343-1240 |
| | (Area Code) Telephone Number |

The representative signing above hereby certifies and agrees that the following information is correct:

1. In preparing its Proposal, the Service Provider has considered all proposals submitted from qualified, potential subcontractors and suppliers; and has not engaged in or condoned prohibited discrimination.
2. For purposes of this Section, discrimination means discrimination in the solicitation, selection, or treatment of any subcontractor, vendor or supplier on the basis of race, ethnicity, gender, age or disability or any otherwise unlawful form of discrimination. Without limiting the foregoing, discrimination also includes retaliating against any person or other entity for reporting any incident of discrimination.
3. Without limiting any other provision of the solicitation for proposals on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the City to reject the Proposal submitted by the Service Provider on this Project and to terminate any contract awarded based on such Proposal.
4. As a condition of contracting with the City, the Service Provider agrees to maintain documentation sufficient to demonstrate that it has not discriminated in its solicitation or selection of subcontractors. The Service Provider further agrees to promptly provide to the City all information and documentation that may be requested by the City from time to time regarding the solicitation and selection of subcontractors. Failure to maintain or failure to provide such information constitutes grounds for the City to reject the bid submitted by the Service Provider or terminate any contract awarded on such bid.
5. As part of its Proposal, the Service Provider shall provide to the City a list of all instances within the past ten years where a complaint was filed or pending against Service Provider in a legal or administrative proceeding alleging that Service Provider discriminated against its subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.
6. The information contained in this Proposal or any part thereof, including its Exhibits, Schedules, and other documents and instruments delivered or to be delivered to the City, is true, accurate, and complete. This Proposal includes all information necessary to ensure that the statements therein do not in whole or in part mislead the City as to any material facts.

Section 6
Required Forms

REQUIRED FORM 4 - PRICING WORKSHEET

RFP # 603-COF1516240

Food Services Equipment and Installation

Regardless of exceptions taken, Companies shall provide pricing based on the requirements and terms set forth in this RFP. Pricing must be all-inclusive and cover every aspect of the Project. Cost must be in United States dollars. **If there are additional costs associated with the Services, please add to this chart. Your Price Proposal must reflect all costs for which the City will be responsible.**

| Food Service Equipment Pricing | |
|---|---------------------------|
| | Total Price |
| Equipment | \$ 1,084,167.00 |
| Installation | \$ 99,120.00 |
| Training | \$ Inc. |
| Total Proposed Price | \$ 1,183,287.00 |
| | Number of Years |
| Warranty Terms | Per specifications |
| | Number of Weeks |
| Equipment Manufacturer Lead Time | 6-10 weeks from release |
| Installation Timeframe | Per construction schedule |

Section 6
Required Forms

REQUIRED FORM 5 – M/W/SBE UTILIZATION

RFP # 603-COF1516240

Food Services Equipment and Installation

The City maintains a strong commitment to the inclusion of LSDBEs in the City's contracting and procurement process when there are viable subcontracting opportunities.

Companies must submit this form with their proposal outlining any supplies and/or services to be provided by each City certified Small Business Enterprise (SBE), and/or City registered Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE) for the Contract. If the Company is a City-registered LSDBE, note that on this form.

The City recommends you exhaust all efforts when identifying potential LSDBEs to participate on this RFP.

| | |
|----------------------|----------------------|
| Company Name: | Stafford-Smith, Inc. |
|----------------------|----------------------|

Please indicate if **your company** is any of the following:

MBE WBE SBE None of the above

If your company has been certified with any of the agencies affiliated with the designations above, indicate which agency, the effective and expiration date of that certification below:

Agency Certifying: _____ Effective Date: _____ Expiration Date: _____

Identify outreach efforts that *were employed* by the firm to maximize inclusion of LSDBEs to be submitted with the firm's proposal (attach additional sheets if needed):

Stafford-Smith, Inc. has partnered with NBS Food Eq. Contractors out of North Carolina and Ketchum Prof. Services to reach the goals of this project.

Identify outreach efforts that *will be employed* by the firm to maximize inclusion during the contract period of the Project (attach additional sheets if needed):

Stafford-Smith, Inc. is always on the look out for additional qualified LSDBE's and will continue to seek out organizations that can help the project meet it's goals.

[Form continues on next page]

Section 6 Required Forms

List below all **LSDBEs** that you intend to subcontract to while performing the Services:

| Subcontractor Name | Description of work or materials | Indicate either "M", "S", and/or "W" | City Vendor # |
|-------------------------|----------------------------------|--------------------------------------|---------------|
| NBS Food Eq. Cont. | Installation | W | |
| Ketchum Prof. Resources | Procurement | W | |
| | | | |
| | | | |

| | | |
|--------------------------------|-------------|----------|
| Total MBE Utilization | | % |
| Total WBE Utilization | 28.7 | % |
| Total SBE Utilization | | % |
| Total LSDBE Utilization | 28.7 | % |

Representative (signed): 
 3/14/2018 Stafford-Smith, Inc.
 Date Representative Name

\$340,189.00
 Estimated Total Contract Value

Section 6 Required Forms

REQUIRED FORM 6 – COMPANY’S BACKGROUND RESPONSE

RFP # 603-COF1516240

Food Services Equipment and Installation

Companies shall complete and submit the form below as part of their response to this RFP. Additional pages may be attached as needed to present the information requested.

| Question | Response |
|--|----------------------|
| Company’s legal name | Stafford-Smith, Inc. |
| Company Location (indicate corporate headquarters and location that will be providing the Services). | See attached |
| How many years has your company been in business? How long has your company been providing the Equipment and Installation Services as described in Section 3? | 77 |
| How many public sector (cities or counties) clients does your company have? How many are using the Services? Identify by name some of the clients similar to City (e.g., similar in size, complexity, location, type of organization). | See attached |
| List any projects or services terminated by a government entity. Please disclose the government entity that terminated and explain the reason for the termination. | N/A |
| List any litigation that your company has been involved with during the past two (2) years for Services similar to those in this RFP. | N/A |
| Provide an overview and history of your company. | See attached |
| If your company is a subsidiary, identify the number of employees in your company or division and the revenues of proposing company or division. | N/A |
| Provide a management organization chart of your company’s overall organization, including director and officer positions and names and the reporting structure. | See attached |
| Describe the key individuals along with their qualifications, professional certifications and experience that would comprise your company’s team for providing the Services. | See attached |
| Explain how your organization ensures that personnel performing the Services are qualified and proficient. | See attached |

Section 6
Required Forms

REQUIRED FORM 7 – REFERENCES

RFP # 603-COF1516240

Food Services Equipment and Installation

Companies shall complete the form below. The City's preference is for references from organizations of similar size or where the Company is performing similar services to those described herein. If such references are not available, individuals or companies that can speak to the Company's performance are adequate.

| Reference 1 | |
|--------------------|----------------------------|
| Company Name | AECOM Hunt |
| Contact Name | Patrick S. Delano |
| Phone Number | (305) 325-0577 |
| Reference 2 | |
| Company Name | Mortenson Construction |
| Contact Name | Jesse Kemp |
| Phone Number | (414) 335-9138 |
| Reference 3 | |
| Company Name | Levy Restaurants |
| Contact Name | Denise Gaffney |
| Phone Number | (312) 335-5012 |
| Reference 4 | |
| Company Name | Dan Frigo |
| Contact Name | Hatco Corp. (Manufacturer) |
| Phone Number | (414) 248-0758 |
| Reference 5 | |
| Company Name | |
| Contact Name | |
| Phone Number | |

EXHIBIT A – SAMPLE CITY CONTRACT

As used in this Section of the RFP, the term “Contract” shall refer to the agreement entered into between the City and the Company, and the term “Company” shall refer to the vendor that has been awarded a contract.

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

**AGREEMENT TO PROVIDE
FOOD SERVICES EQUIPMENT AND INSTALLATION**

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is made and entered into as of this _____ day of _____ 201_ (the "Effective Date"), by and between _____, a corporation doing business in North Carolina (the "Company"), and the City of Fayetteville, a North Carolina municipal corporation (the "City").

RECITALS

WHEREAS, the City issued a Request for Proposals (RFP # 603-COF1516240) for Food Services Equipment and Installation dated FEBRUARY 16, 2018. This Request for Proposals together with all attachments and addenda, is referred to herein as the "RFP"; and

WHEREAS, the City desires that the Company provide certain Food Services Equipment and Installation ("Services"), and the Company desires to provide such Services; and

WHEREAS, the City and the Company have negotiated and agreed regarding the above-referenced Services and desire to reduce the terms and conditions of their agreement to this written form.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the covenants and representations contained herein, the parties agree as follows:

CONTRACT

1. **EXHIBITS.** The Exhibits below are hereby incorporated into and made a part of this Contract. In interpreting this Contract and resolving any ambiguities, the main body of this Contract will take precedence over the Exhibits, and any inconsistency between the Exhibits will be resolved in the order in which the Exhibits appear below. Each reference to COMPANY NAME in the Exhibits and Appendices shall be deemed to mean the Company.

EXHIBIT A: PRICE SCHEDULE

EXHIBIT B: SCOPE OF WORK

2. **DEFINITIONS.** This section may include, but not be limited to, terms defined in Section 1 of the RFP.

3. **DESCRIPTION OF SERVICES.**

3.1. The Company shall be responsible for providing the Services described in Exhibit B attached to this Contract and incorporated herein by reference. Without limiting the foregoing, the Company will perform the Services and meet the requirements as set forth in Exhibit B. However, the Company shall not be responsible for tasks specifically assigned to the City in this Contract or in Exhibit B.

3.2. The Company shall perform the Services on site at the City's facility in Fayetteville, North Carolina, except as mutually agreed upon in writing in specific instances by the City.

4. **COMPENSATION.**

4.1. **TOTAL FEES AND CHARGES**

The City agrees to pay the Company a fixed price (the "Purchase Price") as full and complete consideration for the satisfactory performance of all the requirements of this Contract. This amount constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties, which expressly states that it amends this Section of the Contract. The Payment Cap constitutes the maximum total fees and charges payable to the Company under this Contract including Expenses and will not be increased except by a written instrument duly executed by both parties.

4.2. **MILESTONE PAYMENT PLAN.** The Company shall invoice the City for the Purchase Price in accordance with the Milestone Plan, which shall be attached as Appendix B to the Statement of Work. The Company shall not invoice the City for any Services or Deliverables within a particular Milestone until all Services and Deliverables required in connection with that

Milestone have been fully delivered, completed and Accepted by the City.

The Company shall not be entitled to charge the City for any travel, mileage, meals, materials or other costs or expenses associated with this Contract.

- 4.3. **EMPLOYMENT TAXES AND EMPLOYEE BENEFITS.** The Company represents and warrants that the employees provided by the Company to perform the Services are actual employees of the Company, and that the Company shall be responsible for providing all salary and other applicable benefits to each Company employee. The Company further represents, warrants and covenants that it will pay all withholding tax, social security, Medicare, unemployment tax, worker's compensation and other payments and deductions that are required by law for each Company employee. The Company agrees that the Company employees are not employees of the City.
- 4.4. **INVOICES.** Each invoice sent by the Company shall detail all Services performed and delivered which are necessary to entitle the Company to the requested payment under the terms of this Contract. All invoices must include an invoice number and the City purchase order number for purchases made under this Contract. Purchase order numbers will be provided by the City. Invoices must be submitted with lines matching those on the City-provided purchase order.
- 4.5. **DUE DATE OF INVOICES.** Payment of invoices shall be due within thirty (30) days after receipt of an accurate, undisputed properly submitted invoice by the City.
- 4.6. **PRE-CONTRACT COSTS.** The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date of this Contract.
- 4.7. **AUDIT.** During the term of this Contract and for a period of one (1) year after termination of this Contract, the City shall have the right to audit, either itself or through an independent auditor, all books and records and facilities of the Company necessary to evaluate Company's compliance with the terms and conditions of this Contract or the City's payment obligations. The City shall pay its own expenses, relating to such audits, but shall not have to pay any expenses or additional costs of the Company. However, if non-compliance is found that would have cost the City in excess of \$10,000 but for the audit, then the Company shall be required to reimburse the City for the cost of the audit.
5. **RECORDS.** The Company shall be responsible for keeping a record that accurately states the type of Service performed. The City shall have the right to audit the Company's invoices, expense reports and other documents relating to the Services performed under this Contract, and shall not be required to pay for Services which did not occur, or which occurred in breach of this Contract. The Company shall make such documents available for inspection and copying by the City in Fayetteville, North Carolina between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, whenever requested by the City.
6. **TIME IS OF THE ESSENCE.** Time is of the essence in having the Company perform all Services and deliver all Deliverables within the time frames provided by this Contract and Exhibit B, including all completion dates, response times and resolution times (the "Completion Dates"). Except as specifically stated in this Contract, there shall be no extensions of the Completion Dates. All references to days in this Contract (including the Exhibits) shall refer to calendar days rather than business days, unless this Contract provides otherwise for a specific situation.
7. **NON-APPROPRIATION OF FUNDS.** If the Fayetteville City Council does not appropriate the funding needed by the City to make payments under this Contract for any given fiscal year, the City will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the City will promptly notify the Company of the non-appropriation and this Contract will be terminated at the end of the fiscal year for which the funds were appropriated. No act or omission by the City, which is attributable to non-appropriation of funds shall constitute a breach of or default under this Contract.
8. **COMPANY PROJECT MANAGER.** The duties of the Company Project Manager include, but are not limited to:
 - 8.1. Coordination of Project schedules and the Company's resource assignment based upon the City's requirements and schedule constraints;

- 8.2. Management of the overall Project by monitoring and reporting on the status of the Project and actual versus projected progress, and by consulting with the City's Project Manager when deviations occur and by documenting all such deviations in accordance with agreed upon change control procedures;
 - 8.3. Provision of consultation and advice to the City on matters related to Project implementation strategies, key decisions and approaches, and Project operational concerns/issues and acting as a conduit to the Company's specialist resources that may be needed to supplement the Company's normal implementation staff;
 - 8.4. Acting as the Company's point of contact for all aspects of contract administration, including invoicing for Services, and status reporting;
 - 8.5. Facilitation of review meetings and conferences between the City and the Company's executives when scheduled or requested by the City;
 - 8.6. Communication among and between the City and the Company's staff;
 - 8.7. Promptly responding to the City Project Manager when consulted in writing or by E-mail with respect to Project deviations and necessary documentation;
 - 8.8. Identifying and providing the City with timely written notice of all issues that may threaten the Company's Services in the manner contemplated by the Contract (with "timely" meaning immediately after the Company becomes aware of them);
 - 8.9. Ensuring that adequate quality assurance procedures are in place throughout the Contract; and
 - 8.10. Meeting with other service providers working on City projects that relate to this effort as necessary to resolve problems and coordinate the Services.
9. **CITY PROJECT MANAGER.** The duties of the City Project Manager are to (i) ensure that the Company delivers all requirements and specifications in the Contract; (ii) coordinate the City's resource assignment as required to fulfill the City's obligations pursuant to the Contract; (iii) promptly respond to the Company Project Manager when consulted in writing or by E-mail with respect to project issues; and (iv) act as the City's point of contact for all aspects of the Services including contract administration and coordination of communication with the City's staff. The City shall be allowed to change staffing for the City Project Manager position on one (1) business days' notice to the Company.
10. **PROGRESS REPORTS.** The Company shall prepare and submit to the City bi-weekly (or at such other times as may be agreed in Exhibit B) written progress reports, which accomplish each of the following:
- 10.1. Update the project schedule set forth in Exhibit B, indicating progress for each task and Deliverable.
 - 10.2. Identify all information, personnel, equipment, facilities and resources of the City that will be required for the Company to perform the Services for the subsequent month.
 - 10.3. Identify and report the status of all tasks and Deliverables that have fallen behind schedule.
 - 10.4. Identify and summarize all risks and problems identified by the Company, which may affect the performance of the Services.
 - 10.5. For each risk and problem, identify the action and person(s) responsible for mitigating the risk and resolving the problem.
 - 10.6. For each risk and problem identified, state the impact on the project schedule.
11. **DUTY OF COMPANY TO IDENTIFY AND REQUEST INFORMATION, PERSONNEL AND FACILITIES.** The Company shall identify and request in writing from the City in a timely manner: (i) all information reasonably required by the Company to perform each task comprising the Services, (ii) the City's personnel whose presence or assistance reasonably may be required by the Company to perform each task comprising the Services, and (iii) any other equipment, facility or resource reasonably required by the Company to perform the Services. Notwithstanding the foregoing, the Company shall not be entitled to request that the City provide information, personnel or facilities other than those that Exhibit B specifically requires the City to provide, unless the City can do so at no significant cost. The Company shall not be relieved of any failure to perform under this Contract by virtue of the City's failure to provide any information, personnel, equipment, facilities or resources: (i) that the Company failed to identify and request in writing from the City pursuant to this Section; or (ii)

that the City is not required to provide pursuant to this Contract. In the event the City fails to provide any information, personnel, facility or resource that it is required to provide under this Section, the Company shall notify the City in writing immediately in accordance with the notice provision of this Contract. Failure to do so shall constitute a waiver by Company of any claim or defense it may otherwise have based on the City's failure to provide such information, personnel, facility or resource.

12. COMPANY PERSONNEL REMOVAL, REPLACEMENT, PROMOTION, ETC.

12.1. The City will have the right to require the removal and replacement of any personnel of the Company or the Company's subcontractors who are assigned to provide Services to the City based on experience, qualifications, performance, conduct, compatibility, and violation of City policy or any other reasonable grounds. The addition or promotion of any personnel to key positions within the Project must be approved by the City in writing. The Company will replace any personnel that leave the Project, including but not limited to Key Personnel, with persons having at least equivalent qualifications who are approved by the City in writing. As used in this Contract, the "personnel" includes all staff provided by the Company or its subcontractors, including but not limited to Key Personnel.

12.2. Unless approved by the City in writing, the Company's personnel set forth in Exhibit B (the "Key Personnel") shall stay on the Project until termination without any material reduction of such Key Personnel's duties, time on the Project or level of involvement. In the event of a breach or potential breach of the foregoing sentence, the Company will use its best efforts to maintain such Key Personnel on the Project (if necessary, in a subcontracting role).

13. BACKGROUND CHECKS. Prior to starting work under this Contract, the Company is required to conduct a background check on each Company employee assigned to work under this Contract, and shall require its subcontractors (if any) to perform a background check on each of their employees assigned to work under this Contract (collectively, the "Background Checks"). Each Background Check must include: (i) the person's criminal conviction record from the states and counties where the person lives or has lived in the past seven (7) years; and (ii) a reference check.

After starting work under this Contract, the Company is required to perform a Background Check for each new Company employee assigned to work under this Contract during that year, and shall require its subcontractors (if any) to do the same for each of their employees. If the Company undertakes a new project under this Contract, then prior to commencing performance of the project the Company shall perform a Background Check for each Company employee assigned to work on the project, and shall require its subcontractors (if any) to do the same for each of their employees.

If a person's duties under this Contract fall within the categories described below, the Background Checks that the Company will be required to perform (and to have its subcontractors perform) shall also include the following additional investigation:

- If the job duties require driving: A motor vehicle records check.

The Company must follow all State and Federal laws when conducting Background Checks, including but not limited to the Fair Credit Reporting Act requirements, and shall require its subcontractors to do the same.

The Company shall notify the City of any information discovered in the Background Checks that may be of potential concern for any reason.

The City may conduct its own background checks on principals of the Company as the City deems appropriate. By operation of the public records law, background checks conducted by the City are subject to public review upon request.

14. ACCEPTANCE OF DELIVERABLES AND MILESTONES. Within a reasonable time after a particular Deliverable or Milestone has been completed (or such specific time as may be set forth in Exhibit B), the Company shall submit a written notice to the City's Project Manager stating the Deliverable(s) or Milestone that have been met. This notice shall include a signature page for sign-off by the City Project Manager indicating acceptance of such Deliverable(s) or Milestone.

If the City Project Manager is not satisfied that the Deliverable(s) or Milestone has been met, a notice of rejection (a "Rejection Notice") shall be submitted to the Company by the City Project Manager that specifies the nature and scope of the deficiencies that the City wants corrected. Upon receipt of a

Rejection Notice, the Company shall: (i) act diligently and promptly to correct all deficiencies identified in the Rejection Notice, and (ii) immediately upon completing such corrections give the City a written, dated certification that all deficiencies have been corrected (the "Certification"). In the event the Company fails to correct all deficiencies identified in the Rejection Notice and provide a Certification within thirty (30) days after receipt of the Rejection Notice, the City shall be entitled to terminate this Contract for default without further obligation to the Company and without obligation to pay for the defective work.

Upon receipt of the corrected Deliverable(s) or Milestone, or a Certification, whichever is later, the above-described Acceptance procedure shall recommence. The City shall not be obligated to allow the Company to recommence curative action with respect to any deficiency previously identified in a Rejection Notice, or more than once for any given Deliverable or Milestone (and shall be entitled to terminate this Contract for default if the Company does not meet this time frame).

15. **NON-EXCLUSIVITY.** The Company acknowledges that it is one of several providers of Professional Services to the City and the City does not represent that it is obligated to contract with the Company for any particular project.
16. **EACH PARTY TO BEAR ITS OWN NEGOTIATION COSTS.** Each party shall bear its own cost of negotiating this Contract and developing the exhibits. The City shall not be charged for any Services or other work performed by the Company prior to the Effective Date.
17. **REPRESENTATIONS AND WARRANTIES OF COMPANY.**
 - 17.1. **GENERAL WARRANTIES.**
 - 17.1.1. The Services shall satisfy all requirements set forth in this Contract, including but not limited to the attached Exhibits;
 - 17.1.2. The Company has taken and will continue to take sufficient precautions to ensure that it will not be prevented from performing all or part of its obligations under this Contract by virtue of interruptions in the computer systems used by the Company;
 - 17.1.3. All Services performed by the Company and/or its subcontractors pursuant to this Contract shall meet the highest industry standards and shall be performed in a professional and workmanlike manner by staff with the necessary skills, experience and knowledge;
 - 17.1.4. Neither the Services nor any Deliverables provided by the Company under this Contract will infringe or misappropriate any patent, copyright, trademark or trade secret rights of any third party;
 - 17.1.5. The Company and each Company employee provided by the Company to the City shall have the qualifications, skills and experience necessary to perform the Services described or referenced in Exhibit B;
 - 17.1.6. All information provided by the Company about each Company employee is accurate; and
 - 17.1.7. Each Company employee is an employee of the Company, and the Company shall make all payments and withholdings required for by law for the Company for such employees.
 - 17.2. **ADDITIONAL WARRANTIES.** The Company further represents and warrants that:
 - 17.2.1. It is a legal entity and if incorporated, duly incorporated, validly existing and in good standing under the laws of the state of its incorporation or licensing and is qualified to do business in North Carolina;
 - 17.2.2. It has all the requisite corporate power and authority to execute, deliver and perform its obligations under this Contract;
 - 17.2.3. The execution, delivery, and performance of this Contract have been duly authorized by the Company;
 - 17.2.4. No approval, authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Contract;
 - 17.2.5. In connection with its obligations under this Contract, it shall comply with all

applicable federal, state and local laws and regulations and shall obtain all applicable permits and licenses; and

- 17.2.6. The performance of this Contract by the Company and each Company employee provided by the Company will not violate any contracts or agreements with third parties or any third party rights (including but not limited to non-compete agreements, non-disclosure agreements, patents, trademarks or intellectual property rights).

18. OTHER OBLIGATIONS OF THE COMPANY.

- 18.1. **WORK ON CITY'S PREMISES.** The Company and all its employees will, whenever on the City's premises, obey all instructions and City policies that are provided with respect to performing Services on the City's premises.
- 18.2. **RESPECTFUL AND COURTEOUS BEHAVIOR.** The Company shall assure that its employees interact with City employees and the public in a courteous, helpful and impartial manner. All employees of the Company in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the Company.
- 18.3. **REPAIR OR REPLACEMENT OF DAMAGED EQUIPMENT OR FACILITIES.** In the event that the Company causes damage to the City's equipment or facilities, the Company shall, at its own expense, promptly repair or replace such damaged items to restore them to the same level of functionality that they possessed prior to the Company's action.
- 18.4. **REGENERATION OF LOST OR DAMAGED DATA.** With respect to any data that the Company or any Company employees have negligently lost or negligently damaged, the Company shall, at its own expense, promptly replace or regenerate such data from the City's machine-readable supporting material, or obtain, at the Company's own expense, a new machine-readable copy of lost or damaged data from the City's data sources.
- 18.5. **E-VERIFY.** The Company shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
- 18.6. **IRAN DIVESTMENT ACT.** The Company certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any action causing it to appear on any such list during the term of this Contract; and (iii) it will not utilize any subcontractor that is identified on any such list to provide goods or services hereunder.

19. REMEDIES.

- 19.1. **RIGHT TO COVER.** If the Company fails to meet any completion date or resolution time set forth in this Contract (including the Exhibits) or the Project Plan, the City may take any of the following actions with or without terminating this Contract, and in addition to and without limiting any other remedies it may have:
- a. Employ such means as it may deem advisable and appropriate to perform itself or obtain the Services from a third party until the matter is resolved and the Company is again able to resume performance under this Contract; and
 - b. Deduct any and all expenses incurred by the City in obtaining or performing the Services from any money then due or to become due the Company and, should the City's cost of obtaining or performing the services exceed the amount due the Company, collect the amount due from the Company.
- 19.2. **RIGHT TO WITHHOLD PAYMENT.** If the Company breaches any provision of this Contract, the City shall have a right to withhold all payments due to the Company until such breach has been fully cured.
- 19.3. **SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF.** The Company agrees that monetary damages are not an adequate remedy for the Company's failure to provide the Services or Deliverables as required by this Contract, nor could monetary damages be the equivalent of the performance of such obligation. Accordingly, the Company hereby consents to an order granting specific performance of such obligations of the Company in a court of

competent jurisdiction within the State of North Carolina. The Company further consents to the City obtaining injunctive relief (including a temporary restraining order) to assure performance in the event the Company breaches this Contract.

19.4. **SETOFF.** Each party shall be entitled to setoff and deduct from any amounts owed to the other party pursuant to this Contract all damages and expenses incurred or reasonably anticipated as a result of the other party's breach of this Contract.

19.5. **OTHER REMEDIES.** Upon breach of this Contract, each party may seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.

20. TERM AND TERMINATION OF CONTRACT.

20.1. **TERM.** This Contract shall commence on the Effective Date and shall continue in effect for warranty period provided by the food service equipment provider and installer.

20.2. **TERMINATION BY THE CITY.** The City may terminate this Contract at any time without cause by giving thirty (30) days prior written notice to the Company. As soon as practicable after receipt of a written notice of termination without cause, the Company shall submit a statement to the City showing in detail the Services performed under this Contract through the date of termination. The foregoing payment obligation is contingent upon: (i) the Company having fully complied with Section 20.8; and (ii) the Company having provided the City with written documentation reasonably adequate to verify the number of hours of Services rendered by each Company employee through the termination date and the percentage of completion of each task.

20.3. **TERMINATION FOR DEFAULT BY EITHER PARTY.** By giving written notice to the other party, either party may terminate this Contract upon the occurrence of one or more of the following events:

a. The other party violates or fails to perform any covenant, provision, obligation, term or condition contained in this Contract, provided that, unless otherwise stated in this Contract, such failure or violation shall not be cause for termination if both of the following conditions are satisfied: (i) such default is reasonably susceptible to cure; and (ii) the other party cures such default within thirty (30) days of receipt of written notice of default from the non-defaulting party; or

b. The other party attempts to assign, terminate or cancel this Contract contrary to the terms hereof; or

c. The other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under the Contract shall continue), or if a receiver, trustee or liquidator is appointed for it or any substantial part of other party's assets or properties.

Any notice of default shall identify this Section of this Contract and shall state the party's intent to terminate this Contract if the default is not cured within the specified period.

Notwithstanding anything contained herein to the contrary, upon termination of this Contract by the Company for default, the Company shall continue to perform the Services required by this Contract for the lesser of: (i) six (6) months after the date the City receives the Company's written termination notice; or (ii) the date on which the City completes its transition to a new service provider.

20.4. **ADDITIONAL GROUNDS FOR DEFAULT TERMINATION BY THE CITY.** By giving written notice to the Company, the City may also terminate this Contract upon the occurrence of one or more of the following events (which shall each constitute separate grounds for termination without a cure period and without the occurrence of any of the other events of default previously listed):

- a. Failure of the Company to complete a particular task by the completion date set forth in this Contract;
 - b. The Company makes or allows to be made any material written misrepresentation or provides any materially misleading written information in connection with this Contract, or any covenant, agreement, obligation, term or condition contained in this Contract; or
 - c. The Company takes or fails to take any action which constitutes grounds for immediate termination under the terms of this Contract, including but not limited to failure to obtain or maintain the insurance policies and endorsements as required by this Contract, or failure to provide the proof of insurance as required by this Contract.
- 20.5. **NO SUSPENSION.** In the event that the City disputes in good faith an allegation of default by the Company, notwithstanding anything to the contrary in this Contract, the Company agrees that it will not terminate this Contract or suspend or limit the Services or any warranties or repossess, disable or render unusable any software supplied by the Company, unless (i) the parties agree in writing, or (ii) an order of a court of competent jurisdiction determines otherwise.
- 20.6. **CANCELLATION OF ORDERS AND SUBCONTRACTS.** In the event this Contract is terminated by the City for any reason prior to the end of the term, the Company shall, upon termination, immediately discontinue all service in connection with this Contract and promptly cancel all existing orders and subcontracts, which are chargeable to this Contract. As soon as practicable after receipt of notice of termination, the Company shall submit a statement to the City showing in detail the Services performed under this Contract to the date of termination.
- 20.7. **AUTHORITY TO TERMINATE.** The following persons are authorized to terminate this Contract on behalf of the City: (i) the City Manager, any Assistant City Manager, or any designee of the City Manager; or (ii) the Department Director of the City Department responsible for administering this Contract.
- 20.8. **OBLIGATIONS UPON EXPIRATION OR TERMINATION.** Upon expiration or termination of this Contract, the Company shall promptly return to the City (i) all computer programs, files, documentation, media, related material and any other material and equipment that is owned by the City; (ii) all Deliverables that have been completed or that are in process as of the date of termination; and (iii) a written statement describing in detail all work performed with respect to Deliverables which are in process as of the date of termination. The expiration or termination of this Contract shall not relieve either party of its obligations regarding "Confidential Information," as defined in this Contract.
- 20.9. **NO EFFECT ON TAXES, FEES, CHARGES OR REPORTS.** Any termination of this Contract shall not relieve the Company of the obligation to pay any fees, taxes or other charges then due to the City, nor relieve the Company of the obligation to file any daily, monthly, quarterly or annual reports covering the period to termination nor relieve the Company from any claim for damages previously accrued or then accruing against the Company.
- 20.10. **OTHER REMEDIES.** The remedies set forth in this Section and **Section 19** shall be deemed cumulative and not exclusive, and may be exercised successively or concurrently, in addition to any other remedies available under this Contract or at law or in equity.
- 21. TRANSITION SERVICES UPON TERMINATION.** Upon termination or expiration of this Contract, the Company shall cooperate with the City to assist with the orderly transfer of the Services provided by the Company to the City. Prior to termination or expiration of this Contract, the City may require the Company to perform and, if so required, the Company shall perform certain transition services necessary to shift the Services of the Company to another provider or to the City itself as described below (the "Transition Services"). Transition Services may include but shall not be limited to the following:
- Working with the City to jointly develop a mutually agreed upon Transition Services Plan to facilitate the termination of the Services;
 - Notifying all affected service providers and subcontractors of the Company;
 - Performing the Transition Services;

- Answering questions regarding the Services on an as-needed basis; and
 - Providing such other reasonable services needed to effectuate an orderly transition to a new service provider.
- 22. CHANGES.** In the event changes to the Services (collectively “Changes”), become necessary or desirable to the parties, the parties shall follow the procedures set forth in this Section. A Change shall be effective only when documented by a written, dated agreement executed by both parties that expressly references and is attached to this Contract (a “Change Statement”). The Change Statement shall set forth in detail: (i) the Change requested, including all modifications of the duties of the parties; (ii) the reason for the proposed Change; and (iii) a detailed analysis of the impact of the Change on the results of the Services and time for completion of the Services, including the impact on all Milestones and delivery dates and any associated price.
- In the event either party desires a Change, the Project Manager for such party shall submit to the other party’s Project Manager a proposed Change Statement. If the receiving party does not accept the Change Statement in writing within ten (10) days, the receiving party shall be deemed to have rejected the Change Statement. If the parties cannot reach agreement on a proposed Change, the Company shall nevertheless continue to render performance under this Contract in accordance with its (unchanged) terms and conditions.
- Changes that involve or increase in the amounts payable by the City may require execution by the City Manager or a designee depending on the amount. Some increases may also require approval by Fayetteville City Council.
- 23. CITY OWNERSHIP OF WORK PRODUCT.**
- 23.1. The parties agree that the City shall have exclusive ownership of all reports, documents, designs, ideas, materials, reports, concepts, plans, creative works, and other work product developed for or provided to the City in connection with this Contract, and all patent rights, copyrights, trade secret rights and other intellectual property rights relating thereto (collectively the “Intellectual Property”). The Company hereby assigns and transfers all rights in the Intellectual Property to the City. The Company further agrees to execute and deliver such assignments and other documents as the City may later require to perfect, maintain and enforce the City’s rights as sole owner of the Intellectual Property, including all rights under patent and copyright law. The Company hereby appoints the City as attorney in fact to execute all such assignments and instruments and agree that its appointment of the City as an attorney in fact is coupled with an interest and is irrevocable.
- 23.2. The City grants the Company a royalty-free, non-exclusive license to use and copy the Intellectual Property to the extent necessary to perform this Contract. The Company shall not be entitled to use the Intellectual Property for other purposes without the City’s prior written consent, and shall treat the Intellectual Property as “Confidential Information” pursuant to Section 27 of the Contract.
- 23.3. The Company will treat as Confidential Information under the Confidentiality and Non-Disclosure Contract all data in connection with the Contract. City data processed by the Company shall remain the exclusive property of the City. The Company will not reproduce, copy, duplicate, disclose, or in any way treat the data supplied by the City in any manner except that contemplated by the Contract.
- 24. RELATIONSHIP OF THE PARTIES.** The relationship of the parties established by this Contract is solely that of independent contractors, and nothing contained in this Contract shall be construed to (i) give any party the power to direct or control the day-to-day administrative activities of the other; or (ii) constitute such parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking; or (iii) make either party an agent of the other, or any Company employee an agent or employee of the City, for any purpose whatsoever. Neither party nor its agents or employees is the representative of the other for any purpose, and neither has power or authority to act as agent or employee to represent, to act for, bind, or otherwise create or assume any obligation on behalf of the other.
- 25. INDEMNIFICATION.** To the fullest extent permitted by law, the Company shall indemnify, defend

and hold harmless each of the “Indemnitees” (as defined below) from and against any and all “Charges” (as defined below) paid or incurred as a result of any claims, demands, lawsuits, actions, or proceedings: (i) alleging violation, misappropriation or infringement of any copyright, trademark, patent, trade secret or other proprietary rights with respect to the Services or any products or deliverables provided to the City pursuant to this Contract (“Infringement Claims”); (ii) seeking payment for labor or materials purchased or supplied by the Company or its subcontractors in connection with this Contract; (iii) arising from the Company’s failure to perform its obligations under this Contract, or from any act of negligence or willful misconduct by the Company or any of its agents, employees or subcontractors relating to this Contract, including but not limited to any liability caused by an accident or other occurrence resulting in bodily injury, death, sickness or disease to any person(s) or damage or destruction to any property, real or personal, tangible or intangible; or (iv) arising from any claim that the Company or an employee or subcontractor of the Company is an employee of the City, including but not limited to claims relating to worker’s compensation, failure to withhold taxes and the like. For purposes of this Section: (a) the term “Indemnitees” means the City and each of the City’s officers, officials, employees, agents and independent contractors (excluding the Company); and (b) the term “Charges” means any and all losses, damages, costs, expenses (including reasonable attorneys’ fees), obligations, duties, fines, penalties, royalties, interest charges and other liabilities (including settlement amounts).

If an Infringement Claim occurs, the Company shall either: (i) procure for the City the right to continue using the affected product or service; or (ii) repair or replace the infringing product or service so that it becomes non-infringing, provided that the performance of the overall product(s) and service(s) provided to the City shall not be adversely affected by such replacement or modification. If the Company is unable to comply with the preceding sentence within thirty (30) days after the City is directed to cease use of a product or service, the Company shall promptly refund to the City all amounts paid under this Contract.

This Section 25 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise).

26. **SUBCONTRACTING.** Should the Company choose to subcontract, the Company shall be the prime contractor and shall remain fully responsible for performance of all obligations that it is required to perform under the Contract. Any subcontract entered into by Company shall name the City as a third party beneficiary.

27. **CONFIDENTIAL INFORMATION.**

27.1. **CONFIDENTIAL INFORMATION.** Confidential Information includes any information, not generally known in the relevant trade or industry, obtained from the City or its vendors or licensors or which falls within any of the following general categories:

27.1.1. *Trade secrets.* For purposes of this Contract, trade secrets consist of *information* of the City or any of its suppliers, contractors or licensors: (a) that derives value from being secret; and (b) that the owner has taken reasonable steps to keep confidential. Examples of trade secrets include information relating to proprietary software, new technology, new products or services, flow charts or diagrams that show how things work, manuals that tell how things work and business processes and procedures.

27.1.2. *Information of the City or its suppliers, contractors or licensors marked “Confidential” or “Proprietary.”*

27.1.3. *Information relating to criminal investigations conducted by the City, and records of criminal intelligence information compiled by the City.*

27.1.4. *Information contained in the City’s personnel files, as defined by N.C. Gen. Stat. 160A-168.* This consists of all information gathered and/or maintained by the City about employees, except for that information which is a matter of public record under North Carolina law.

27.1.5. *Citizen or employee social security numbers collected by the City.*

27.1.6. *Computer security information of the City, including all security features of electronic data processing, or information technology systems, telecommunications networks and*

electronic security systems. This encompasses but is not limited to passwords and security standards, procedures, processes, configurations, software and codes.

- 27.1.7. *Local tax records of the City that contains information about a taxpayer's income or receipts.*
- 27.1.8. *Any attorney / City privileged information disclosed by either party.*
- 27.1.9. *Any data collected from a person applying for financial or other types of assistance, including but not limited to their income, bank accounts, savings accounts, etc.*
- 27.1.10. *The name or address of individual homeowners who, based on their income, have received a rehabilitation grant to repair their home.*
- 27.1.11. *Building plans of city-owned buildings or structures, as well as any detailed security plans.*
- 27.1.12. *Billing information of customers compiled and maintained in connection with the City providing utility services.*
- 27.1.13. *Other information that is exempt from disclosure under the North Carolina public records laws.*

Categories stated in Sections 27.1.3 through 27.1.13 above constitute "Highly Restricted Information," as well as Confidential Information. The Company acknowledges that certain Highly Restricted Information is subject to legal restrictions beyond those imposed by this Contract, and agrees that: (a) all provisions in this Contract applicable to Confidential Information shall apply to Highly Restricted Information; and (b) the Company will also comply with any more restrictive instructions or written policies that may be provided by the City from time to time to protect the confidentiality of Highly Restricted Information.

The parties acknowledge that in addition to information disclosed or revealed after the date of this Contract, the Confidential Information shall include information disclosed or revealed within one (1) year prior to the date of this Contract.

27.2. **RESTRICTIONS.** The Company shall keep the Confidential Information in the strictest confidence, in the manner set forth below:

- 27.2.1. It shall not copy, modify, enhance, compile or assemble (or reverse compile or disassemble), or reverse engineer Confidential Information.
- 27.2.2. It shall not, directly or indirectly, disclose, divulge, reveal, report or transfer Confidential Information of the other to any third party or to any individual employed by the Company, other than an employee, agent, subcontractor or vendor of the City or Company who: (i) has a need to know such Confidential Information, and (ii) has executed a confidentiality agreement incorporating substantially the form of this Section of the Contract and containing all protections set forth herein.
- 27.2.3. It shall not use any Confidential Information of the City for its own benefit or for the benefit of a third party, except to the extent such use is authorized by this Contract or other written agreements between the parties hereto, or is for the purpose for which such Confidential Information is being disclosed.
- 27.2.4. It shall not remove any proprietary legends or notices, including copyright notices, appearing on or in the Confidential Information of the other.
- 27.2.5. The Company shall use its best efforts to enforce the proprietary rights of the City and the City's vendors, licensors and suppliers (including but not limited to seeking injunctive relief where reasonably necessary) against any person who has possession of or discloses Confidential Information in a manner not permitted by this Contract.
- 27.2.6. In the event that any demand is made in litigation, arbitration or any other proceeding for disclosure of Confidential Information, the Company shall assert this Contract as a ground for refusing the demand and, if necessary, shall seek a protective order or other appropriate relief to prevent or restrict and protect any disclosure of Confidential Information.
- 27.2.7. All materials which constitute, reveal or derive from Confidential Information shall be kept confidential to the extent disclosure of such materials would reveal Confidential

Information, and unless otherwise agreed, all such materials shall be returned to the City or destroyed upon satisfaction of the purpose of the disclosure of such information.

- 27.3. EXCEPTIONS. The parties agree that the Company shall have no obligation with respect to any Confidential Information which the Company can establish:
- 27.3.1. Was already known to the Company prior to being disclosed by the disclosing party;
 - 27.3.2. Was or becomes publicly known through no wrongful act of the Company;
 - 27.3.3. Was rightfully obtained by the Company from a third party without similar restriction and without breach hereof;
 - 27.3.4. Was used or disclosed by the Company with the prior written authorization of the City;
 - 27.3.5. Was disclosed pursuant to the requirement or request of a governmental agency, which disclosure cannot be made in confidence, provided that, in such instance, the Company shall first give to the City notice of such requirement or request;
 - 27.3.6. Was disclosed pursuant to the order of a court of competent jurisdiction or a lawfully issued subpoena, provided that the Company shall take use its best efforts to obtain an agreement or protective order providing that, to the greatest possible extent possible, this Contract will be applicable to all disclosures under the court order or subpoena.
- 27.4. UNINTENTIONAL DISCLOSURE. Notwithstanding anything contained herein in to the contrary, in the event that the Company is unintentionally exposed to any Confidential Information of the City, the Company agrees that it shall not, directly or indirectly, disclose, divulge, reveal, report or transfer such Confidential Information to any person or entity or use such Confidential Information for any purpose whatsoever.
- 27.5. REMEDIES. The Company acknowledges that the unauthorized disclosure of the Confidential Information of the City will diminish the value of the proprietary interests therein. Accordingly, it is agreed that if the Company breaches its obligations hereunder, the City shall be entitled to equitable relief to protect its interests, including but not limited to injunctive relief, as well as monetary damages.
- 28. INSURANCE.**
- 28.1. TYPES OF INSURANCE. The Company shall obtain and maintain during the life of this Contract, with an insurance company rated not less than "A" by A.M. Best, authorized to do business in the State of North Carolina, acceptable to the City of Fayetteville, Risk and Legal managers the following insurance:
- 28.1.1. Automobile Liability - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - bodily injury and property damage.
 - 28.1.2. Commercial General Liability - Bodily injury and property damage liability as shall protect the Company and any subcontractor performing Services under this Contract, from claims of bodily injury or property damage which arise from performance of this Contract, whether such operations are performed by the Company, any subcontractor, or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products, operations, personal and advertising injury, and contractual liability, assumed under the indemnity provision of this Contract.
 - 28.1.3. Workers' Compensation and Employers Liability - meeting the statutory requirements of the State of North Carolina, \$500,000 per accident limit, \$500,000 disease per policy limit, \$500,000 disease each employee limit.
- The Company shall not commence any Services in connection with this Contract until it has obtained all of the foregoing types of insurance and such insurance has been approved by the

City. The Company shall not allow any subcontractor to commence Services on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.

28.2. **OTHER INSURANCE REQUIREMENTS.**

28.2.1. The City shall be exempt from, and in no way liable for any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Company and/or subcontractor providing such insurance.

28.2.2. The City of Fayetteville shall be named as an additional insured for operations or services rendered under the general liability coverage. The Company's insurance shall be primary of any self-funding and/or insurance otherwise carried by the City for all loss or damages arising from the Company's operations under this agreement.

28.2.3. Certificates of such insurance will be furnished to the City and shall contain the provision that the City be given thirty (30) days' written notice of any intent to amend coverage reductions or material changes or terminate by either the insured or the insuring Company.

28.2.4. Should any or all of the required insurance coverage be self-funded/self-insured, a copy of the Certificate of Self-Insurance or other documentation from the North Carolina Department of Insurance shall be furnished to the City.

28.2.5. If any part of the Services under this Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the Company from meeting all insurance requirements or otherwise being responsible for the subcontractor.

29. COMMERCIAL NON-DISCRIMINATION. As a condition of entering into this Contract, the Company represents and warrants that it will fully comply with the City's Commercial Non-Discrimination Policy, as described in Section 2, Article V of the Fayetteville City Code, and consents to be bound by the award of any arbitration conducted thereunder. As part of such compliance, the Company shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, age or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors or suppliers in connection with a City contract or contract solicitation process, nor shall the Company retaliate against any person or entity for reporting instances of such discrimination. The Company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its subcontracting and supply opportunities on City contracts, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The Company understands and agrees that a violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Company from participating in City contracts or other sanctions.

As a condition of entering into this Contract, the Company agrees to: (a) promptly provide to the City in a format specified by the City all information and documentation that may be requested by the City from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this Contract; and (b) if requested, provide to the City within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Company has used on City contracts in the past five years, including the total dollar amount paid by the Company on each subcontract or supply contract. The Company further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Non-Discrimination Policy, to provide any documents relevant to such investigation that are requested by the City, and to be bound by the award of any arbitration conducted under such Policy.

The Company agrees to provide to the City from time to time on the City's request, payment affidavits detailing the amounts paid by the Company to subcontractors and suppliers in connection with this Contract within a certain period of time. Such affidavits shall be in the format specified by the City from time to time

The Company understands and agrees that violation of this Commercial Non-Discrimination provision shall be considered a material breach of this Contract and may result in contract termination, disqualification of the Company from participating in City contracts and other sanctions.

30. NOTICES AND PRINCIPAL CONTACTS. Any notice, consent or other communication required or contemplated by this Contract shall be in writing, and shall be delivered in person, by U.S. mail, by overnight courier, by electronic mail or by telefax to the intended recipient at the address set forth below:

For the Company:

PHONE: _____
E-MAIL: _____

For the City:
Francesca Cameron
City of Fayetteville
Finance Dept - Purchasing Office
433 Hay Street – 2nd Floor
Fayetteville, NC 28301
PHONE: 910-433-1358
NCameron@ci.Fay.nc.us

Notice shall be effective upon the date of receipt by the intended recipient; provided that any notice, which is sent by telefax or electronic mail, shall also be simultaneously sent by mail deposited with the U.S. Postal Service or by overnight courier. Each party may change its address for notification purposes by giving the other party written notice of the new address and the date upon which it shall become effective.

31. MISCELLANEOUS.

- 31.1. **ENTIRE AGREEMENT.** This Contract is the entire agreement between the parties with respect to its subject matter, and there are no other representations, understandings, or agreements between the parties with respect to such subject matter. This Contract supersedes all prior agreements, negotiations, representations and proposals, written or oral.
- 31.2. **AMENDMENT.** No amendment or change to this Contract shall be valid unless in writing and signed by both parties to this Contract.
- 31.3. **GOVERNING LAW AND JURISDICTION.** The parties acknowledge that this Contract is made and entered into in Fayetteville, North Carolina, and will be performed in Fayetteville, North Carolina. The parties further acknowledge and agree that North Carolina law shall govern all the rights, obligations, duties and liabilities of the parties under this Contract, and that North Carolina law shall govern interpretation and enforcement of this Contract and any other matters relating to this Contract (all without regard to North Carolina conflicts of law principles). The parties further agree that any and all legal actions or proceedings relating to this Contract shall be brought in a state or federal court sitting in Cumberland County, North Carolina. By the execution of this Contract, the parties submit to the jurisdiction of said courts and hereby irrevocably waive any and all objections, which they may have with respect to venue in any court sitting in Cumberland County, North Carolina.
- 31.4. **BINDING NATURE AND ASSIGNMENT.** This Contract shall bind the parties and their successors and permitted assigns. Neither party may assign any of the rights and obligations thereunder without the prior written consent of the other. Any assignment attempted without the written consent of the other party shall be void.
- 31.5. **CITY NOT LIABLE FOR DELAYS.** It is agreed that the City shall not be liable to the Company, its agents or representatives or any subcontractor for or on account of any stoppages or delay in the performance of any obligations of the City or any other party hereunder caused by injunction or other legal or equitable proceedings or on account of any other delay for any cause beyond the City's reasonable control. The City shall not be liable under any circumstances for lost profits or any other consequential, special or indirect damages.
- 31.6. **FORCE MAJEURE.**
 - 31.6.1. The Company shall be not liable for any failure or delay in the performance of its obligations pursuant to this Contract (and such failure or delay shall not be deemed a default of this Contract or grounds for termination hereunder if all of the following

- conditions are satisfied: (i) if such failure or delay: (a) could not have been prevented by reasonable precaution, and (b) cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) if and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or court order.
- 31.6.2. Upon the occurrence of an event which satisfies all of the conditions set forth above (a "Force Majeure Event") the Company shall be excused from any further performance of those of its obligations pursuant to this Contract affected by the Force Majeure Event for as long as (a) such Force Majeure Event continues and (b) the Company continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 31.6.3. Upon the occurrence of a Force Majeure Event, the Company shall immediately notify the City by telephone (to be confirmed by written notice within two (2) days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event prevents the Company from performing its obligations for more than five (5) days, the City may terminate this Contract.
- 31.6.4. Strikes, slow-downs, walkouts, lockouts, and individual disputes are not excused under this provision.
- 31.7. **SEVERABILITY.** The invalidity of one or more of the phrases, sentences, clauses or sections contained in this Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated. If any provision of this Contract is held to be unenforceable, then both parties shall be relieved of all obligations arising under such provision, but only to the extent that such provision is unenforceable, and this Contract shall be deemed amended by modifying such provision to the extent necessary to make it enforceable while preserving its intent.
- 31.8. **NO PUBLICITY.** No advertising, sales promotion or other materials of the Company or its agents or representations may identify or reference this Contract or the City in any manner absent the written consent of the City.
- 31.9. **APPROVALS.** All approvals or consents required under this Contract must be in writing.
- 31.10. **WAIVER.** No delay or omission by either party to exercise any right or power it has under this Contract shall impair or be construed as a waiver of such right or power. A waiver by either party of any covenant or breach of this Contract shall not be constitute or operate as a waiver of any succeeding breach of that covenant or of any other covenant. No waiver of any provision of this Contract shall be effective unless in writing and signed by the party waiving the rights.
- 31.11. **SURVIVAL OF PROVISIONS.** The following sections of this Contract shall survive the termination hereof:
Section 4.3 "Employment Taxes and Employee Benefits"
Section 17 "Representations and Warranties of Company"
Section 20 "Term and Termination of Contract"
Section 23 "City Ownership of Work Product"
Section 25 "Indemnification"
Section 27 "Confidential Information"
Section 28 "Insurance"
Section 30 "Notices and Principal Contacts"
Section 31 "Miscellaneous"
- 31.12. **CHANGE IN CONTROL.** In the event of a change in "Control" of the Company (as defined below), the City shall have the option of terminating this Contract by written notice to the Company. The Company shall notify the City within ten (10) days of the occurrence of a change in control. As used in this Contract, the term "Control" shall mean the possession, direct or indirect, of either (i) the ownership of or ability to direct the voting of, as the case may be fifty-

- one percent (51%) or more of the equity interests, value or voting power in the Company or (ii) the power to direct or cause the direction of the management and policies of the Company whether through the ownership of voting securities, by contract or otherwise.
- 31.13. **DRAFTER'S PROTECTION.** Each of the Parties has agreed to the use of the particular language of the provisions of this Contract and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the drafters, but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the Parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.
- 31.14. **FAMILIARITY AND COMPLIANCE WITH LAWS AND ORDINANCES.** The Company agrees to make itself aware of and comply with all local, state and federal ordinances, statutes, laws, rules and regulations applicable to the Services. The Company further agrees that it will at all times during the term of this Contract be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to, workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the Services.
- 31.15. **CONFLICT OF INTEREST.** The Company covenants that its officers, employees and shareholders have no interest and shall not acquire any interest, direct or indirect that would conflict in any manner or degree with the performance of Services required to be performed under the Contract.
- 31.16. **NO BRIBERY.** The Company certifies that neither it, any of its affiliates or subcontractors, nor any employees of any of the foregoing has bribed or attempted to bribe an officer or employee of the City in connection with the Contract.
- 31.17. **HARASSMENT.** The Company agrees to make itself aware of and comply with the City's Harassment Policy. The City will not tolerate or condone acts of harassment based upon race, sex, religion, national origin, color, age, or disability. Violators of this policy will be subject to termination.
- 31.18. **TRAVEL UPGRADES.** The City has no obligation to reimburse the Company for any travel or other expenses incurred in connection with this Contract unless this Contract specifically requires reimbursement. If this Contract requires reimbursement by the City: (a) the City will only pay coach/economy rate airline fares, and (b) the Company's invoices shall include sufficient detail of travel expenses to demonstrate that fares were at coach/economy rates. Notwithstanding the foregoing, nothing in this provision shall preclude complimentary upgrades to first class or business class seating, mileage, points, or credits based upgrades, or upgrades paid for by the contractor so long as the City is not charged for or asked to reimburse the upgrade charge or the value of the miles, points, or credits used.
- 31.19. **TAXES.** Except as specifically stated elsewhere in this Contract, the Company shall pay all applicable federal, state and local taxes which may be chargeable against the performance of the Services. The Company consents to and authorizes the City to collect any and all delinquent taxes and related interest, fines, or penalties of the Company by reducing any payment, whether monthly, quarterly, semi-annually, annually, or otherwise, made by the City to the Company pursuant to this Contract for an amount equal to any and all taxes and related interest, fines, or penalties owed by the Company to the City. The Company hereby waives any requirements for notice under North Carolina law for each and every instance that the City collects delinquent taxes pursuant to this paragraph. This paragraph shall not be construed to prevent the Company from filing an appeal of the assessment of the delinquent tax if such appeal is within the time prescribed by law.
- 31.20. **COUNTERPARTS.** This Contract may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

[Signature Page Follows]

IN WITNESS WHEREOF, and in acknowledgement that the parties hereto have read and understood each and every provision hereof, the parties have caused this Contract to be executed as of the date first written above.

[INSERT COMPANY NAME]

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

**CITY OF FAYETTEVILLE:
CITY MANAGER**

BY: _____
(signature)

PRINT NAME: _____

TITLE: _____

DATE: _____

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

BY: _____
(signature)

DATE: _____



STAFFORD-SMITH, Inc.

COMMERCIAL REFRIGERATION · FOOD SERVICE EQUIPMENT · HEATING & AIR CONDITIONING
DESIGN · ENGINEERING · SALES · INSTALLATION · SERVICE

3414 S. BURDICK, KALAMAZOO, MI 49001 269-343-1240 FAX: 269-343-2509

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Supplemental Information

See Responsibility Matrix for scope of work interpretation of the documents provided. It has always been our practice that if awarded the project at the kick-off meeting to meet with the GC and the trades to ensure there are no gaps in the scope of work. This ensures that when the equipment hits the site everyone knows their roles.

Substitutions:

The project is bid as specified and SSI is aware that any changes to mechanical/electrical scope of work by using an approved alternate will be our responsibility. That being said we feel these voluntary alternates meet or exceed the specifications and will require no further changes.

| | |
|--|----------|
| Hobart dish machine in lieu of the Champion 86PW - estimated savings | \$5,300 |
| Micro-Matic beer systems in lieu of Chill Rite - estimated savings | \$7,000 |
| Krowne Metal bar equipment in lieu of specified Glastender - potential savings | \$7,200 |
| Vulcan fryers in lieu of Pitco - potential savings | \$8,000 |
| American Panel in lieu of Thermalrite walk-ins - potential savings of | \$15,000 |

Total potential savings if these alternates are accepted will be \$42,500

Understand that it is not Stafford-Smith's intention to change the specified manufacturers from the project; but allowing alternate acceptable manufacturers will make the pricing more competitive. SSI will do what we can if we are awarded the project to keep the prime specified manufacturers in as part of the project.

Rich Harrison
V.P., Stafford-Smith, Inc.
(269) 343-1240 - Ext. 4016
(269) 998-6133 (Mobile)
rharrison@staffordsmith.com

| | Food Service Contractor | | Electrical Contractor | | Plumbing/Fire Protection Contractor | | Mechanical Contractor | | BY OTHERS | |
|--|-------------------------|---------|-----------------------|---------|-------------------------------------|---------|-----------------------|---------|-----------|---------|
| | Furnish | Install | Furnish | Install | Furnish | Install | Furnish | Install | Furnish | Install |
| General Responsibilities | | | | | | | | | | |
| General | | | | | | | | | | |
| deliver, uncrate and set in place equipment | X | X | | | | | | | | |
| all floor, wall, roof penetrations, sleeving, and fireproofing/insulating/re-sealing necessary for the performance of your work. | X | X | X | X | X | X | X | X | X | X |
| start-up, testing and calibrating equipment | X | X | | | | | | | | |
| owner training of equipment | X | X | | | | | | | | |
| Electrical | | | | | | | | | | |
| all final electrical connections and interconnections to equipment room building services | | | X | X | | | | | | |
| all control wiring | | | X | X | | | | | | |
| interwiring complete for serving counters | | | X | X | | | | | | |
| electrical disconnects as required by local code | | | X | X | | | | | | |
| Electrical Load Centers and/or Panelboards per bid documents | | | X | X | | | | | | |
| Interconnections of electrical feeds within foodservice equipment that were disconnected for shipping purposes. | X | X | | | | | | | | |
| Mechanical/Plumbing | | | | | | | | | | |
| all final plumbing connections and interconnections to equipment from building services | | | | | X | X | | | | |
| all plumbing materials including pipes, traps, stops, valves, fittings, shut-offs, water hammer arrestors, pressure reducing valves, etc. for a complete and operable system | | | | | X | X | | | | |
| hand sinks (where specified by FSC) | X | X | | | | | | | | |
| sink faucets | X | X | | | | | | | | |
| waste fittings (where specified by FSC) | X | X | | | | | | X | X | |
| flexible gas hoses for mobile equipment | X | X | | | | | | X | X | |
| appliance gas pressure regulators | X | X | | | | | | X | X | |
| primary gas pressure regulator for main feed to equipment (6"-12" of water column, pressure required) | | | | | | | | X | X | |
| floor troughs | X | | | | | | X | | | |
| complete building system flush a minimum of 2 times prior to glycol fill (document process) | | | | | | | | X | X | |
| inline strainer prior to foodservice equipment final connections (accessible & serviceable) | | | | | | | | X | X | |
| Filtering devices at chiller/pumping equipment (suction type or better) | | | | | | | | X | X | |
| Pre-Chiller Equipment | | | | | | | | | | |
| Pre-chiller equipment piping between components | | | | | | | | X | X | |
| Final connection | | | | | | | | X | X | |
| Interconnection between ice maker & chiller | | | | | | | | X | X | |
| Hoods | | | | | | | | | | |
| Exhaust Ventilator, non Water Wash | | | | | | | | | | |
| exhaust ventilator | X | X | | | | | | | | |
| duct work and duct connections at hood collars | | | | | | | | X | X | |
| fan starters and/or relays | | | X | X | | | | | | |



STAFFORD-SMITH, Inc.

COMMERCIAL REFRIGERATION • FOOD SERVICE EQUIPMENT • HEATING & AIR CONDITIONING
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PROJECT PLAN

Stafford-Smith, Inc. has over 77 years of experience in the food service equipment industry and we realize the importance of coordination and team-work when working on these types of projects. The "team" listed below will be dedicated specifically to your project to ensure a successful completion for everyone involved.

David M. Stafford - CEO

- Personal involvement with the project from start to finish.

Rich Harrison - V.P.

- Responsible for bid proposal and contract issues, scope reviews, plans and specifications. Oversees entire project – main contact person between owner, owner's representative and the GC/CM.

John Carney - Estimator

- Responsible for all pricing issues regarding the project, RFI's, ASI's and costing proposals.

Terry Allen - Senior Project Manager

- Responsible for the day to day details of the project. Our senior project manager is in charge of our onsite crews, the processing of the project documents, field measurements, coordination with the trades and the GC, release of fabricated equipment, etc. The Senior Project Manager is the direct line of contact in the coordination process between the GC/CM and Stafford-Smith.

Scott Field – Regional Manager/On-Site Project Manager

- Project Manager is responsible for the everyday items on the project, close working relationship with the trades, close coordination of work in the field and with the GC/CM. Coordinates deliveries and installation of the work.

Cindy Speicher – Inside Coordinator Supervisor

- Our inside coordinator is responsible for issuing Purchase Orders and following up with manufacturers for on-time deliveries. Reviews acknowledgements and verifies voltages, hinging, finishes and direction of equipment ordered for the project. Generates RFI's on discrepancies found.

Tiffany Arnett – Submittal Coordinator

- Tiffany is responsible for compiling all the submittals for the project. Buy-Out books, mfr. shop-drawings, Stafford-Smith dimensioned rough-in drawings and O and M manuals are the bulk of her responsibilities.

Tony Mitchell – CAD and Safety Supervisor

- Tony runs a staff of four CAD operators and will be responsible for creating the Stafford-Smith Rough-in drawings. Tony also maintains our Safety Plan.

In addition to the core group responsible for the successful completion of your project Stafford Smith also has:

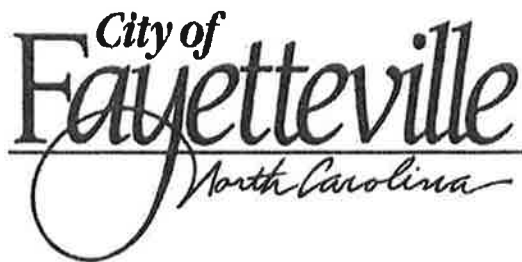
Accounts Payable Department: responsible to ensure timely payment to the vendors to guarantee on time shipments. They are responsible to match up acknowledgements, to invoices and ensure that we are receiving the equipment that we ordered.

Accounts Receivable Department: responsible for AIA billing of the project. This staff is responsible for gathering all the documentation required for the billing of the project to ensure a smooth flow of information between Stafford-Smith, Barton Malow, and The City of Fayetteville.

Stafford-Smith employs over 150 quality and competent individuals with the primary focus to provide the best service and management of food service equipment construction projects around the country. We pride ourselves in doing it right the first time. This is our core competency and we are focused on doing our job well.

Rich Harrison

V.P., Stafford-Smith, Inc.



PURCHASING

February 26, 2018

MEMO TO: Prospective Service Providers

FROM: Francesca Cameron, Purchasing Agent

SUBJECT: **Addendum #1:**
RFP Food Service Equipment and Installation Services for the
Minor League Baseball Stadium/Entertainment Venue

DUE DATE AND TIME: March 15, 2018; 5:00 p.m.

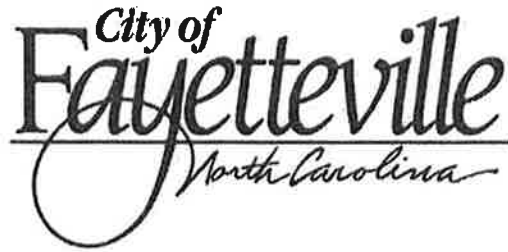
1. The RFP solicitation documents are hereby modified per the attached Addendum #1 dated February 26, 2018. To include the following:
 - a. **Revised Appendix B- Food Service Equipment Plans**
2. The foregoing changes shall be incorporated in the RFP solicitation documents, and a copy of the Addendum #1, signed by the Service Provider, must accompany the proposal to indicate the Service Provider's familiarity with the changes.

Service Provider Acknowledgement:

Service Provider Name (Print): Richard Harrison

Service Provider Signature: _____

Date of Signature: 3/14/2018



PURCHASING

March 8, 2018

MEMO TO: Prospective Service Providers
FROM: Francesca Cameron, Purchasing Agent
SUBJECT: **Addendum #2:**
RFP Food Service Equipment and Installation Services for the Minor League
Baseball Stadium/Entertainment Venue

DUE DATE AND TIME: March 15, 2018; 5:00 p.m.

1. The RFP solicitation documents are hereby modified per the attached Addendum #2 dated March 8, 2018. To include the following:
 - a. **Requests for additional information and interested service provider questions with the City's official responses.**
2. The foregoing changes shall be incorporated in the RFP solicitation documents, and a copy of the Addendum #2, signed by the Service Provider, must accompany the proposal to indicate the Service Provider's familiarity with the changes.

Service Provider Acknowledgement:

Service Provider Name (Print): Richard Harrison

Service Provider Signature: _____

Date of Signature: 3/14/2018

Project Name: Fayetteville Ball Park

Project Location: Fayetteville, NC

Due Date: 3/15/2018

Addenda:

Notes:

Prepared By: JC

Bidding To: City of Fayetteville (Owner)

CM/GC:

FS Consultant: The Bigelow Cos.

Architects: Populous

Substantial Completion Date: 2/1/2019 ??

Installing: Fall 2018/Winter 2019

| Drawing # | Room # | Spec Item # | Sub Item # | MODEL NO. | MANUFACTURER BID | Description | Qty | U/M | Total |
|-----------|--------|-------------|------------|----------------------------|-----------------------|--|-----|------|--------------|
| FS-1-01 | | 2.003 | | | Chill-Rite | Remote refrig. draft beer system | 1 | each | \$ 23,635.69 |
| FS-1-01 | | 2.099 | | | By EC - NIKEC | Beer conduit | 2 | each | \$ - |
| FS-1-01 | | 13.001 | | DKSRCSEZ/SKSTCS/SKS | Cooler Concepts | Keg racks | 1 | lot | \$ 10,729.13 |
| FS-1-01 | | 22.311 | | | ThermalRite | Walk-in cooler (angled) - 12' x 16' 6" | 1 | each | \$ 16,253.55 |
| FS-1-01 | | 22.311 | A | | ThermalRite | Walk-in lights/alarms/heat - Inc. w/#22.311A | 1 | lot | \$ - |
| FS-1-01 | | 22.311 | B | | ThermalRite | Remote refrig. unit | 1 | each | \$ 3,534.95 |
| FS-1-01 | | 22.311 | C | | ThermalRite | Evaporator coil - Inc. w/#22.311A | 1 | each | \$ - |
| FS-2-01 | | 1.011 | | MOZ025M63CF | Glastender | 42" U/B ice bins | 9 | each | \$ 13,289.09 |
| FS-2-01 | | 1.021 | | LCE6160BECRCB6 | Glastender | 42" U/B locking speed rails | 9 | each | \$ 1,800.14 |
| FS-2-01 | | 1.024 | | CBA-42L-CP10 | Glastender | 6" U/B soda gun holders | 9 | each | \$ 2,048.98 |
| FS-2-01 | | 1.025 | | SSR-42/SSRC-42 | Glastender | 48" U/B drainboard w/storage | 2 | each | \$ 2,084.83 |
| FS-2-01 | | 1.034 | | SHB-6 | Glastender | 36" slide-top bottle coolers | 9 | each | \$ 13,817.95 |
| FS-2-01 | | 1.035 | | DBC8-48 | Glastender | 24" U/B POS cabinets | 9 | each | \$ 7,717.68 |
| FS-2-01 | | 1.067 | | 5736-S | Glastender | 12" U/B hand sinks | 5 | each | \$ 3,797.28 |
| FS-2-01 | | 1.079 | | PCB-24 | Glastender | 36" back bar coolers | 3 | each | \$ 5,863.10 |
| FS-2-01 | | 1.085 | | DHSB-12 | Glastender | 108" back bar coolers | 4 | each | \$ 16,284.67 |
| FS-2-01 | | 1.082 | | B836R | Glastender | Bag-in-Box systems | 2 | each | \$ - |
| FS-2-01 | | 2.002 | | BB108R | By Purveyor - NIKEC | 6-tap draft beer towers - Inc. w/#2.003 | 5 | each | \$ - |
| FS-2-01 | | 2.012 | | THT-6-S/S | Chill-Rite | Soda guns | 9 | each | \$ - |
| FS-2-01 | | 2.038 | | | By Purveyor - NIKEC | POS systems | 9 | each | \$ - |
| FS-2-01 | | 3.009 | | | By Owner - NIKEC | Digital menu boards | 4 | each | \$ - |
| FS-2-01 | | 3.033 | | | By Base Bldg. - NIKEC | Water filter ass'y. | 1 | each | \$ 317.87 |
| FS-2-01 | | 8.031 | | ICE125-S | 3M/Cuno | U/C cubed ice machine | 1 | each | \$ 5,104.36 |
| FS-2-01 | | 8.915 | | UYF-0310A | Manitowoc | Trash receptacles | 9 | each | \$ 424.17 |
| FS-2-01 | | 10.039 | | FG35A060 | Rubbermaid | Mobile storage shelving - 18" x 48" - 2T | 2 | each | \$ 283.26 |
| FS-2-01 | | 13.957 | | VG | Eagle | 3-comp't. sink - 60" | 1 | each | \$ 782.10 |
| FS-2-01 | | 14.020 | | E358-1014-10T15 | John Boos | Bag-in-Box rack | 1 | each | \$ - |
| FS-2-02 | | 2.001 | | | By Purveyor - NIKEC | Remote refrig. draft beer system | 1 | each | \$ 23,635.69 |
| FS-2-02 | | 2.003 | | | Chill-Rite | 2-tap draft beer towers - Inc. w/#2.003 | 6 | each | \$ - |
| FS-2-02 | | 2.010 | | THT-2-S/S | Chill-Rite | D/I soda dispensers | 3 | each | \$ - |
| FS-2-02 | | 2.037 | | | By Purveyor - NIKEC | Insulated beverage dispenser | 1 | each | \$ 159.44 |
| FS-2-02 | | 2.053 | | 1000LCD | Cambrio | Soda conduit | 1 | each | \$ - |
| FS-2-02 | | 2.098 | | | By EC - NIKEC | Beer conduit | 1 | each | \$ - |
| FS-2-02 | | 3.009 | | | By Owner - NIKEC | POS systems | 6 | each | \$ - |
| FS-2-02 | | 3.013 | | | By Purveyor - NIKEC | Heated nacho/chili dispenser | 1 | each | \$ - |
| FS-2-02 | | 3.014 | | | Channel | Mobile work-top bun pan rack | 1 | each | \$ 525.10 |
| FS-2-02 | | 3.027 | | UR-111/S | Dispense-Rite | Disposable cup racks | 3 | each | \$ 377.91 |
| FS-2-02 | | 3.033 | | WR-CC-22 | By Base Bldg. - NIKEC | Digital menu boards | 4 | each | \$ - |
| FS-2-02 | | 4.063 | | 16100KIT36 | Dormont | QD gas hose | 1 | each | \$ 152.24 |
| FS-2-02 | | 4.063 | | SG14S-3FD | Pitco | Mobile (3) fryer/filter ass'y. | 1 | each | \$ 22,079.64 |
| FS-2-02 | | 4.069 | | PCF-14 | Pitco | Mobile fry dump station | 1 | each | \$ 3,192.89 |
| FS-2-02 | | 4.091 | | 1675KIT36 | Dormont | QD gas hose | 1 | each | \$ 123.00 |
| FS-2-02 | | 4.091 | | GTGG48-G48M | Garland | Counter-top 48" griddle/mobile stand | 1 | each | \$ 2,942.70 |
| FS-2-02 | | 8.005 | | KM-650MAJ | Hoshizaki | Cubed ice machine | 1 | each | \$ 2,754.97 |
| FS-2-02 | | 8.014 | | SG700S-30 | Follett | Ice storage bin | 1 | each | \$ 2,219.50 |
| FS-2-02 | | 8.030 | | ICE14S [5616204] | 3M/Cuno | Water filter ass'y. | 1 | each | \$ 207.73 |
| FS-2-02 | | 9.007 | | | John Boos | 44" S/P/L shelf | 1 | each | \$ 1,020.69 |
| FS-2-02 | | 10.031 | | FG265500/FG265400/FG264000 | Rubbermaid | Trash receptacle/Lid/Dolly | 1 | each | \$ 143.39 |
| FS-2-02 | | 11.004 | | 2023E | Gold Medal | Poptcorn popper | 1 | each | \$ 2,209.83 |
| FS-2-02 | | 12.054 | | DI48-10 | Continental | 48" sandwich-prep refrigerator | 1 | each | \$ 3,601.99 |
| FS-2-02 | | 12.069 | | | By Purveyor - NIKEC | 1-section R/I display refrigerators | 2 | each | \$ - |

| Drawing # | Room # | Spec Item # | Sub Item # | MODEL NO. | MANUFACTURER BID | Description | Qty | U/M | Total |
|-----------|--------|-------------|------------|--------------------|-----------------------|--|-----|------|--------------|
| FS-2-02 | | 12.080 | | 1FE-SS | Continental | Mobile 1-section R/I freezer | 1 | each | \$ 3,617.08 |
| FS-2-02 | | 13.001 | | SKSTCS/SKS | Cooler Concepts | Keg racks | 1 | lot | \$ 4,443.38 |
| FS-2-02 | | 13.096 | | S5-74-2448E | Metro | Wall-mounted pot sink system | 1 | each | \$ 780.69 |
| FS-2-02 | | 13.144 | | PBHS-W-1410-SSLR-X | Eagle | Mobile storage shelving - 24" x 48" - 5T | 1 | each | \$ 330.39 |
| FS-2-02 | | 14.002 | | PBMS2016-12 | John Boos | Hand sinks | 2 | each | \$ 424.45 |
| FS-2-02 | | 14.003 | | S890TBL | John Boos | Mop sink/Service faucet | 1 | each | \$ 682.62 |
| FS-2-02 | | 14.008 | | T1400TBL | San Jamar | Soap dispensers | 2 | each | \$ 35.89 |
| FS-2-02 | | 14.009 | | 3PB18244-2D18 | San Jamar | Paper towel dispensers | 2 | each | \$ 236.67 |
| FS-2-02 | | 14.014 | | FSD-1X | John Boos | 3-comp't sink - 93" | 1 | each | \$ 2,066.09 |
| FS-2-02 | | 16.004 | | GR2SD5-36D | Hatco | Counter-top hot food mdsr. | 4 | each | \$ 7,364.00 |
| FS-2-02 | | 16.036 | | HDW-2N | Hatco | Counter-top heated display slide mdsr. | 4 | each | \$ 2,783.50 |
| FS-2-02 | | 17.046 | | Z-FAYETTE-17.046 | John Boos | Mobile 2-section warming drawers | 4 | each | \$ 8,326.00 |
| FS-2-02 | | 17.091 | | Q KVE SJ | By PC - NIKEC | 24" wall-mounted mop cabinet | 1 | each | \$ 1,133.01 |
| FS-2-02 | | 21.040 | | Q R-102 | Halton | Water heater | 1 | each | \$ - |
| FS-2-02 | | 21.056 | | | Halton | Exhaust hood w/o MUA - 10' | 1 | each | \$ 13,676.03 |
| FS-2-02 | | 22.111 | A | | ThermalRite | Fire suppression system | 1 | each | \$ 3,297.03 |
| FS-2-02 | | 22.111 | B | MOZ025M63CF | ThermalRite | Walk-in lights/alarms/heater - Inc. w/#22.111B | 1 | lot | \$ - |
| FS-2-02 | | 22.111 | C | LCE6160BECRCB6 | ThermalRite | Walk-in cooler - 13' 6" x 5' 10" | 1 | each | \$ 12,501.05 |
| FS-2-02 | | 25.301 | | | ThermalRite | Remote refrig. unit | 1 | each | \$ 3,167.30 |
| FS-2-03 | | 25.404 | | | By Base Bldg. - NIKEC | Evaporator coil - Inc. w/#22.111B | 1 | each | \$ - |
| FS-2-03 | | 2.001 | | | By Purveyor - NIKEC | Rear counter | 1 | each | \$ - |
| FS-2-03 | | 2.003 | | | By Purveyor - NIKEC | Front counter | 1 | each | \$ - |
| FS-2-03 | | 2.010 | | | Chill-Rite | Bag-in-Box rack | 1 | each | \$ - |
| FS-2-03 | | 2.037 | | | Chill-Rite | Remote refrig. draft beer system | 1 | each | \$ 23,635.69 |
| FS-2-03 | | 2.050 | | | By Purveyor - NIKEC | 2-tap draft beer towers - Inc. w/#2.003 | 6 | each | \$ - |
| FS-2-03 | | 2.053 | | | Fetco | D/I soda dispensers | 3 | each | \$ - |
| FS-2-03 | | 2.098 | | | Cambro | Counter-top bulk hot water dispenser | 1 | each | \$ 1,531.02 |
| FS-2-03 | | 2.099 | | | By EC - NIKEC | Insulated beverage dispenser | 1 | each | \$ 159.44 |
| FS-2-03 | | 3.009 | | | By EC - NIKEC | Soda conduit | 1 | each | \$ - |
| FS-2-03 | | 3.013 | | | By Owner - NIKEC | Beer conduit | 2 | each | \$ - |
| FS-2-03 | | 3.014 | | | By Purveyor - NIKEC | POS systems | 6 | each | \$ - |
| FS-2-03 | | 3.027 | | | By Purveyor - NIKEC | Heated nacho/chili dispenser | 1 | each | \$ - |
| FS-2-03 | | 3.033 | | | Channel | Mobile work-top bun pan rack | 1 | each | \$ 525.10 |
| FS-2-03 | | 4.021 | | | Dispense-Rite | Disposable cup racks | 3 | each | \$ 377.91 |
| FS-2-03 | | 4.109 | | | By Base Bldg. - NIKEC | Digital menu boards | 4 | each | \$ - |
| FS-2-03 | | 8.001 | | | 3M/Cuno | Water filter ass'y. | 1 | each | \$ 501.99 |
| FS-2-03 | | 8.013 | | | Green | 2-comp't convection steamer | 1 | each | \$ 11,145.32 |
| FS-2-03 | | 8.029 | | | Nemco | Hot dog roller grill | 1 | each | \$ 1,407.09 |
| FS-2-03 | | 9.003 | | | Hoshizaki | Cubed ice machine | 1 | each | \$ 4,651.13 |
| FS-2-03 | | 10.031 | | | Follett | Ice storage bin | 1 | each | \$ 2,727.49 |
| FS-2-03 | | 11.004 | | | 3M/Cuno | Water filter ass'y. | 1 | each | \$ 310.24 |
| FS-2-03 | | 12.069 | | | John Boos | 42" S/S P/T window | 1 | each | \$ 940.72 |
| FS-2-03 | | 12.081 | | | Rubbermaid | Trash receptacle/Lid/Dolly | 1 | each | \$ 143.39 |
| FS-2-03 | | 13.001 | | | Gold Medal | Popcorn popper | 1 | each | \$ 2,209.83 |
| FS-2-03 | | 13.096 | | | Continental | 1-section R/I display refrigerators | 2 | each | \$ - |
| FS-2-03 | | 13.144 | | | Cooler Concepts | Mobile 1-section R/I refrigerator | 1 | each | \$ 3,338.57 |
| FS-2-03 | | 13.145 | | | Metro | Keg racks | 1 | lot | \$ 5,852.25 |
| FS-2-03 | | 14.002 | | | Eagle | Wall-mounted pot sink system | 1 | each | \$ 780.69 |
| FS-2-03 | | 14.008 | | | Eagle | Mobile storage shelving - 24" x 48" - 5T | 2 | each | \$ 660.77 |
| FS-2-03 | | 14.009 | | | John Boos | Mobile storage shelving - 24" x 60" - 5T | 4 | each | \$ 1,485.95 |
| FS-2-03 | | 15.026 | | | John Boos | Hand sinks | 2 | each | \$ 424.45 |
| FS-2-03 | | 15.042 | | | John Boos | Mop sink/Service faucet | 1 | each | \$ 682.62 |
| FS-2-03 | | 16.004 | | | San Jamar | Soap dispensers | 2 | each | \$ 35.89 |
| FS-2-03 | | 16.012 | | | San Jamar | Paper towel dispensers | 2 | each | \$ 236.67 |
| FS-2-03 | | 16.036 | | | John Boos | 3-comp't sink - 93" | 1 | each | \$ 2,066.09 |
| FS-2-03 | | 16.036 | | | John Boos | Mobile work table - 60" x 30" | 1 | each | \$ 647.38 |
| FS-2-03 | | 16.036 | | | John Boos | Beverage table - 36" x 30" | 1 | each | \$ 599.21 |
| FS-2-03 | | 16.036 | | | Hatco | Counter-top hot food mdsr. | 4 | each | \$ 7,364.00 |
| FS-2-03 | | 16.036 | | | Hatco | 36" heat lamp | 1 | each | \$ 270.50 |
| FS-2-03 | | 16.036 | | | Hatco | Mobile 2-section warming drawers | 4 | each | \$ 8,326.00 |

| Drawing # | Room # | Spec Item # | Sub Item # | MODEL NO. | MANUFACTURER BID | Description | Qty | U/M | Total |
|-----------|--------|-------------|------------|--------------------|-----------------------|--|-----|------|--------------|
| FS-2-03 | | 16.045 | | TS-1826-18 | F.W.E. | Mobile heated cabinets | 3 | each | \$ 9,044.89 |
| FS-2-03 | | 17.046 | | Z-FAYETTE-17.046 | John Boos | 24" wall-mounted mop cabinet | 1 | each | \$ 1,133.01 |
| FS-2-03 | | 22.111 | | | ThermalRite | Walk-in cooler - 12' " x 7' 9" | 1 | each | \$ 12,925.70 |
| FS-2-03 | | 22.111 | A | | ThermalRite | Walk-in lights/alarms/heater - Inc. w/#22.111B | 1 | each | \$ - |
| FS-2-03 | | 22.111 | B | MOZO10M64CF | ThermalRite | Remote refrig. unit | 1 | each | \$ 2,940.25 |
| FS-2-03 | | 25.301 | C | LCE61208EQRCB6 | ThermalRite | Evaporator coil - Inc. w/#22.111B | 1 | each | \$ - |
| FS-2-03 | | 25.401 | | | By Base Bldg. - NIKEC | Front counter | 1 | each | \$ - |
| FS-2-04 | | 1.011 | | CBA-42L-CP10 | By Base Bldg. - NIKEC | Rear counter | 1 | each | \$ - |
| FS-2-04 | | 1.021 | | SSR-42/SSRC-42 | Glastender | 42" U/B ice bins | 3 | each | \$ 4,429.73 |
| FS-2-04 | | 1.024 | | SHB-6 | Glastender | 42" U/B locking speed rails | 3 | each | \$ 600.05 |
| FS-2-04 | | 1.034 | | ST36-S | Glastender | 6" U/B soda gun holders | 3 | each | \$ 682.99 |
| FS-2-04 | | 1.055 | | PCB-24 | Glastender | 36" slide-top bottle cooler | 1 | each | \$ 1,535.33 |
| FS-2-04 | | 1.067 | | DHSB-12 | Glastender | 24" U/B POS cabinets | 3 | each | \$ 2,572.56 |
| FS-2-04 | | 1.085 | | BB108R | Glastender | 12" U/B hand sink | 1 | each | \$ 759.46 |
| FS-2-04 | | 2.001 | | | By Purveyor - NIKEC | 108" back bar cooler | 1 | each | \$ 4,071.17 |
| FS-2-04 | | 2.003 | | | Chill-Rite | Bag-in-Box rack | 1 | each | \$ - |
| FS-2-04 | | 2.010 | | THT-2-S/S | Chill-Rite | Remote refrig. draft beer system | 1 | each | \$ 23,635.69 |
| FS-2-04 | | 2.012 | | THT-6-S/S | Chill-Rite | 2-tap draft beer towers - Inc. w/#2.003 | 6 | each | \$ - |
| FS-2-04 | | 2.023 | | | By Purveyor - NIKEC | 6-tap draft beer towers - Inc. w/#2.003 | 2 | each | \$ - |
| FS-2-04 | | 2.037 | | | By Purveyor - NIKEC | Auto. coffee urn | 1 | each | \$ - |
| FS-2-04 | | 2.038 | | | By Purveyor - NIKEC | D/I soda dispensers | 3 | each | \$ - |
| FS-2-04 | | 2.053 | | 1000LCD | By Purveyor - NIKEC | Soda guns | 3 | each | \$ - |
| FS-2-04 | | 2.098 | | | Cambro | Insulated beverage dispensers | 2 | each | \$ 318.89 |
| FS-2-04 | | 2.099 | | | By EC - NIKEC | Soda conduit | 2 | each | \$ - |
| FS-2-04 | | 3.009 | | | By EC - NIKEC | Beer conduit | 2 | each | \$ - |
| FS-2-04 | | 3.013 | | | By Owner - NIKEC | POS systems | 10 | each | \$ - |
| FS-2-04 | | 3.014 | | UR-111/S | By Purveyor - NIKEC | Heated nacho/chili dispenser | 1 | each | \$ - |
| FS-2-04 | | 3.027 | | WR-CC-22 | Channel | Mobile work-top bun pan rack | 1 | each | \$ 525.10 |
| FS-2-04 | | 3.033 | | | Dispense-Rite | Disposable cup racks | 3 | each | \$ 377.91 |
| FS-2-04 | | 4.010 | | 1650KIT36 | By Base Bldg. - NIKEC | Digital menu boards | 6 | each | \$ - |
| FS-2-04 | | 4.030 | | BPP-40GC | Dormont | QD gas hose | 1 | each | \$ 92.55 |
| FS-2-04 | | 4.053 | | DFG-100 DBL | Groen | 40-gallon tilt. skillet | 1 | each | \$ 18,346.66 |
| FS-2-04 | | 4.053 | | SF165 (5624601) | Blodgett | Mobile double-deck convection ovens | 2 | each | \$ 27,382.33 |
| FS-2-04 | | 4.053 | | CTC7-20G | Dormont | QD gas hose | 2 | each | \$ 246.00 |
| FS-2-04 | | 4.053 | | 1675KIT36 | 3M/Cuno | Water filter ass'y. | 2 | each | \$ 1,003.99 |
| FS-2-04 | | 4.063 | | 16100KIT36 | Alto-Shaam | 2-comp't. combi oven/stand | 1 | each | \$ 26,712.63 |
| FS-2-04 | | 4.064 | | SG145-3FD | Dormont | QD gas hose | 2 | each | \$ 246.00 |
| FS-2-04 | | 4.064 | | 16125KIT36 | Dormont | QD gas hose | 1 | each | \$ 123.00 |
| FS-2-04 | | 4.069 | | PCF-14 | Pitco | Mobile (3) fryer/filter ass'y. | 1 | each | \$ 27,933.63 |
| FS-2-04 | | 4.081 | | 1675KIT36 | Pitco | Mobile (4) fryer/filter ass'y. | 1 | each | \$ 9,578.67 |
| FS-2-04 | | 4.084 | | 436C-3T | Dormont | Mobile fry dump station | 3 | each | \$ 2,501.32 |
| FS-2-04 | | 4.084 | | 436C-3C | Southbend | QD gas hose | 1 | each | \$ 123.00 |
| FS-2-04 | | 4.087 | | 1675KIT36 | Dormont | 36" griddle-top cabinet-base range | 1 | each | \$ 4,344.55 |
| FS-2-04 | | 4.087 | | 4361C | Southbend | 36" char-broiler cabinet-base range | 1 | each | \$ 123.00 |
| FS-2-04 | | 4.091 | | 1675KIT36 | Dormont | QD gas hose | 1 | each | \$ 123.00 |
| FS-2-04 | | 4.091 | | GTGG48-G48M | Gariand | 36" 6-burner cabinet-base range | 1 | each | \$ 123.00 |
| FS-2-04 | | 6.001 | | UR-11 | Channel | Counter-top 48" griddle/mobile stand | 1 | each | \$ 2,942.70 |
| FS-2-04 | | 6.005 | | 56050-1 | By Base Bldg. - NIKEC | Mobile UA pan racks | 13 | each | \$ 6,304.37 |
| FS-2-04 | | 6.009 | | R301 ULTRA | Nemco | Manual can opener | 1 | each | \$ 310.59 |
| FS-2-04 | | 6.017 | | S13A | Robot Coupe | Food processor | 1 | each | \$ 1,391.53 |
| FS-2-04 | | 6.022 | | SP60 | Globe | Auto. food slicer | 1 | each | \$ 5,479.92 |
| FS-2-04 | | 8.001 | | KM-1301SAJ3 | Globe | 60-qt. mixer | 1 | each | \$ 10,241.27 |
| FS-2-04 | | 8.013 | | SG1300S-48 | Hoshizaki | Cubed ice machine | 1 | each | \$ 4,651.13 |
| FS-2-04 | | 8.029 | | ICE190-S (5616403) | Follett | Ice storage bin | 1 | each | \$ 2,727.49 |
| FS-2-04 | | 9.003 | | | 3M/Cuno | Water filter ass'y. | 1 | each | \$ 310.24 |
| FS-2-04 | | 9.007 | | | John Boos | 42" S/S P/T window | 1 | each | \$ 837.32 |
| FS-2-04 | | | | | John Boos | 44" S/S P/T shelf | 1 | each | \$ 1,020.69 |

| Drawing # | Room # | Spec Item # | Sub Item # | MODEL NO. | MANUFACTURER BID | Description | Qty | U/M | Total |
|-----------|--------|-------------|------------|---|-----------------------|--|-----|------|--------------|
| FS-2-04 | | 10.031 | | FG265500/FG265400/FG264000 | Rubbermaid | Trash receptacles/lids/Dollies | 3 | each | \$ 430.17 |
| FS-2-04 | | 10.039 | | FG354060 | Rubbermaid | Trash receptacles | 2 | each | \$ 94.26 |
| FS-2-04 | | 10.063 | | FT-1848-SG | IMC/Teddy | Floor Trough/Grate - 48" x 18" | 1 | each | \$ 1,832.89 |
| FS-2-04 | | 10.101 | | | By Base Bldg. - NIKEC | Employee lockers | 1 | lot | \$ - |
| FS-2-04 | | 10.102 | | | By Base Bldg. - NIKEC | Employee lockers | 1 | lot | \$ - |
| FS-2-04 | | 10.954 | | ST6-Q079554-003 | John Boos | Chef's counter - 17' 3" x 48" | 1 | each | \$ 4,056.06 |
| FS-2-04 | | 11.004 | | 2023E | Gold Medal | Popcorn popper | 1 | each | \$ 2,209.83 |
| FS-2-04 | | 12.042 | | CPA60 | Continental | Mobile 60" refri. pizza-prep table | 1 | each | \$ 3,387.77 |
| FS-2-04 | | 12.054 | | DL48-10 | Continental | 48" sandwich-prep refrigerator | 1 | each | \$ 3,601.99 |
| FS-2-04 | | 12.069 | | | By Purveyor - NIKEC | 1-section R/I display refrigerators | 2 | each | \$ - |
| FS-2-04 | | 12.080 | | 1FE-55 | Continental | Mobile 1-section R/I freezer | 1 | each | \$ 3,617.08 |
| FS-2-04 | | 12.082 | | 2FE-55 | Continental | Mobile 2-section R/I freezer | 1 | each | \$ 5,427.92 |
| FS-2-04 | | 12.083 | | 2RE-55 | Continental | Mobile 2-section R/I refrigerator | 1 | each | \$ 4,398.50 |
| FS-2-04 | | 13.001 | | DKSRCSEZ/SKSTCS/SKS | Cooler Concepts | Keg racks | 1 | lot | \$ 11,921.25 |
| FS-2-04 | | 13.096 | | | Metro | Wall-mounted pot sink system | 1 | each | \$ 780.69 |
| FS-2-04 | | 13.143 | | 55-74-2442E | Eagle | Mobile storage shelving - 24" x 42" - 5T | 7 | each | \$ 2,265.79 |
| FS-2-04 | | 13.144 | | 55-74-2448E | Eagle | Mobile storage shelving - 24" x 48" - 5T | 13 | each | \$ 4,295.04 |
| FS-2-04 | | 13.145 | | 55-74-2460E | Eagle | Mobile storage shelving - 24" x 60" - 5T | 14 | each | \$ 5,200.84 |
| FS-2-04 | | 13.146 | | 55-74-2472E | Eagle | Mobile storage shelving - 24" x 72" - 5T | 3 | each | \$ 1,253.06 |
| FS-2-04 | | 14.002 | | PBHS-W-1410-SSLR-X | John Boos | Hand sinks | 7 | each | \$ 1,485.58 |
| FS-2-04 | | 14.003 | | PBMS2016-12 | John Boos | Mop sink/Service faucet | 1 | each | \$ 682.62 |
| FS-2-04 | | 14.008 | | S890TBL | San Jamar | Soap dispensers | 7 | each | \$ 125.61 |
| FS-2-04 | | 14.009 | | T1400TBL | San Jamar | Paper towel dispensers | 7 | each | \$ 828.35 |
| FS-2-04 | | 14.014 | | 3PB18244-2D18 | John Boos | 3-comp't. sink - 93" | 1 | each | \$ 2,066.09 |
| FS-2-04 | | 15.026 | | ST6-3060SSK | John Boos | Mobile work table - 60" x 30" | 1 | each | \$ 647.38 |
| FS-2-04 | | 15.044 | | ST6R5-3060SBK | John Boos | Beverage table - 60" x 30" | 1 | each | \$ 681.44 |
| FS-2-04 | | 15.056 | | EPT6R5-3072SSK-L-X | John Boos | Work tables w/sink - 72" X 30" | 2 | each | \$ 1,509.32 |
| FS-2-04 | | 15.103 | | ST6-3060SBK-X | John Boos | Work table - 60" x 30" | 1 | each | \$ 465.60 |
| FS-2-04 | | 15.104 | | ST6-3072SBK-X | John Boos | Mobile work tables - 72" x 30" | 2 | each | \$ 1,022.38 |
| FS-2-04 | | 15.105 | | ST6-3084SBK-X | John Boos | Mobile work tables - 84" x 30" | 3 | each | \$ 1,926.42 |
| FS-2-04 | | 15.106 | | ST6-3096SBK-X | John Boos | Mobile work table - 96" x 30" | 1 | each | \$ 668.33 |
| FS-2-04 | | 16.004 | | FSD-1X | Hatco | Counter-top hot food mdsrs. | 4 | each | \$ 7,364.00 |
| FS-2-04 | | 16.012 | | GRH-36 | Hatco | 36" heat lamps | 3 | each | \$ 811.50 |
| FS-2-04 | | 16.024 | | GR25DS-36D | Hatco | Counter-top heated display slide mdsr. | 1 | each | \$ 2,783.50 |
| FS-2-04 | | 16.036 | | HDW-2N | Hatco | Mobile 2-section warming drawers | 4 | each | \$ 8,326.00 |
| FS-2-04 | | 16.045 | | TS-1826-18 | F.W.E. | Mobile heated cabinets | 5 | each | \$ 15,074.82 |
| FS-2-04 | | 16.054 | | 364-0880 | Vollrath | D/I 15-well hot food unit | 1 | each | \$ 3,312.82 |
| FS-2-04 | | 17.002 | | C-24 | Hatco | Booster heater | 1 | each | \$ 2,082.50 |
| FS-2-04 | | 17.010 | | CD2020 | Cambro | Dish rack dollies | 9 | each | \$ 1,251.45 |
| FS-2-04 | | 17.011 | | ADCS | Cambro | Poker-chip dish dollies | 3 | each | \$ 1,849.37 |
| FS-2-04 | | 17.016 | | 86 PW | Champion | 86" conveyor dish machine | 1 | each | \$ 39,246.20 |
| FS-2-04 | | 17.019 | | SDT6-S96SBK-R | John Boos | Soiled dish table - 96" | 1 | each | \$ 1,024.52 |
| FS-2-04 | | 17.020 | | CDT6-S84SBK-L | John Boos | Clean dish table - 84" | 1 | each | \$ 622.70 |
| FS-2-04 | | 17.046 | | Z-FAYETTE-17.046 | John Boos | 24" wall-mounted mop cabinet | 1 | each | \$ 1,133.01 |
| FS-2-04 | | 17.052 | | 300-SM | Salvaor | 3-HP scrap-master | 1 | each | \$ 8,729.16 |
| FS-2-04 | | 17.052 | | B-0133-B/B-0230-K | T & S Brass | Pre-rinse ass'y. | 1 | each | \$ 273.96 |
| FS-2-04 | | 17.091 | | | By PC - NIKEC | Water heater | 1 | each | \$ - |
| FS-2-04 | | 21.017 | | Q KVE SJ | Halton | Exhaust hood w/MUA - 11' | 1 | each | \$ 16,125.28 |
| FS-2-04 | | 21.019 | | Q KVE SJ | Halton | Exhaust hood w/MUA - 12' | 1 | each | \$ 18,044.91 |
| FS-2-04 | | 21.020 | | Q KVE SJ | Halton | Exhaust hood w/MUA - 12' | 1 | each | \$ 18,106.99 |
| FS-2-04 | | 21.038 | | Q KVE SJ | Halton | Exhaust hood w/o MUA - 9' | 1 | each | \$ 13,076.57 |
| FS-2-04 | | 21.056 | | Q R-102 | Halton | Fire suppression systems | 2 | each | \$ 7,624.20 |
| FS-2-04 | | 22.811 | | | ThermalRite | Walk-in cooler (3) / freezer (1) | 1 | each | \$ 56,786.25 |
| FS-2-04 | | 22.811 | A | | ThermalRite | Walk-in lights/alarms/heater - Inc. w/#22.811B | 1 | lot | \$ - |
| FS-2-04 | | 22.811 | B | MOZ045L63CFLT/MOZ020M63CF(2)/MOZ025M63CF | ThermalRite | Remote refrig. units | 4 | each | \$ 15,540.10 |
| FS-2-04 | | 22.811 | C | LCE61408EQRC6B/LCE6768EQRC6B/LCA672AEQRC6B(2) | ThermalRite | Evaporator coils - Inc. w/#22.811B | 4 | each | \$ - |
| FS-2-04 | | 25.301 | | | By Base Bldg. - NIKEC | Front counter | 1 | each | \$ - |
| FS-2-04 | | 25.401 | | | By Base Bldg. - NIKEC | Rear counter | 1 | each | \$ - |
| FS-2-08 | | 2.001 | | | By Purveyor - NIKEC | Bag-in-Box rack | 1 | each | \$ - |
| FS-2-08 | | 2.003 | | | Chill-Rite | Remote refrig. draft beer system | 1 | each | \$ 23,635.69 |

| Drawing # | Room # | Spec Item # | Sub Item # | MODEL NO. | MANUFACTURER BID | Description | Qty | U/M | Total |
|-----------|---------|-------------|------------|----------------------------|-----------------------|--|-----|------|--------------|
| FS-2-08 | | 2.010 | | THT-2-SJS | Chill-Rite | 2-tap draft beer towers - Inc. w/#2.003 | 4 | each | \$ - |
| FS-2-08 | | 2.037 | | | By Purveyor - NIKEC | D//soda dispensers | 2 | each | \$ - |
| FS-2-08 | | 2.053 | | 1000LCD | Cambro | Insulated beverage dispenser | 1 | each | \$ 159.44 |
| FS-2-08 | | 2.098 | | | By EC - NIKEC | Soda conduit | 1 | each | \$ - |
| FS-2-08 | | 2.099 | | | By EC - NIKEC | Beer conduit | 1 | each | \$ - |
| FS-2-08 | | 3.009 | | | By Owner - NIKEC | POS systems | 4 | each | \$ - |
| FS-2-08 | | 3.013 | | UR-111/S | By Purveyor - NIKEC | heated nacho/chili dispenser | 1 | each | \$ - |
| FS-2-08 | | 3.014 | | WR-CC-22 | Channel | Mobile work-top bun pan rack | 1 | each | \$ 525.10 |
| FS-2-08 | | 3.027 | | | Dispense-Rite | Disposable cup racks | 2 | each | \$ 251.94 |
| FS-2-08 | | 3.033 | | | By Base Bldg. - NIKEC | Digital menu boards | 3 | each | \$ - |
| FS-2-08 | | 4.062 | | 16100KIT36 | Dormont | QD gas hose | 1 | each | \$ 152.24 |
| FS-2-08 | | 4.062 | | SG14S-2FD | Pitco | Mobile (2) Fryer/filter ass'y. | 1 | each | \$ 16,225.66 |
| FS-2-08 | | 4.069 | | PCF-14 | Pitco | Mobile fry dump station | 1 | each | \$ 3,192.89 |
| FS-2-08 | | 4.090 | | 1675KIT36 | Dormont | QD gas hose | 1 | each | \$ 123.00 |
| FS-2-08 | | 4.090 | | GTGG36-G36M | Garland | Counter-top 36" griddle/mobile stand | 1 | each | \$ 2,391.89 |
| FS-2-08 | | 6.017 | | S13A | Globe | Auto. food slicer | 1 | each | \$ 5,479.92 |
| FS-2-08 | | 8.005 | | KM-650MAJ | Hoshizaki | Cubed ice machine | 1 | each | \$ 2,754.97 |
| FS-2-08 | | 8.014 | | SG700S-30 | Follett | Ice storage bin | 1 | each | \$ 2,219.50 |
| FS-2-08 | | 8.030 | | ICE145 (5616204) | 3M/Cuno | Water filter ass'y. | 1 | each | \$ 207.73 |
| FS-2-08 | | 9.006 | | | John Boos | 38" S/S P/T window | 1 | each | \$ 987.45 |
| FS-2-08 | | 10.031 | | FG265500/FG265400/FG264000 | Rubbermaid | Trash receptacle/Lid/Dolly | 1 | each | \$ 143.39 |
| FS-2-08 | | 11.004 | | 2023E | Gold Medal | Popcorn popper | 1 | each | \$ 2,209.83 |
| FS-2-08 | | 12.001 | | DL36G | Continental | Mobile 36" refrig. eq. stand | 1 | each | \$ 3,376.94 |
| FS-2-08 | | 12.053 | | DL36-10 | Continental | 36" sandwich-prep refrigerator | 1 | each | \$ 3,013.14 |
| FS-2-08 | | 12.069 | | | By Purveyor - NIKEC | 1-section R/I display refrigerators | 2 | each | \$ - |
| FS-2-08 | | 12.080 | | 1FE-55 | Continental | Mobile 1-section R//freezer | 1 | each | \$ 3,617.08 |
| FS-2-08 | | 13.001 | | SKSTCS/SKS | Cooler Concepts | Keg racks | 1 | lot | \$ 3,197.07 |
| FS-2-08 | | 13.096 | | | Metro | Wall-mounted pot sink system | 1 | each | \$ 780.69 |
| FS-2-08 | | 13.144 | | S5-74-2448E | Eagle | Mobile storage shelving - 24" x 48" - 5T | 1 | each | \$ 330.39 |
| FS-2-08 | | 14.002 | | PBHS-W-1410-SSLR-X | John Boos | Hand sinks | 2 | each | \$ 424.45 |
| FS-2-08 | | 14.003 | | PBMS2016-12 | John Boos | Mop sink/Service faucet | 1 | each | \$ 682.62 |
| FS-2-08 | | 14.008 | | S890TBL | San Jamar | Soap dispensers | 2 | each | \$ 35.89 |
| FS-2-08 | | 14.009 | | T1400TBL | San Jamar | Paper towel dispensers | 2 | each | \$ 236.67 |
| FS-2-08 | | 14.014 | | 3PB18244-2D18 | John Boos | 3-comp't. sink - 93" | 1 | each | \$ 2,066.09 |
| FS-2-08 | | 15.028 | | ST6-30845SK-X | John Boos | Mobile work table - 84" x 30" | 1 | each | \$ 662.51 |
| FS-2-08 | | 16.004 | | FSD-1X | Hatco | Counter-top hot food mdsrs. | 3 | each | \$ 5,523.00 |
| FS-2-08 | | 16.023 | | GR2SDS-30D | Hatco | Counter-top heated display slide mdr. | 1 | each | \$ 2,617.50 |
| FS-2-08 | | 16.036 | | HDW-2N | Hatco | Mobile 2-section warming drawers | 3 | each | \$ 6,244.50 |
| FS-2-08 | | 16.045 | | TS-1826-18 | F.W.E. | Mobile heated cabinets | 2 | each | \$ 6,029.93 |
| FS-2-08 | | 17.046 | | Z-FAYETTE-17.046 | John Boos | 24" wall-mounted mop cabinet | 1 | each | \$ 1,133.01 |
| FS-2-08 | | 21.034 | | Q KVE SJ | Halton | Exhaust hood w/o MUA - 7' | 1 | each | \$ 11,268.49 |
| FS-2-08 | | 21.056 | | Q R-102 | Halton | Fire suppression system | 1 | each | \$ 3,097.21 |
| FS-2-08 | | 22.111 | | | ThermalRite | Walk-in cooler - 6' 9" x 7' 6" | 1 | each | \$ 10,146.00 |
| FS-2-08 | | 22.111 | A | | ThermalRite | Walk-in lights/alarms/heater - Inc. w/#22.111B | 1 | each | \$ - |
| FS-2-08 | | 22.111 | B | MOZ005M63CF | ThermalRite | Remote refrig. unit | 1 | each | \$ 2,957.35 |
| FS-2-08 | | 22.111 | C | LCE665EWMCB8 | ThermalRite | Evaporator coil - Inc. w/#22.111B | 1 | each | \$ - |
| FS-2-08 | | 25.301 | | | By Base Bldg. - NIKEC | Front counter | 1 | each | \$ - |
| FS-2-08 | | 25.401 | | | By Base Bldg. - NIKEC | Rear counter | 1 | each | \$ - |
| FS-3-01 | 3.11.01 | 1.011 | | CBA-42L-CP10 | Glastender | 42" U/B ice bin | 1 | each | \$ 1,476.58 |
| FS-3-01 | 3.11.01 | 1.021 | | SSR-4Z/SSRC-42 | Glastender | 42" U/B locking speed rail | 1 | each | \$ 200.02 |
| FS-3-01 | 3.11.01 | 1.024 | | SHB-6 | Glastender | 6" U/B soda gun holder | 1 | each | \$ 227.66 |
| FS-3-01 | 3.11.01 | 1.025 | | DBC-48 | Glastender | 48" U/B drainboard w/storage | 1 | each | \$ 1,042.42 |
| FS-3-01 | 3.11.01 | 1.033 | | ST24-5 | Glastender | 24" slide-top bottle cooler | 1 | each | \$ 1,337.90 |
| FS-3-01 | 3.22.01 | 1.046 | | KC24 | Glastender | 24" U/B POS cabinet | 1 | each | \$ 1,712.45 |
| FS-3-01 | 3.22.01 | 1.055 | | PCB-24 | Glastender | 24" U/B POS cabinet | 1 | each | \$ 857.52 |
| FS-3-01 | 3.11.01 | 1.055 | | PCB-24 | Glastender | 60" U/B 3-comp't. sink | 1 | each | \$ 1,150.42 |
| FS-3-01 | 3.11.01 | 1.065 | | TSB-60-5 | Glastender | 18" U/B hand sink | 1 | each | \$ 794.45 |
| FS-3-01 | 3.22.01 | 1.068 | | DHSB-18 | Glastender | 60" refrig. back bar | 1 | each | \$ 2,713.39 |
| FS-3-01 | 3.11.01 | 1.081 | | BB6OR | Glastender | 60" low-profile refrig. back bar | 1 | each | \$ 2,596.75 |
| FS-3-01 | 3.22.01 | 1.089 | | LP6OL | Glastender | | 1 | each | \$ - |



North Carolina Department of Administration

Pat McCrory, Governor
Bill Daughtridge, Jr., Secretary

Office for Historically Underutilized Businesses
Dennis M. English, Jr., Asst. to the Secretary for
HUB Outreach

February 17, 2016

Nancy Field
NBS Food Equipment Contractors, LLC (Woman Owned)
1637 Forest Ridge Drive
Stanley, NC 28164

Dear Nancy Field:

The Office for Historically Underutilized Businesses (HUB Office) is pleased to inform you that your company is now certified as a Historically Underutilized Business. Your firm is listed in the Statewide Uniform Certification (SWUC) Program database. This certification will remain in effect for four (4) years from the date of this letter.

You must notify the HUB Office in writing within 30 days of any changes affecting your compliance with SWUC Program eligibility requirements, including changes in ownership, day-to-day management and operational control. Failure to notify the HUB Office of these changes or reapply for certification in a timely manner may cause your HUB Certification to be revoked. In addition, please be advised your status may be changed if there is a 3rd party challenge granted against your firm. The link to the HUB Office 3rd party challenge form can be located at <http://www.doa.nc.gov/hub/documents/ThirdpartyEligibilityChallengeev080811.pdf>. All information submitted to the Office for Historically Underutilized Business is subject to audit and review.

The HUB Office collaborates with local Minority/Women/Small Business (M/W/SBE) Offices who offer assistance to certified HUB firms with identifying contract opportunities with state and local government. Many of these offices also offer assistance with business development. Please visit our website at <http://www.doa.nc.gov/hub/programs.aspx?pid=swuc> to locate the local office near you. Another great resource is the Small Business and Technology Development Center at www.sbtcdc.org for free personalized business assistance and counseling.

It is important to note that although your status as a certified HUB firm greatly improves your access to state and local government contracts, this certification does not guarantee contract awards. Your ability to research opportunities and bid competitively will be important to your success in this program.

Thank you for your interest and participation in the SWUC Program as a Historically Underutilized Business firm with the State of North Carolina.

Sincerely,

Traci Fleming

Traci Fleming
Supplier Diversity Specialist

Mailing Address:

Office for Historically Underutilized Businesses
Department of Administration
1336 Mail Service Center
Raleigh, NC 27699-1336

Telephone (919) 807-2330
Fax (919) 807-2335
State Courier #51-01-00

Location:

116 West Jones Street
Administration Building
Suite 4109
Raleigh, NC 27603



hereby grants

National Women's Business Enterprise Certification

to

Ketchum Professional Resources LLC

who has successfully met WBENC's standards as a Women's Business Enterprise (WBE).

This certification affirms the business is woman-owned, operated and controlled; and is valid through the date herein.

WBENC National WBE Certification was processed and validated by
Great Lakes Women's Business Council, a WBENC Regional Partner Organization.

Certification Granted: August 15, 2012
Expiration Date: August 15, 2018
WBENC National Certification Number: 2005120766

Authorized by Michelle Richards, President
Great Lakes Women's Business Council



NAICS: 238290, 423440, 423740, 541120, 541611, 561110, 561499
UNSPSC: 80000000, 80101500, 80101508, 80101604, 80101706, 80111706, 80160000, 80161500, 80161601



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-127

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.05

TO: Mayor and Members of City Council

THRU: Doug Hewett, ICMA - CM, City Manager

FROM: Cheryl Spivey, CPA, Chief Financial Officer

DATE: March 26, 2018

RE:

Call for Public Hearing on Limited Obligation Bonds to Finance a Baseball Stadium/Entertainment Venue and Parking Garage

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal V: Sustainable Organizational Capacity - Objective A: To ensure strong financial management with fiduciary accountability and plan for the future resource sustainability by aligning resources with City priorities.

Executive Summary:

The City has entered into a 30-year agreement with the Astros to bring minor league baseball to Fayetteville. The City plans to issue limited obligation bonds not to exceed \$52 million to finance the minor league baseball stadium/entertainment venue and parking garage. Section 160A-20 of the General Statutes of North Carolina requires that the City hold a public hearing prior to entering into this financing agreement.

Background:

City Council has taken several steps along the path of constructing a minor league baseball stadium/entertainment venue including:

- The execution of a thirty year operating agreement with the Astros,
- The approval of a financing plan for stadium construction,

- The approval of the limited obligation bond underwriters,
- The initiation of project design after selecting and contracting with the project architect,
- The adoption of capital project ordinance to support construction,
- The execution of a CM@R contract with Barton Malow,
- The execution of a Downtown Development Agreement with PCH, including the purchase of a parking garage, and
- The approval of the baseball stadium/entertainment venue Guaranteed Maximum Price (GMP).

The Astros agreement requires the stadium to be completed in advance of the 2019 baseball season.

In order to finance the baseball stadium and entertainment venue, the City would issue limited obligation bonds and enter into a trust agreement or similar financing agreement. The City would execute and deliver a deed of trust granting a lien on the site of the project, together with all improvements and fixtures, as security for its obligations under the agreement. In accordance with Section 160A-20(g) of the North Carolina General Statutes, the City is required to hold a public hearing on the proposed agreement. City Council is requested to call for the public hearing to be held at 7:00 pm on April 9, 2018.

The most recent version of the financing calendar (attached) has the bonds being priced on May 23, 2018 and proceeds of the bonds wired to the bond trustee on June 6th. Under the financing agreement, the City of Fayetteville would be obligated to pay debt service on a principal amount not to exceed \$52,000,000, together with interest on the outstanding principal.

Issues/Analysis:

Financial market conditions are likely to change between now and the date the bonds are priced.

Identified revenue sources will need to be available to pay principal and interest payments or alternative revenues will need to be identified.

Economic conditions and/or new development timing could differ from current projections.

If the City fails to make timely principal and interest payments or otherwise default on the agreement, the trustee could foreclose on the property. A foreclosure would negatively affect the City's ability to issue future bonds and other debt.

Budget Impact:

The City may pay amounts due under the agreement from any source of funds available. Staff has prepared a funding model that includes various revenue sources.

Options:

1. Call for the public hearing to be held at 7:00 p.m. on April 9, 2018 in the Council Chambers of City Hall located at 433 Hay Street in Fayetteville, North Carolina, and direct the City Clerk to publish notice of hearing once in the Fayetteville Observer not later than the 10th day before said date.
2. Call the public hearing to be held on a date other than April 9, 2018.
3. Do not call public hearing and provide direction to staff.

Recommended Action:

Call for the public hearing to be held at 7:00 p.m. on April 9, 2018 in the Council Chambers of City Hall located at 433 Hay Street in Fayetteville, North Carolina, and direct the City Clerk to publish notice of hearing once in the Fayetteville Observer not later than the 10th day before said date.

Attachments:

1. Resolution to Call Public Hearing
2. Notice of Public Hearing
3. Financing Calendar

The City Council of the City of Fayetteville, North Carolina met in a regular meeting in the City Council Chambers of the City Hall located at 433 Hay Street in Fayetteville, North Carolina, the regular place of meeting, at 7:00 p.m. on March 26, 2018.

Present: Mayor Mitch Colvin, presiding, and Council Members

Absent: Council Members

Also Present: _____

* * * * *

_____ introduced the following resolution, the title of which was read and a copy of which had been distributed to each Council Member:

RESOLUTION CALLING A PUBLIC HEARING IN CONNECTION WITH A PROPOSED INSTALLMENT FINANCING BY THE CITY FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A BASEBALL STADIUM AND PARKING DECK PROJECT

WHEREAS, the City Council (the “City Council”) of the City of Fayetteville, North Carolina (the “City”) is considering financing the acquisition, construction and equipping of a baseball stadium and a parking deck, together with certain related facilities (collectively, the “Project”), pursuant to an installment financing arrangement;

WHEREAS, in order to finance the Project, the City proposes to enter into a trust agreement or similar financing agreement (the “Agreement”) pursuant to Section 160A-20 of the General Statutes of North Carolina providing for the issuance of limited obligation bonds thereunder in an amount necessary to finance the costs of the Project and related financing costs;

WHEREAS, as security for its obligations under the Agreement, the City proposes to execute and deliver a deed of trust granting a lien on all or a portion of the baseball stadium site comprising a portion of the Project, together with all improvements and fixtures located or to be located thereon;

WHEREAS, in accordance with Section 160A-20(g) of the General Statutes of North Carolina, the City is required to hold a public hearing on the proposed Agreement as described above; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City as follows:

1. The City Council hereby fixes 7:00 p.m. on April 9, 2018 in the Council Chambers of the City Hall located at 433 Hay Street in Fayetteville, North Carolina, as the hour, day and place for the public hearing on the proposed Agreement.

2. The City Council hereby directs the City Clerk to cause a notice of such public hearing to be published once in The Fayetteville Observer not later than the 10th day before said date.

3. The City Council hereby authorizes, ratifies and approves the filing of an application with the Local Government Commission for approval of the proposed Agreement and hereby requests the Local Government Commission to approve the proposed Agreement and the proposed financing contemplated thereby.

4. This resolution shall take effect immediately upon its adoption.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Pamela Megill, City Clerk of the City of Fayetteville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City at a regular meeting held on March 26, 2018, as relates in any way to the adoption of the foregoing resolution calling a public hearing on a proposed installment financing by said City and that said proceedings are to be recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of said City this 26th day of March, 2018.

City Clerk

[SEAL]

To be published once in The Fayetteville Observer on March 30, 2018:

NOTICE OF PUBLIC HEARING

The City Council of the City of Fayetteville, North Carolina (the “City”) has determined to consider whether to enter into a trust agreement or similar financing agreement (the “Agreement”) pursuant to Section 160A-20 of the General Statutes of North Carolina providing for the issuance of one or more series of limited obligation bonds thereunder in an aggregate principal amount not to exceed \$52,000,000 for the purpose of financing the costs of acquiring, constructing and equipping a baseball stadium and a parking deck, together with certain related facilities (collectively, the “Project). If the City enters into the proposed Agreement, it will secure its obligations thereunder by executing and delivering a deed of trust granting a lien on the site of the baseball stadium comprising a portion of the Project, together with all improvements or fixtures located or to be located thereon, subject to permitted encumbrances.

Section 160A-20 of the General Statutes of North Carolina requires that the City hold a public hearing prior to entering into the proposed Agreement.

Please take notice that the City Council of the City will conduct a public hearing in the Council Chambers of the City Hall located at 433 Hay Street in Fayetteville, North Carolina, at 7:00 p.m. on April 9, 2018, at which time any person may be heard regarding the proposed Agreement.

Any person wishing to comment in writing on the proposed Agreement should do so prior to April 9, 2018 to the City of Fayetteville, North Carolina, 433 Hay Street, Fayetteville, North Carolina 28301, Attention: Pamela Megill, City Clerk.

Pamela Megill
City Clerk
City of Fayetteville, North Carolina



City of Fayetteville, North Carolina
 Taxable Limited Obligation Bonds, Series 2018
Baseball Stadium Financing Calendar

| February | | | | | | |
|----------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | | | |

| March | | | | | | |
|-------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | 31 |

| April | | | | | | |
|-------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| 22 | 23 | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 | | | | | |

| May | | | | | | |
|-----|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | 31 | | |

| June | | | | | | |
|------|----|----|----|----|----|----|
| S | M | T | W | T | F | S |
| | | 1 | 2 | 3 | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | | |

| Date | Event | Responsible Party |
|-----------------------|---|-------------------|
| February 27, 2017 | Organizational Conference Call @ 12:00p CT/1:00p ET (800.608.3572; 1956447#) | All |
| March 10, 2017 | Distribute 1st Draft of Financing Documents | City/BC |
| March 15, 2017 | Distribute Preliminary Offering Documents | City/UC |
| March 21, 2017 | Document Review Session @ 9:00a CT/10:00a ET (800.608.3572; 1956447#) | All |
| April 4, 2017 | Distribute 2nd Draft of Financing Documents | City/BC/UC |
| April 11, 2017 | Document Review Session @ 9:00a CT/10:00a ET (800.608.3572; 1956447#) | All |
| December 18, 2017 | Re-Organizational Conference Call @ 1:30pm ET (800.608.3572; 1956447#) | All |
| January 18, 2018 | Distribute Updated Draft of Financing Documents | City/BC/UC |
| January 25, 2018 | Document Review Session @ 10:00am ET (800.608.3572; 1956447#) | All |
| January 25, 2018 | Re-Distribute Updated Draft of Financing Documents | City/BC/UC |
| NLT March 15, 2018 | Letter to Joint Legislative Committee to Notify of City's Intent to Issue Debt | City |
| March 19, 2018 | City Council Approves Final GMP | City |
| March 26, 2018 | City Council calls for Public Hearing to be held April 9, 2018 (3/16/18 Agenda Deadline) | City |
| NLT March 30, 2018 | Publish Notice of Public Hearing | City |
| NLT April 4, 2018 | LGC Application is Due | City/FA |
| April 9, 2018 | Council Holds Public Hearing, Adopts Findings Resolution (3-30-18 Agenda Deadline) | City |
| April 26, 2018 | S&P Rating Agency Presentation @ ____am/pm (Fayetteville City Hall) | City/FA/UW |
| April 27, 2018 | Underwriter's Due Diligence Call @ ____am/pm (800.608.3572; 4495914#) | City/UC/UW/FA |
| May 1, 2018 | Receive LGC Approval | LGC |
| May 1, 2018 | Council Adopts Final Approval Resolution (Agenda Deadline 4-20-18) | City |
| NLT May 3, 2018 | Receive S&P Bond Rating | City |
| May 4, 2018 | Call to Finalize Documents & POS (<i>if needed</i>) | All |
| May 14, 2018 | Distribute Preliminary Official Statement | UW/UC |
| May 22, 2018 | Pre-Pricing Call | All |
| May 23, 2018 | Price Bonds | All |
| May 24, 2018 | Sign Bond Purchase Agreement | UW/UC |
| March 30, 2018 | Sign Bond Purchase Agreement | UW/UC |
| May 30, 2018 | Print Final Official Statement | UW/UC |
| June 5, 2018 | Bond Preclosing | All |
| June 6, 2018 | Close Transaction, Funds are Wired to Trustee | All |

Legend

| Abbr. | Entity |
|-------|---|
| City | City of Fayetteville |
| FA | Financial Advisor - Stephens Inc. |
| LGC | Local Government Commission |
| BC | Co-Bond Counsel - Womble Bond Dickinson (US) LLP and The Charleston Group |
| UW | Underwriters - RW Baird and PNC Capital Markets |
| UC | Co-Underwriter's Counsel - Parker Poe and Rand & Gregory |

| |
|----------------------|
| Fed Meeting |
| NYSE Holiday |
| City Council Meeting |

last updated 3/7/2018



City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-129

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.06

TO: Mayor and Members of City Council

**THRU: David W. Trego, CEO/General Manager
Fayetteville Public Works Commission**

FROM: Fayetteville Public Works Commission

DATE: March 26, 2018

RE:

**Bid Recommendation - Annexation Phase V, Area 20 - Hackney Hills, Lake Point,
Robin Hill Estates**

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

High Quality Built Environment

Executive Summary:

Bids were received to award the contract for the construction of Annexation Phase V, Area 20 - Hackney Hills, Lake Point, Robin Hill Estates. The recommended lowest responsive, responsible bidder is T2 Contracting, Fuquay Varina, NC, in the total amount of \$5,837,472.50.

Background:

The Fayetteville Public Works Commission during their meeting on March 14, 2018, approved the bid recommendation to award the contract for the construction of Annexation Phase V, Area 20 - Hackney Hills, Lake Point, Robin Hill Estates to T2 Contracting, Fuquay Varina, NC, the lowest responsive, responsible bidder in the total amount of \$5,837,472.50 and to forward to City Council for approval.

Bids were received on February 28, 2018, as follows:

| Bidders | Total Cost |
|--|----------------|
| T2 Contracting, Fuquay Varina, NC | \$5,837,472.50 |
| TA Loving Co., Goldsboro, NC | \$6,369,846.00 |
| Billy Bill Contracting, Fayetteville, NC | \$6,775,749.18 |

Issues/Analysis:

Plans and specifications were requested by four (4) contractors with three (3) contractors responding. The base bid for the project includes permanent pavement patch only. The project area will be resurfaced under a future City resurfacing contract. PWC will reimburse the City the cost for the overlay of this project area at the time of the completion of the overlay. **SDBE:** T2 Contracting, Inc. will utilize Paul Williams Hauling, Dunn, NC, and Utilities Plus, Linden, NC both certified as DBEs, for hauling services and sewer installation services in the amount of \$515,000. T2 Contracting, Inc. has submitted their good faith efforts to solicit minority participation on the project as required by the bid documents. **Local:** T2 Contracting, Inc. will utilize Highland Paving, Fayetteville, NC for asphalt pavement patch; Forest's Landscaping, Fayetteville, NC for seeding and mulching; Fortiline, Fayetteville, NC for supplies; Oldcastle Precast for precast materials; Utilities Plus, Inc. for sewer installation. The anticipated amount of local subcontractor/supplier spending for the project is approximately \$1,830,092.

Budget Impact:

The construction of Annexation Phase V, Area 20 - Hackney Hills, Lake Point, Robin Hill Estates is budgeted in FY2018 CIP WS 58 - Phase V Annexation - \$6,924,171.54 was budgeted for construction of this area.

Options:

N/A

Recommended Action:

The Fayetteville Public Works Commission recommends the City Council approve the bid recommendation to award the contract for the construction of Annexation Phase V, Area 20 - Hackney Hills, Lake Point, Robin Hill Estates to T2 Contracting, Fuquay Varina, NC, the lowest responsive, responsible bidder in the total amount of \$5,837,472.50

Attachments:

Annexation Area 20 Recommendation

**PUBLIC WORKS COMMISSION
ACTION REQUEST FORM**

TO: David W. Trego, CEO/General Manager
FROM: Mark Cannady, Procurement Supervisor

DATE: March 7, 2018

.....
ACTION REQUESTED: Award contract for construction of Annexation Phase V, Area 20 – Hackney Hills, Lake Point, Robin Hill Estates
.....

BID/PROJECT NAME: Annexation Phase V, Area 20 – Hackney Hills, Lake Point, Robin Hill Estates

BID DATE: February 28, 2018

DEPARTMENT: Water Resources Engineering

BUDGET INFORMATION: FY2018 CIP WS 58 – Phase V Annexation - \$6,924,171.54 was budgeted for construction of this project.
.....

| BIDDERS | TOTAL COST |
|--|-------------------|
| T2 Contracting, Fuquay Varina, NC | \$5,837,472.50 |
| TA Loving Co., Goldsboro, NC | \$6,369,846.00 |
| Billy Bill Contracting, Fayetteville, NC | \$6,775,749.18 |

.....

AWARD RECOMMENDED TO: T2 Contracting, Inc., Fuquay Varina, NC

BASIS OF AWARD: Lowest responsive, responsible bidder
.....

COMMENTS: The Commission is asked to approve award of the bid to T2 Contracting, Inc., Fuquay Varina, NC, for the base bid price of \$5,837,472.50. Plans and specifications were requested by four (4) contractors with three (3) contractors responding. The base bid for the project includes permanent pavement patch only. The project area will be resurfaced under a future City resurfacing contract. PWC will reimburse the City the cost for the overlay of this project area at the time of the completion of the overlay.
.....

ACTION BY COMMISSION
APPROVED _____ **REJECTED** _____
DATE _____

ACTION BY COUNCIL
APPROVED _____ **REJECTED** _____
DATE _____

BID HISTORY

FAYETTEVILLE ANNEXATION PHASE V, AREA 21 – HACKNEY HILLS, LAKE POINT, ROBIN HILLS ESTATES BID DATE: FEBRUARY 28, 2018

Consulting Engineer

WK Dickson, Inc., Raleigh, North Carolina

Advertisement

- | | | |
|----|--|----------------------|
| 1. | PWC Website | 01/18/18 to 02/28/18 |
| 2. | Fayetteville Regional Chamber | Web Posting |
| 3. | The Fayetteville Press, Fayetteville, NC | General Ad Monthly |

List of Organizations Notified of Bids

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. Fayetteville Business & Professional League, Fayetteville, NC
5. SBTDC, Fayetteville, NC
6. FTCC Small Business Center, Fayetteville, NC
7. CEED, Fayetteville, NC
8. iSqFt Planroom

List of Contractors Requesting Plans and Specifications

1. State Utility Contractors, Monroe, NC
2. T.A. Loving Co., Goldsboro, NC
3. T2 Contracting, Inc, Fuquay Varina, NC
4. Sanford Contractors, Sanford, NC

SDBE/Local Participation

SDBE: T2 Contracting, Inc., will utilize Paul Williams Hauling, Dunn, NC, and Utilities Plus, Linden, NC both certified as DBEs, for hauling services and sewer installation services in the amount of \$515,000. T2 Contracting, Inc. has submitted their good faith efforts to solicit minority participation on the project as required by the bid documents.

Local: T2 Contracting, Inc. will utilize Highland Paving, Fayetteville, NC for asphalt pavement patch; Forest's Landscaping, Fayetteville, NC for seeding and mulching; Fortiline, Fayetteville, NC for supplies; Oldcastle Precast for precast materials; Utilities Plus, Inc. for sewer installation. The anticipated amount of local subcontractor/supplier spend for the project is approx. \$1,830,092.

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-130

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.07

TO: Mayor and Members of City Council

**THRU: David W. Trego, CEO/General Manager
Fayetteville Public Works Commission**

FROM: Fayetteville Public Works Commission

DATE: March 26, 2018

RE:

**Bid Recommendation - Annexation Phase V, Area 21 - Arran Lakes West
Subdivision**

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

High Quality Built Environment

Executive Summary:

Bids were received to award the contract for the construction of Annexation Phase V, Area 21 - Arran Lakes West Subdivision. The recommended lowest responsive, responsible bidder is TA Loving Co., Goldsboro, NC, in the total amount of \$5,017,469.50.

Background:

The Fayetteville Public Works Commission during their meeting on March 14, 2018, approved the bid recommendation to award the contract for the construction of Annexation Phase V, Area 21 - Arran Lakes West Subdivision to TA Loving Co., Goldsboro, NC, the lowest responsive, responsible bidder in the total amount of \$5,017,469.50, and to forward to City Council for approval.

Bids were received on February 21, 2018, as follows:

| Bidders | Total Cost |
|--|----------------|
| TA Loving Co., Goldsboro, NC | \$5,017,469.50 |
| T2 Contracting, Fuquay Varina, NC | \$5,170,770.00 |
| Billy Bill Contracting, Fayetteville, NC | \$5,601,924.80 |

Issues/Analysis:

Plans and specifications were requested by four (4) contractors with three (3) contractors responding. The base bid for the project includes permanent pavement patch only. The project area will be resurfaced under a future City resurfacing contract. PWC will reimburse the City the cost for the overlay of this project area at the time of the completion of the overlay. **SDBE:** TA Loving Co. will utilize Crowder Trucking, Fayetteville, NC, a certified DBE, for hauling services in the amount of \$100,000. TA Loving Co. has submitted their good faith efforts to solicit minority participation on the project as required by the bid documents. **Local:** TA Loving Co., will utilize Highland Paving, Fayetteville, NC, for asphalt paving; Crowder Trucking, Fayetteville, NC, for hauling services; the anticipated amount of local subcontractor/supplier spend for the project is approximately \$1,100,000.

Budget Impact:

The construction of Annexation Phase V, Area 21 - Arran Lakes West Subdivision is budgeted in FY2018 CIP WS 58 - Phase V Annexation - \$7,161,363.64 was budgeted for construction of this area.

Options:

N/A

Recommended Action:

The Fayetteville Public Works Commission recommends the City Council approve the bid recommendation to award the contract for the construction of Annexation Phase V, Area 21 - Arran Lakes West Subdivision to TA Loving Co., Goldsboro, NC, the lowest responsive, responsible bidder in the total amount of \$5,017,469.50.

Attachments:

Annexation V - Area 21 Recommendation

**PUBLIC WORKS COMMISSION
ACTION REQUEST FORM**

TO: David W. Trego, CEO/General Manager
FROM: Mark Cannady, Procurement Supervisor

DATE: March 14, 2018

.....
ACTION REQUESTED: Award contract for construction of Annexation Phase V, Area 21 – Arran Lakes West Subdivision.

.....
BID/PROJECT NAME: Annexation Phase V, Area 21 – Arran Lakes West Subdivision

BID DATE: February 21, 2018

DEPARTMENT: Water Resources Engineering

BUDGET INFORMATION: FY2018 CIP WS 58 – Phase V Annexation - \$7,161,363.64 was budgeted for construction of this area.

.....

| BIDDERS | TOTAL COST |
|--|-------------------|
| TA Loving Co., Goldsboro, NC | \$5,017,469.50 |
| T2 Contracting, Fuquay Varina, NC | \$5,170,770.00 |
| Billy Bill Contracting, Fayetteville, NC | \$5,601,924.80 |

.....
AWARD RECOMMENDED TO: TA Loving Co., Goldsboro, NC

BASIS OF AWARD: Lowest responsive, responsible bidder

.....
COMMENTS: The Commission is asked to approve award of the bid to TA Loving, Co., Goldsboro, NC, for the base bid price of \$5,017,469.50. Plans and specifications were requested by four (4) contractors with three (3) contractors responding. The base bid for the project includes permanent pavement patch only. The project area will be resurfaced under a future City resurfacing contract. PWC will reimburse the City the cost for the overlay of this project area at the time of the completion of the overlay.

.....
ACTION BY COMMISSION
APPROVED _____ **REJECTED** _____
DATE _____

ACTION BY COUNCIL
APPROVED _____ **REJECTED** _____
DATE _____

BID HISTORY

FAYETTEVILLE ANNEXATION PHASE V, AREA 21 – ARRAN LAKES WEST SUBDIVISION

BID DATE: FEBRUARY 21, 2018

Consulting Engineer

Moorman, Kizer & Reitzel Inc., Fayetteville, North Carolina

Advertisement

- | | | |
|----|--|----------------------|
| 1. | PWC Website | 01/17/18 to 02/21/18 |
| 2. | Fayetteville Regional Chamber | Web Posting |
| 3. | The Fayetteville Press, Fayetteville, NC | General Ad Monthly |

List of Organizations Notified of Bids

1. NAACP Fayetteville Branch, Fayetteville, NC
2. NAWIC, Fayetteville, NC
3. N.C. Institute of Minority Economic Development, Durham, NC
4. Fayetteville Business & Professional League, Fayetteville, NC
5. SBTDC, Fayetteville, NC
6. FTCC Small Business Center, Fayetteville, NC
7. CEED, Fayetteville, NC
8. iSqFt Planroom

List of Contractors Requesting Plans and Specifications

1. State Utility Contractors, Monroe, NC
2. T.A. Loving Co., Goldsboro, NC
3. T2 Contracting, Inc, Fuquay Varina, NC
4. Sanford Contractors, Sanford, NC

SDBE/Local Participation

SDBE: TA Loving Co., will utilize Crowder Trucking, Fayetteville, NC, a certified DBE, for hauling services in the amount of \$100,000. TA Loving Co. has submitted their good faith efforts to solicit minority participation on the project as required by the bid documents.

Local: TA Loving Co. will utilize Highland Paving, Fayetteville, NC for asphalt paving; Crowder Trucking, Fayetteville, NC, for hauling services; the anticipated amount of local subcontractor/supplier spend for the project is approx. \$1,100,000.

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-128

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.08

TO: Mayor and Members of City Council

THRU: Karen M. McDonald, City Attorney

FROM: D. Brandon Christian, Police Attorney

DATE: March 26, 2018

RE:

An Ordinance Prohibiting Passing Items Into/Out of Motor Vehicles

COUNCIL DISTRICT(S):

ALL

Relationship To Strategic Plan:

Goal IV: Desirable Place to Live, Work and Recreate

Executive Summary:

Presenting for the Council's consideration a new ordinance based off of an ordinance enacted by Charleston, SC, to protect the occupants of vehicles and persons seeking to solicit donations from vehicle operators by restricting the passing of items between persons in vehicles on public streets and persons outside the vehicle.

Background:

Council has previously requested staff to review the ordinances of other cities to determine whether Fayetteville has appropriate ordinances regulating activities associated with panhandling. It is the goal of the City to ensure that all residents have the right to be free from unwanted advances and that the constitutionally protected rights of everyone are protected.

To that end, staff reviewed the ordinances of other North Carolina municipalities, and presented those findings to Council previously. Council then expressed an interest in addressing the safety of panhandlers on the side of public streets and highways and the

safety issues it creates for the panhandlers and occupants of motor vehicles. One item of interest specifically addressed by Council was an ordinance from Charleston, SC, that restricted the passing of items to and from vehicles on public streets.

At the March 5, 2018, work session, staff presented Council with a draft ordinance based upon the Charleston, SC, ordinance. Council directed staff to advance the ordinance prohibiting the passing of items into or out of motor vehicles on the public streets for consideration at a formal Council meeting. Council further directed staff to incorporate two changes: (1) that the ordinance only be enforceable on streets that have permanent lane markings, thereby exempting the ordinance from applying on neighborhood streets; and (2) adding a time limit of 12 months to the heightened penalties for subsequent violations. The attached draft incorporates both changes as directed.

Issues/Analysis:

No issues.

Budget Impact:

No budget impact.

Options:

1. Adopt the ordinance amendment.
2. Do not adopt the ordinance amendment.
3. Provide additional direction to staff.

Recommended Action:

Staff recommends that the City Council either adopt or do not adopt the proposed ordinance as Council deems appropriate.

Attachments:

Draft Ordinance

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE CREATING A NEW SECTION 16-266 TO PROHIBIT THE PASSING OF ITEMS TO AND FROM THE OCCUPANTS OF MOTOR VEHICLES ON PUBLIC STREETS OR HIGHWAYS 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:

Section 1. Chapter 16, motor vehicles and traffic, is amended by creating a new Section 16-266, the passing of items to or from the occupant of a motor vehicle on a roadway, as follows:

Sec. 16-266. The passing of items to or from the occupant of a motor vehicle on a roadway is prohibited.

1. *Intent of section.* This section is intended to provide for the free flow of motor vehicle traffic on public streets and highways in the city. The city council finds that persons who distribute any item to, receive any item from or exchange any item with the occupant of a motor vehicle upon a roadway presents a threat to the free and safe flow of motor vehicle traffic. By this section, the city council intends to promote the health, safety and welfare of the citizens traveling by vehicle or on foot in the city.
2. *Definitions.* For purposes of this section, the following definitions apply:
 - a. **Pass/passing** means distributing any item to, receiving any item from, or exchanging any item with the occupant of a motor vehicle that is located in a lane of travel on the roadway.
 - b. **Roadway** means all public streets and highways within the city that have lane markings. This definition excludes private roads and private property, and it is further not intended to apply to neighborhood roads that do not have permanent pavement markings on them. This definition also excludes areas in which parking is permitted in the city.
 - c. **Item** means any physical object.
3. *Prohibition on roadways.* It shall be unlawful to violate any of the prohibitions set forth below in the city.
 - a. No person shall knowingly distribute any item to, receive any item from, or exchange any item with the occupant of any motor vehicle when the vehicle is located in a lane of travel on the roadway.
 - b. This section shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle on private property or in a permitted parking area.

- c. This section shall not apply to any law enforcement officer acting within the scope of his/her official duty.
 - d. This section shall not apply to the distribution, receipt or exchange of any item with the occupant of a motor vehicle located in the roadway in order to assist the occupant after a motor vehicle accident, with a disabled motor vehicle or where the occupant is experiencing a medical emergency.
4. *Exemption.* So long as it does not impede the normal movement of traffic on the street or highway, this section shall not apply to the distribution of newspapers on the non-traveled portion of any street or highway pursuant to N.C.G.S. § 20-175(d).
5. *Enforcement.* Sworn officers of the Fayetteville Police Department are authorized to issue civil citations for violation of this section.
6. *Penalty.* Violation of this section shall be a civil violation, and carry a civil penalty.
- a. Amount of penalty:
 - i. For a first violation – written warning
 - 1. It shall be prima facie evidence that a person has already received a written warning under this section if the records management system of the Fayetteville Police Department indicates that such a warning has been given. No officer or other person shall be required to testify or otherwise be present to establish the fact that a prior warning was given in any civil proceeding to enforce this section.
 - ii. For a second violation within 12 months following the date of the first violation - \$25.00 civil penalty
 - iii. For a third or subsequent violation within 12 months following the date of the preceding violation - \$100.00 civil penalty
 - 1. The date of the preceding violation for this section shall be considered the latter of:
 - a. The actual date of the preceding violation if the civil penalty is paid, on time and without a contested hearing;
 - b. The date the civil penalty is actually paid, if the penalty is not contested at a hearing; or
 - c. The date the hearing officer upholds the penalty, if the penalty is contested.
7. *Severability.* If any provision of this section is declared invalid or unconstitutional by any court of competent jurisdiction, the remaining provisions shall be severable and shall continue in full force and effect.

Section 2. 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 _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-133

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Consent

Agenda Number: 6.09

TO: Mayor and Members of City Council

THRU: Kristoff T. Bauer, Deputy City Manager

FROM: Kecia N. Parker, NCCP, Real Estate Manager

DATE: March 26, 2018

RE:

Adopt a Resolution Declaring Jointly Owned Real Property Surplus and Authorizing a Quitclaim Deed of the City's Title to the County

COUNCIL DISTRICT(S):

Not in City Limits

Relationship To Strategic Plan:

A Desirable Place to Live, Work and Recreate

Executive Summary:

Cumberland County has requested that the City of Fayetteville quitclaim their interest in 2663 Doland Court known as Parcel ID 0415-58-2158 to clear up a cloud on title. On March 19, 2018 City Council approved the Resolution authorizing two parcels to be conveyed to the County. The County mistakenly left out the above parcel in the previous memo and has since realized the error. This parcel was not in City limits and was mistakenly put in the City's name when it was foreclosed on in 2005. The County sold the parcel out in 2006 and it has since been sold again in 2010 without the City conveying the ½ interest that remains in the City's name. This action is to clear up this cloud on title and allow the County to put the ownership in the correct name.

Background:

On March 16, 2005, Parcel 0415-58-2158 located at 2663 Doland Court was conveyed to the County of Cumberland and the City of Fayetteville as a result of a tax foreclosure proceeding. This property was not in City limits and therefore the City should not have

been a party to the deed. The Commissioner's Deed is recorded in Book 6819, Page 5 of the Cumberland County Registry. On October 31, 2006, the County of Cumberland, as Grantor, conveyed said properties out to an outside party but the City of Fayetteville was mistakenly left off. The County did not request the City to Quitclaim their interest at that time. The third party has now sold this property out and the title needs to be cleared up. To clear up the cloud on title the County of Cumberland is requesting the City of Fayetteville to quitclaim their interest to the County so the matter can be corrected.

Issues/Analysis:

No known issues

Budget Impact:

There is no significant impact to the budget;

Options:

- Accept the County's request to declare the property surplus and quitclaim the City's title to the County according to the Resolution attached.
- Reject the County's request and retain a ½ interest in the properties.

Recommended Action:

Staff recommends adopting the attached Resolution declaring the property surplus and authorizing the City Manager to sign a Quitclaim Deed conveying the City's interest to the County.

Attachments:

Resolution

Map

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE TO DECLARE CITY PROPERTY SURPLUS AND QUITCLAIM CITY'S INTEREST TO CUMBERLAND COUNTY

WHEREAS, the City of Fayetteville and the County of Cumberland did jointly own real property in Cumberland County, said property having the tax map designation of: PIN 0415-58-2158 located at 2663 Doland Court and being more particularly described as follows:

Being all of Lot 236 in a subdivision known as Section Seven, WOODLEA according to a plat of the same duly recorded in Plat Book 39, Page 9, Cumberland County, North Carolina Registry.

WHEREAS, the property is surplus to the needs of the City of Fayetteville, and;

WHEREAS, the County of Cumberland has previously sold the parcel and requests that the City of Fayetteville declare the parcel surplus to the City's needs and quitclaim the City's title to the County, and;

WHEREAS, the City Council of the City of Fayetteville finds such action to be in the public interest, and;

NOW, THEREFORE, BE IT RESOLVED on behalf of the people of Fayetteville, this Council of the City of Fayetteville, North Carolina does hereby resolve that the aforesaid real property is surplus to City's needs and authorizes its Manager to sign a deed quitclaiming title to the County of Cumberland.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 26th day of March, 2018; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

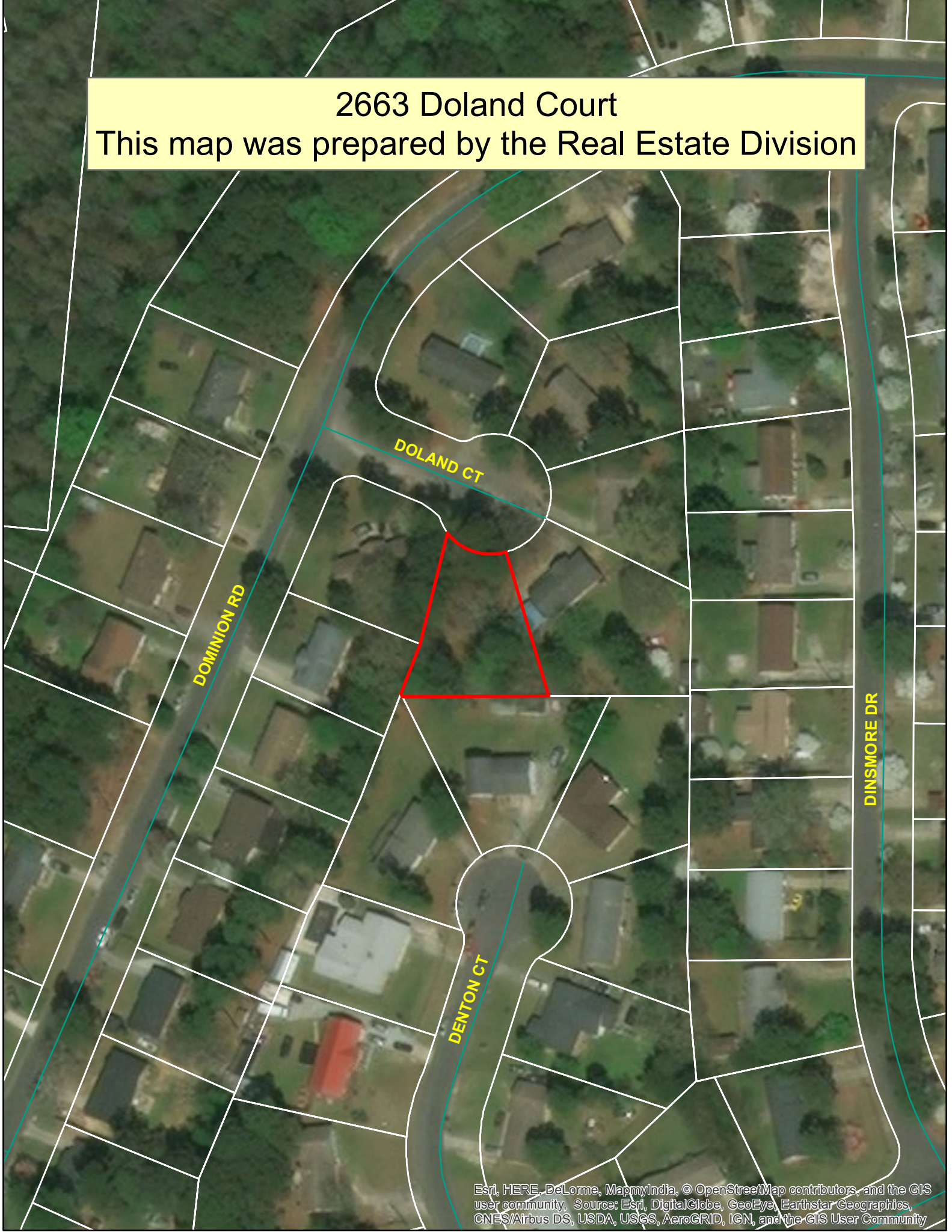
CITY OF FAYETTEVILLE

MITCH COLVIN, MAYOR

ATTEST:

PAMELA J. MEGILL, City Clerk

2663 Doland Court
This map was prepared by the Real Estate Division



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-010

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 7.01

TO: Mayor and Members of City Council

THRU: Jay Reinstein, Assistant City Manager

FROM: Craig M. Harmon, AICP, CZO - Senior Planner

DATE: March 26, 2018

RE:

P18-01F The issuing of a Special Use Permit to allow a free standing cellular communications tower to be located in a MR-5 Mixed Residential district, the structure will be located at 1268 Ireland Drive near the intersection with David Street, containing 5.06 acres and being the property of REFUGE CHURCH.

COUNCIL DISTRICT(S):

5

Relationship To Strategic Plan:

Growth and Development

Executive Summary:

Beacon Towers looks to install a 150 foot communications tower 1268 Ireland Drive, behind the Sears Outlet located on Raeford Road.

Background:

Owner: REFUGE CHURCH

Applicant: Jonathan Yates

Requested Action: SUP for a Communications Tower

Property Address: 1268 Ireland Drive

Council District: 5

Status of Property: Partially developed with Refuge Church

Size: 5.06 acres +/-

Adjoining Land Use & Zoning:

North - CC Undeveloped

South - MR-5 Duplexes
West - MR-5 Utility substation
East - MR-5 Church and Single Family (across Ireland Dr)
Letters Mailed: 18

Land Use Plan: Heavy Commercial

2030 Growth Management Plan: Policy 3.2: ADVANCED PLANNING FOR ALL INFRASTRUCTURE facilities shall be supported and routinely updated on a countywide basis. Facilities benefited by advanced planning shall include, at a minimum, schools, roads, water, sewer, stormwater management, parks and greenways.

Additional Reviews:

Technical Review Committee (TRC) - A preliminary review was conducted on this site plan. As a result, the proposed plan was given preliminary approval.

RLUAC/Fort Bragg - Following an examination of the special use permit request by the RLUAC staff and Board of Directors for the property listed above, and recognizing that our findings are non-binding on the City of Fayetteville, the RLUAC Board of Directors finds that:

- The case involves property that is identified as suitable for URBAN development on the 2003 and 2008 Joint Land Use Study maps.

Issues/Analysis:

Beacon Towers looks to install a 150 foot communications tower behind the Sears Outlet store on Ireland Drive. The applicant proposes a mono-pole style tower to accommodate eight cellular antennas.

Requirements for:

(4) Freestanding Towers [Please see the attached application, letter from Hellman Yates and Tisdale and site details that shows how the applicant will comply with City ordinances.]

Freestanding telecommunications towers, whether as a principal or accessory use, shall comply with the following standards:

a. Safety

- i. Before obtaining a Building Permit, the applicant shall submit to the City Manager engineering drawings for the tower, sealed by a licensed engineer, that include a statement that the tower will meet all applicable local, State, and Federal building codes and structural standards.
- ii. Every two years after construction of a tower, the owner shall submit to the City Manager a statement on the tower's structural soundness that is signed and sealed by an engineer. Every sixth year, the statement shall be signed and sealed by an independent, registered, and licensed engineer.

b. Height

The height of a telecommunications tower, including any building or structure atop which the tower is located, shall not exceed 450 feet.

c. Aesthetics

- i. A monopole shall be used unless a different structure is explicitly approved by City Council.
- ii. Towers shall either maintain a galvanized steel finish or be painted.
- iii. Towers shall be camouflaged with the surrounding area, through paint, incorporation into architectural design/structure, or other means, to the maximum extent practicable.
- iv. The exterior appearance of ground-based accessory structures located within a residential zoning district shall be designed to look like a residential structure typical of the district (e.g., with a pitched roof and frame or brick siding).
- v. Photo imagery shall be used to illustrate the appearance of the facility and its visual impact on the area.

d. Lighting

If lighting is required by the Federal Aviation Administration (FAA), it shall comply with FAA standards. To the extent allowed by the FAA, strobe lights shall not be used for nighttime lighting and lighting shall be oriented so as not to project directly onto any surrounding residentially-zoned property. Documentation from the FAA that the lighting is the minimum lighting required shall be submitted to the City Manager before issuance of any building permit for the tower.

e. Setbacks

- i. Except as provided in subsection iii., telecommunications towers shall be set back from abutting property lines the distance equal to or exceeding that in Table 30-4.C.3, Freestanding Telecommunications Tower Setback Standards.
- ii. Buildings associated with a telecommunications facility shall meet the minimum setback requirements for the zoning district where located.
- iii. When a tower, building or other structure is being added to an existing telecommunications tower site that was in existence prior to the adoption of the setback requirements under subsection b.i. and ii. above and the existing site does not comply with the setback requirements of subsection b.i. and ii., the Council, upon good cause shown by the applicant and evidence provided by a North Carolina registered professional engineer regarding the safety of the proposed setback, may reduce the setback requirements for the tower, building or other structure to be added to the existing site.

f. Separation from Other Towers

New telecommunication towers shall not be located within 1,500 feet of an existing telecommunications tower. This standard shall not apply to a telecommunications tower placed out of view in a building or other structure. The 1,500-foot standard may be reduced or waived through the special use permit process based on mitigating circumstances which may include, but are not limited to, topographical or transportation facility barriers (such as rivers, railways, and major highways), degree or extent of separation from other such uses, and surrounding neighborhood characteristics.

g. Collocation

- i. No freestanding telecommunications tower shall be allowed unless it is demonstrated that no suitable existing tower, building, or other structure within the coverage area is available for the collocation of antennas.
- ii. New freestanding telecommunications towers shall be designed to accommodate the

present and future needs of the owner and at least two comparable users. Unused space on an existing telecommunications tower shall be made available to other users at a fair market rental unless mechanical, structural, or regulatory factors prevent collocation. In determining fair market rental, the rent paid by a current collocator under a swapping agreement need not be considered.

h. Buffer and Screening

A Type D buffer (see Section 30-5.B.4.d, Property Perimeter Landscape,) shall be provided around the perimeter of a freestanding telecommunications tower facility (including equipment structures and guy anchor supports).

i. Security Fencing

Towers, guy anchor supports, and ground-based equipment buildings shall be enclosed by security fencing not less than ten feet in height.

j. Interference

No telecommunications tower, antenna, or supporting equipment shall disturb or diminish radio or television or similar reception on adjoining residentially zoned land.

k. Use of Associated Buildings

Building and structures associated with a telecommunications tower shall not be used as an employment center for any worker. This does not prevent the periodic maintenance, inspection, and monitoring of equipment and instruments, or renovation of the facility.

l. No Outdoor Storage

No outdoor storage shall be allowed on a telecommunications tower site.

m. Compliance with State or Federal Laws and Regulations

Towers and antennas shall meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the State or Federal government that regulates telecommunications towers and antennas.

n. Replacement of Existing Towers

Existing freestanding towers may be replaced with a new tower that increases the number of collocation opportunities, subject to the following standards:

- i. The height of the replacement tower shall not exceed 110 percent of the height of the replaced tower.
- ii. The replacement tower shall be located within 100 feet of the replaced tower, unless the City Manager determines that a farther distance furthers the purpose and intent of this Ordinance.
- iii. The replacement tower shall comply with all the standards of this section.

o. Nonconforming Telecommunications Towers

Nonconforming telecommunications towers shall be allowed to remain and be maintained in accordance with the standards in Article 30-7: Nonconformities. Additional equipment may be added to the tower provided that such additions do not increase the degree of nonconformity.

p. Discontinued Use

If a telecommunications tower is not used for a period of six consecutive months, the City Manager may send the tower owner notice indicating that the tower must be removed within 90 days from the date of notice.

The SUP must meet the following findings of fact.

- (1) The special use complies with all applicable standards in Section 30-4.C,

Use-Specific Standards; [Yes, see the attached site plan, letter from applicant and application.]

(2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning districts(s) of surrounding lands; [Yes, this property is large enough to separate this tower from many of its surrounding uses.]

(3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration; [Yes, the tower meets the City's requirements.]

(4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands; [Yes the proposed tower's separation from other uses helps protect the visual impacts on adjacent lands as can be seen in the simulated photos that were submitted as part of the applicant's submittal.]

(5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources; [Yes, the tower meets the City's requirements.]

(6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site; [Yes, the tower meets the City's requirements and will have access from Ireland Drive.]

(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 [Yes, no documentation has been submitted showing that property values would be negatively affected.]

(8) The Special use complies with all other relevant City, State, and Federal laws and regulations. [Yes, the applicant will be required to meet all applicable standards.]

On January 9, 2018, the Zoning Commission held a public hearing regarding this case. There was one speaker in favor and none in opposition. The Commission voted 5-0 to recommend approval.

Conditions recommended by the Zoning Commission and staff.

1. Compliance with the attached site plan, with final review and approval by the TRC.

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

1. The tower would be located on a 5-acre parcel in an area that is away from other development. The tower is setback more than the required amount from all property lines.
2. This proposal meets all of the applicable standards of the City.
3. The conditions listed above.
4. The proposal meets all of the use-specific standards listed above.
5. The proposal meets all eight findings of fact.

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 SUP with the conditions listed above (Recommended).
- 2) Approval of the SUP with additional conditions.
- 3) Approval of the SUP without conditions.
- 4) Denial of the SUP

Recommended Action:

OPTION 1

I move to APPROVE the Special Use Permit (SUP) to allow a communications tower in a MR-5 residential zoning district, as presented by staff, based on the standards of the City's development code and the evidence presented during this hearing. And that the application is consistent with applicable plans because: (1) the development is located in a Mixed Residential District and (2) that this use complies with the findings listed below and (3) the proposed permit is in the public interest because the proposed SUP does fit with the character of the area.

[Applicable to Motion to Approve] If approved, this Special Use Permit shall become effective ten days after its approval by the City Council, which is April 5, 2018. The SUP shall expire one year from its effective date if a building permit is not issued within that time.

*For a motion to approve, all eight findings below must be met.

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

OPTION 2

I move to DISAPPROVE the Special Use Permit (SUP) to allow a communications tower in a MR-5 residential zoning district, as presented by staff, based on the standards of the

City's development code and the evidence presented during this public hearing. And that the application is inconsistent with applicable plans because: (1) the development is located in a Mixed Residential District which has both commercial and residential zoning and uses surrounding it and (2) that this use does not comply with the findings listed below and (3) the proposed permit is not in the public interest because the proposed SUP does not fit with the character of the area. [List any of the eight findings below that have not been met.]

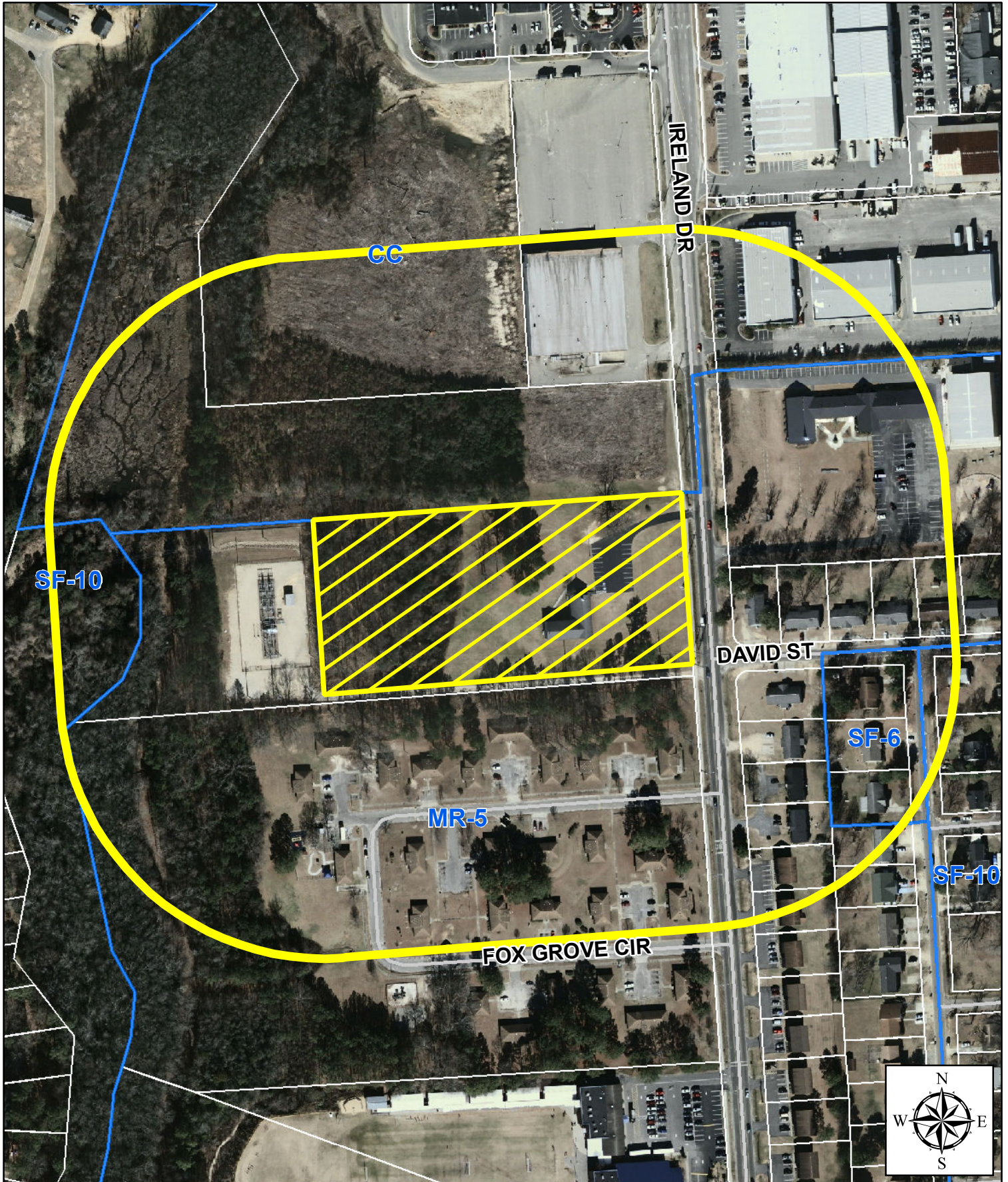
[Applicable to Motion to Deny] If denied this action shall become effective ten days after its denial by the City Council, which is April 5, 2018.

* For a motion to deny only one of the findings shown below needs to not apply.

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

Attachments:

Zoning Map
Current Land Use Map
Land Use Plan Map
Application
Site Plan & Equipment Details
Letter from Hellman, Yates & Tisdale
Site Photos



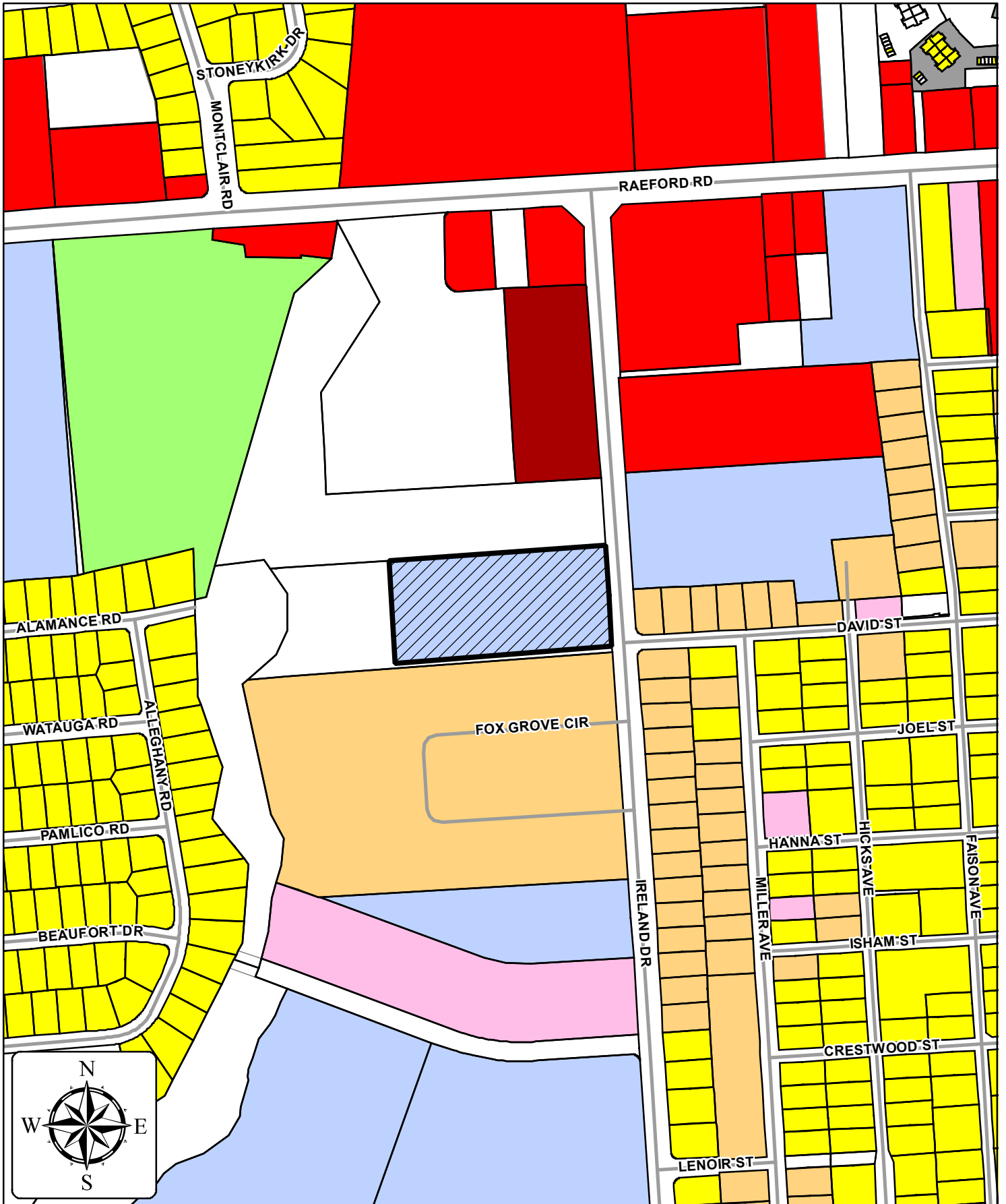
Request: SUP Cell Tower
Location: 1268 Ireland Drive
Lot Size: 5.06 +/- acres

Zoning Commission: 1/9/2018
Pin: 0416-59-4520-

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

Current Land Use

P18-01F

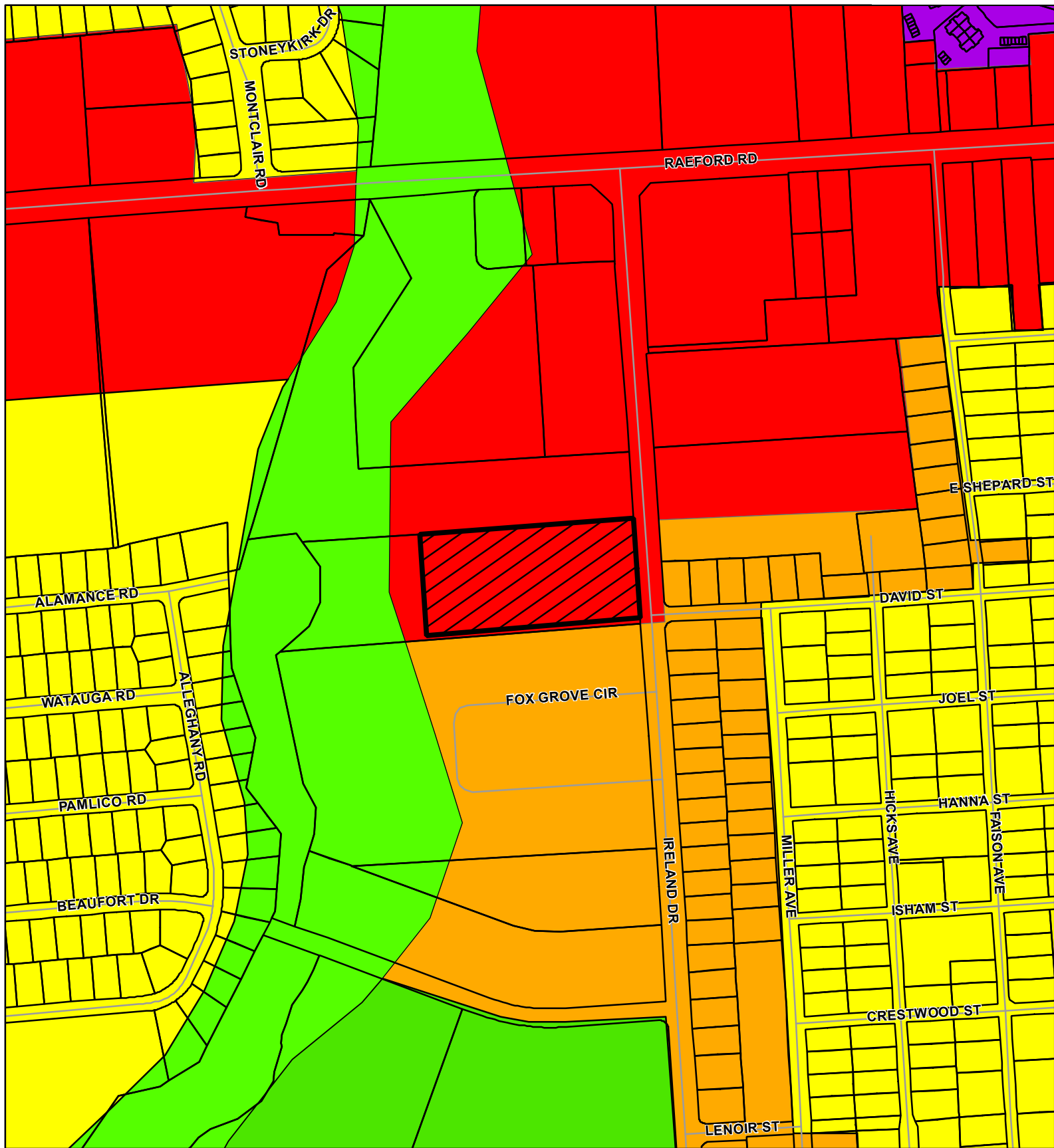


Legend

| | | | | | | | |
|------------------------|-------------|-------------------|---------------|------------------|----------------------|--------------------------|-------------------|
| 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. P18-01F



Legend

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



View #1



View #2



View #3





Special Use Permit Application Form

P18-01F

Submittal Date: 11-9-17 Approval/Denial Date: _____

433 Hay Street, Fayetteville, North Carolina 28301
910-433-1612 Fax # 910-433-1776

Fee: \$700.00 (Cell Tower Fee \$2500)

Received By: *Harvix Estep*

Notes:

1. A pre-application conference is mandatory prior to submission of an application for a special use permit.
2. Applications for special use permits shall include the sketch plan from the pre-application conference or may include a site plan depicting the proposed special use.
3. Unless specified otherwise by the City Council, a Special Use Permit shall automatically expire if a Building Permit for the development authorized by the Special Use Permit is not obtained within one year after the date of issuance of the Special Use Permit, or if the development authorized by the Special Use Permit is discontinued and not resumed for a period of one year.
4. *Extension* - Upon written request submitted at least 30 days before expiration of the time period provided in accordance with Section 30-2.C.7.d.8.a above, and upon a showing of good cause, the City Manager may grant one extension not to exceed six months. Failure to submit a written request for an extension within the time limits established by this section shall result in the expiration of the Special Use Permit.

1. General Project Information

Project Address: 1268 Ireland Drive, Fayetteville, NC 28304

Tax Parcel Identification Number: 0416-59-4520

Zoning District: MR-5 Overlay zoning district(s): _____

2. Written Description of Special Use

A) Provide a written description of the proposed special use, including summary of existing uses and the proposed use/activity in detail. Also include hours and days of operation, number of employees, number of clients, etc.

We are proposing a 150-foot monopole-style wireless telecommunications facility on the property of Refuge Church in the back of the property. The proposed facility will be unmanned and after 45-60 day construction period, the facility will only be visited 4-6 times a year for maintenance. Presently, the property is utilized by Refuge Church and is zoned MR-5.

B) Please provide a description of the zoning district designations and existing uses on adjacent properties, including across the street. (attach additional sheets if necessary)

The property to the North is zoned CC and is presently utilized as retail and part of it is undeveloped. The property to the South is zoned MR-5 and is utilized by Fayetteville Metropolitan Housing & Urban Development. The two properties to the East are both zoned MR-5 and one is utilized by a church and the other is residential. The property to the West is zoned MR-5 and is utilized as a utility substation.



3. Special Use Permit Justification. Answer all questions in this section (attach additional sheets as necessary).

A) Indicate how the special use complies with all applicable use-specific standards in the City Code of Ordinances.

Please see attached narrative for review of full compliance with of Section 30-4.C.3(i) of the City of Fayetteville Unified Development Ordinance.

B) Describe how 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 wireless telecommunications facility is designed to support the surrounding area by providing adequate wireless infrastructure and important access to 911 Responders: Fire, Police, & EMS.

C) Indicate how the special use avoids significant adverse impact on surrounding lands regarding service delivery, parking and loading, odors, noise, glare, and vibration.

The facility will not produce any noise, odors, glare or vibration and after 45-50 day construction period, will only be visited 4-6 times a year for routine maintenance.

D) Demonstrate how the special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands.

The proposed facility has been carefully placed on the Refuge Church property to take advantage of the heavy and mature tree cover and the closest adjacent use to the facility is a utility substation.

E) Explain how the special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

The proposed facility will not create any deterioration of water or air resources, wildlife habitats, scenic resources, or any other natural resources.

F) Indicate how the special use maintains safe ingress and egress onto the site and safe road conditions around the site.

The proposed facility will utilize an existing driveway from Ireland Drive, It is an unmanned facility and will generate very few trips per year and will aid traffic and pedestrian safety in surrounding area by providing effective access to 911 first responders.

G) Demonstrate how 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.

The proposed facility will enhance the value of the surrounding properties and areas by providing effective wireless infrastructure.

H) The special use complies with all other relevant City, State and Federal laws and regulations

The proposed facility complies with all regulations of the City of Fayetteville, State of North Carolina, and the United States.

4. Submittal Requirement Checklist

(Submittals should include 2 copies of listed items, unless otherwise stated.)

| | |
|--------------------------|--|
| <input type="checkbox"/> | Pre-application Conference completed |
| <input type="checkbox"/> | Application fee |
| <input type="checkbox"/> | Completed site plan (information required includes parking, ingress, egress, fencing, play areas, setbacks, square footage of building, landscaping, etc.) |
| <input type="checkbox"/> | Special Use Permit Application Form |
| <input type="checkbox"/> | Vested Rights Certificate (if requested) |
| <input type="checkbox"/> | Copy of recorded deed |
| <input type="checkbox"/> | Copy of an approved Certificate of Appropriateness (COA) if located within the HLO |
| <input type="checkbox"/> | Proposed or existing development name (if different from project name) |
| <input type="checkbox"/> | Traffic impact analysis (if required) |
| <input type="checkbox"/> | Any additional information determined to be necessary by the Development Services Department |

5. Primary Point of Contact Information for the Pre-application Conference

Primary Point of Contact Name: Jonathan L. Yates

Mailing Address: 105 Broad Street, 3rd Floor, Charleston, SC 29401 Fax No.: _____

Phone No.: (843) 414-9754 Email: jly@hellmanyates.com

6. Owner Information

Owner Name: Refuge Church

Mailing Address: 1268 Ireland Drive, Fayetteville, NC 28304 Fax No.: _____

Phone No.: 910-670-4470 Email: pastorbriancwoodall78@gmail.com

Signature: Brian Woodall Date: 11/1/17

HELLMAN YATES & TISDALE

ATTORNEYS AND COUNSELORS AT LAW

JONATHAN L. YATES
DIRECT VOICE 843 414-9754
JLY@HELLMANYATES.COM

HELLMAN YATES & TISDALE, PA
105 BROAD STREET, THIRD FLOOR
CHARLESTON, SOUTH CAROLINA 29401
V 843 266-9099
F 843 266-9188

November 8, 2017

VIA FEDERAL EXPRESS

Craig Harmon, AICP, CZO
Senior Planner
City of Fayetteville Zoning Department
433 Hay Street
Fayetteville, NC 28301

Re: Proposed 150' monopole in a new wireless telecommunications facility to be located at 1268 Ireland Drive, Fayetteville, NC 28304 (Tax Parcel Identification # 0416-59-4520).

Dear Mr. Harmon,

Enclosed please find the application of Beacon Towers for a proposed 150-foot monopole-style tower and wireless telecommunications facility. The facility will be located on the property of Refuge Church, which is located at 1268 Ireland Drive, Fayetteville, NC 28304 and is designated as Cumberland County Tax Parcel Identification number 0416-59-4520. This area of the City of Fayetteville is in desperate need of adequate wireless voice and advanced data coverage. We have taken the liberty of recasting the relevant sections of the City of Fayetteville, NC Ordinance regarding wireless telecommunication towers and antennas below with out response to the relevant sections in bold:

4. *Freestanding Towers* Freestanding telecommunications towers, whether as a principal or accessory use, shall comply with the following standards:

a. *Safety*

1. Before obtaining a Building Permit, the applicant shall submit to the City Manager engineering drawings for the tower, sealed by a licensed engineer, that include a statement that the tower will meet all applicable local, State, and Federal building codes and structural standards.

The applicant accepts and acknowledges this provision.

2. Every two years after construction of a tower, the owner shall submit to the City Manager a statement on the tower's structural soundness that is signed and sealed by an engineer. Every sixth year, the statement shall be signed and sealed by an independent, registered, and licensed engineer.

The applicant accepts and acknowledges this provision.

- b. *Height* The height of a telecommunications tower, including any building or structure atop which they tower is located, shall not exceed 450 feet.

The proposed wireless telecommunications facility will only be 150' in height, as shown on Sheet A-2 of the Site Plans and Drawings, attached hereto as Exhibit "1".

c. Aesthetics

1. A monopole shall be used unless a different structure is explicitly approved by City Council.

The proposed tower will incorporate the monopole style, as shown on Sheet A-2 of Exhibit "1".

2. Towers shall either maintain a galvanized steel finish or be painted.

The proposed wireless telecommunications facility will have a galvanized gray finish as stated on Sheet A-2 of Exhibit "1".

3. Towers shall be camouflaged with the surrounding area, through paint, incorporation into architectural design/structure, or other means, to the maximum extent practicable.

The proposed facility has been designed to the extent possible to blend into the natural setting by its very careful placement on the Refuge Church property. The property enjoys heavy and mature tree cover that surrounds the proposed facility.

4. The exterior appearance of ground-based accessory structures located within a residential zoning district shall be designed to look like a residential structure typical of the district (e.g., with a pitched roof and frame or brick siding).

The applicant accepts and acknowledges this provision.

5. Photo imagery shall be used to illustrate the appearance of the facility and its visual impact on the area.

Photo simulations are attached hereto as Exhibit "2" and incorporated herein by reference.

d. Lighting

If lighting is required by the Federal Aviation Administration (FAA), it shall comply with FAA standards. To the extent allowed by the FAA, strobe lights shall not be used for nighttime lighting and lighting shall be oriented so as not to project directly onto any surrounding residentially-zoned property. Documentation from the FAA that the lighting is the minimum lighting it requires shall be submitted to the City Manager before issuance of any building permit for the tower.

The proposed telecommunications facility will not require lighting for aviation safety, as stated on Sheet A-2 of the Exhibit "1" and as determined by the FAA Determination of No Hazard to Air Navigation, attached hereto as Exhibit 3 and incorporated herein by reference.

e. Setbacks

1. Except as provided in subsection iii., telecommunications towers shall be set back from abutting property lines the distance equal to or exceeding that in Table 30-4.C.3, Freestanding Telecommunications Tower Setback Standards.

The proposed 150' wireless telecommunications facility shall have a setback of at least 165' from adjacent properties, as shown on Sheet A-0 of Exhibit "1".

Table 30-4.C.3: Freestanding Telecommunications Tower Setback Standards

| ZONING DISTRICT [1] | MINIMUM SETBACK |
|--|--|
| CD, AR, SF-15, SF-10, SF-6, MR-5, MH, OI, NC | Tower height |
| CC, LC, MU, BP, LI, HI | Greater of: 1/2 tower height; or 50 feet |
| NOTES: [1] New freestanding telecommunications towers are not permitted in the DT zoning district. | |

2. Buildings associated with a telecommunications facility shall meet the minimum setback requirements for the zoning district where located.

The applicant accepts and acknowledges this provision.

3. When a tower, building or other structure is being added to an existing telecommunications tower site that was in existence prior to the adoption of the setback requirements under subsection b.i. and ii. above and the existing site does not comply with the setback requirements of subsection b.i. and ii., the Council, upon good cause shown by the applicant and evidence provided by a North Carolina registered professional engineer regarding the safety of the proposed setback, may reduce the setback requirements for the tower, building or other structure to be added to the existing site.

This provision is not applicable.

- f. *Separation from Other Towers* New telecommunication towers shall not be located within 1,500 feet of an existing telecommunications tower. This standard shall not apply to a telecommunications tower placed out of view in a building or other structure. The 1,500-foot standard may be reduced or waived through the special use permit process based on mitigating circumstances which may include, but are not limited to, topographical or transportation facility barriers (such as rivers, railways, and major highways), degree or extent of separation from other such uses, and surrounding neighborhood characteristics.

The closest existing wireless telecommunications facility is ___ from the proposed wireless telecommunications facility, as shown on Sheet A-0 of Exhibit "1".

g. Collocation

1. No freestanding telecommunications tower shall be allowed unless it is demonstrated that no suitable existing tower, building, or other structure within the coverage area is available for the collocation of antennas.

The closest existing tower is _____ feet away from the proposed tower, as shown on Sheet A-0 of Exhibit "1". An extensive search was conducted by Beacon Towers, whereby it was determined that there were no existing communication towers, buildings, or other structures suitable for co-location within the desired coverage area. The results of this search are further documented in the Lack of Collocation Statement by Samuel Black, attached hereto as Exhibit "4" and incorporated herein by reference.

2. New freestanding telecommunications towers shall be designed to accommodate the present and future needs of the owner and at least two comparable users. Unused space on an existing telecommunications tower shall be made available to other users at a fair market rental unless mechanical, structural, or regulatory factors prevent collocation. In determining fair market rental, the rent paid by a current collocater under a swapping agreement need not be considered.

Beacon Towers has designed the proposed facility to accommodate the equipment of four (4) wireless carriers, as shown on Sheet A-2 of Exhibit "1" and the letter of Martin Deputy of Beacon Towers attached hereto as Exhibit "5" and incorporated herein by reference.

Buffer and Screening A Type D buffer (see Section 30-5.B.4.d, Property Perimeter Landscape,) shall be provided around the perimeter of a freestanding telecommunications tower facility (including equipment structures and guy anchor supports).

The existing heavy and mature tree cover on the Refuge Church property not only meets but exceeds the requirements of Section 30-5.B.4.d.

h. *Security Fencing* Towers, guy anchor supports, and ground-based equipment buildings shall be enclosed by security fencing not less than ten feet in height.

A 9-foot chained link fence topped with three strands of barbed wire as an anti-climbing device for a total height of 10-feet will surround the proposed facility as shown on Sheet A-3 of Exhibit "1".

i. *Interference* No telecommunications tower, antenna, or supporting equipment shall disturb or diminish radio or television or similar reception on adjoining residentially zoned land.

The applicant accepts and acknowledges this provision.

k. *Use of Associated Buildings* Building and structures associated with a telecommunications tower shall not be used as an employment center for any worker. This does not prevent the periodic maintenance, inspection, and monitoring of equipment and instruments, or renovation of the facility.

The applicant accepts and acknowledges this provision.

l. *No Outdoor Storage* No outdoor storage shall be allowed on a telecommunications tower site.

The applicant accepts and acknowledges this provision.

m. *Compliance with State or Federal Laws and Regulations* Towers and antennas shall meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (FCC), and any other agency of the State or Federal government that regulates telecommunications towers and antennas.

The applicant accepts and acknowledges this provision.

November 8, 2017

Page 6

n. *Replacement of Existing Towers* Existing freestanding towers may be replaced with a new tower that increases the number of collocation opportunities, subject to the following standards:

1. The height of the replacement tower shall not exceed 110 percent of the height of the replaced tower.
2. The replacement tower shall be located within 100 feet of the replaced tower, unless the City Manager determines that a farther distance furthers the purpose and intent of this Ordinance.
3. The replacement tower shall comply with all the standards of this section.

The applicant accepts and acknowledges this provision.

o. *Nonconforming Telecommunications Towers* Nonconforming telecommunications towers shall be allowed to remain and be maintained in accordance with the standards in Article 30-7: Nonconformities. Additional equipment may be added to the tower provided that such additions do not increase the degree of nonconformity.

This provision is not applicable.

p. *Discontinued Use* If a telecommunications tower is not used for a period of six consecutive months, the City Manager may send the tower owner notice indicating that the tower must be removed within 90 days from the date of notice.

Beacon Towers accepts and acknowledges this provision as stated in the Tower Removal Letter by Beacon Tower's Martin Deputy attached hereto as Exhibit "7" and incorporated herein by reference.

Also, we have included the FCC Form 854 attached hereto as Exhibit "6" and incorporated herein by reference, as well as the Refuge Church Deed attached hereto as Exhibit "8" and incorporated herein by reference.

On behalf of Beacon Towers, we thank you very much for your time and consideration in the review of this application. If you have any questions or concerns, please do not hesitate to contact me at 843-414-9756.

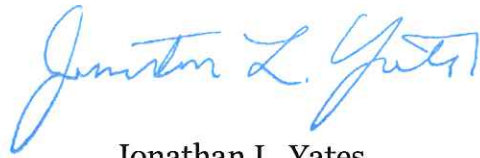
We look forward to working with you and your staff on this project for Beacon Towers.

Thank you so much for all your help with this.

With warmest regards, I am

Yours very truly,

November 8, 2017
Page 7



Jonathan L. Yates

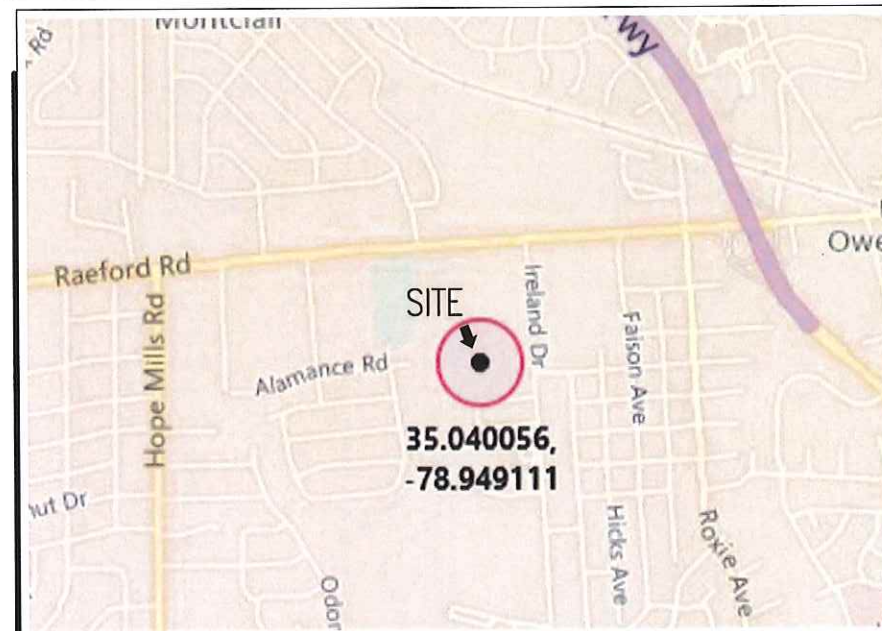
JLY:jlc
Enclosures

SITE NAME:
REDFORD
SITE NUMBER:
NC-232



VICINITY MAP

SCALE: 1" = 30 MILES NORTH



LOCAL MAP

SCALE: 1" = 2000' NORTH

DIRECTIONS TO SITE:

DEPART US-17 S / JOHNNIE DODDS BLVD 3.1 MI. TAKE RAMP RIGHT FOR I-26 TOWARD COLUMBIA / NORTH CHARLESTON 51.5 MI. AT EXIT 169B, TAKE RAMP RIGHT FOR I-95 NORTH TOWARD FLORENCE, ENTERING NORTH CAROLINA 152.9 MI. AT EXIT 40, TAKE RAMP RIGHT FOR US-301 / I-95-BR NORTH TOWARD FAYETTEVILLE / FORT BRAGG / POPE AAF 7.4 MI. TURN LEFT ONTO OWEN DR. 3.0 MI. KEEP STRAIGHT ONTO ALL AMERICAN Fwy 0.3 MI. TAKE RAMP RIGHT AND FOLLOW SIGNS FOR US-401-BR 0.2 MI. TURN LEFT ONTO US-401 BR / RAEFORD RD 0.5 MI. TURN LEFT ONTO IRELAND DR. 0.3 MI. TURN RIGHT ONTO EXISTING DRIVEWAY. SITE ACCESS ENTRANCE WILL BE ON RIGHT APPROX. 500'

BEACON TOWERS



"Leading the Way"

PROJECT DESCRIPTION:
PROPOSED 150' MONOPOLE IN A NEW WIRELESS TELECOMMUNICATIONS FACILITY



Know what's below.
Call before you dig.

DIG ALERT:
CALL NORTH CAROLINA 811 FOR UNDERGROUND UTILITIES PRIOR TO DIGGING-811 OR 800-632-4949

EMERGENCY:
CALL 911

| APPROVAL | | | |
|--------------------------|-----------|--------------|------|
| OWNER'S AGENT APPROVAL | SIGNATURE | PHONE NUMBER | DATE |
| | | | |
| CONSTRUCTION COORDINATOR | SIGNATURE | PHONE NUMBER | DATE |
| | | | |
| APPROVAL | SIGNATURE | PHONE NUMBER | DATE |
| | | | |

| SUBMISSION REVISION | | | | | | | |
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| SET NO. | DESCRIPTION | BY | DATE | SET NO. | DESCRIPTION | BY | DATE |
| 1 | CLIENT COMMENTS | GMW | 11-6-17 | 5 | | | |
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| 4 | | | | 8 | | | |

ARCHITECTURAL AND ENGINEERING FIRM:
BC ARCHITECTS ENGINEERS, PLC
5661 COLUMBIA PIKE, SUITE 200
FALLS CHURCH, VA 22041-2868
TEL: (703) 671-6000 CONTACT: CHRIS MORIN ENGINEER
FAX: (703) 671-6300

SURVEYOR:
POINT TO POINT LAND SURVEYORS
9650 STRICKLAND RD, #103-307
RALEIGH, NC 27615
TEL: (678) 565-4440 CONTACT: G. DARRELL TAYLOR, PLS
FAX: (678) 565-4497

UTILITIES:
POWER COMPANY:
COMPANY NAME: FAYETTEVILLE PWC
CONTACT: CUSTOMER SERVICE
TEL: (910) 483-1382

TELEPHONE COMPANY:
COMPANY NAME: COMCAST/SUDDENLINK
CONTACT: CUSTOMER SERVICE
TEL: (800) 490-9604

SITE NAME:
REDFORD

PARCEL OWNER:
REFUGE CHURCH
A NORTH CAROLINA NON PROFIT CORP.
1268 IRELAND DR.
FAYETTEVILLE, NC 28304

SITE NUMBER:
NC-232

SITE ADDRESS:
1268 IRELAND DR.
FAYETTEVILLE, NC 28304

APPLICANT BUILDING INFO:
BEACON TOWERS-VA, LLC
P.O. BOX 685
MT. PLEASANT, SC 29465 ATTN: MARTIN DEPUTY

PROJECT DESCRIPTION:
AN UNMANNED RADIO TELECOMMUNICATIONS FACILITY CONSISTING OF A PROPOSED 150' MONOPOLE IN A NEW FENCED COMPOUND

ADA COMPLIANCE:
FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION

PROJECT DATA:
JURISDICTION: CITY OF FAYETTEVILLE
COUNTY: CUMBERLAND
PARCEL ID: 0416-59-4520
ZONING: MR-5
GEOGRAPHIC COORDINATES:
LATITUDE: N 35° 02' 24.2"
LONGITUDE: W 78° 56' 56.8"
GROUND ELEVATION: 216' AMSL

CODE COMPLIANCE
IBC 2015 2012 NCBC
NEC 2015

SHEET NUMBER: T-1

DESCRIPTION:
T-1 TITLE SHEET, VICINITY MAP AND GENERAL INFORMATION
A-0 SITE PLAN
A-1 ENLARGED SITE PLAN
A-2 TOWER ELEVATION
A-3 FENCE & GATE DETAILS
A-4 SIGNAGE

CONSULTING TEAM

PROJECT SUMMARY

SHEET INDEX

BEACON TOWERS



"Leading the Way"
BEACON TOWERS-VA, LLC
P.O. BOX 685
MT. PLEASANT, SC 29465

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architects
engineers

5661 COLUMBIA PIKE, SUITE 200
FALLS CHURCH, VA 22041-2868
TEL: (703) 671-6000
FAX: (703) 671-6300

| SHEET REVISION | | |
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| NO. | DESCRIPTION | BY DATE |
| 1 | CLIENT COMMENTS | GMW 11-6-17 |
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ISSUED FOR ZONING

SITE NAME:
REDFORD
SITE NUMBER:
NC-232
SITE ADDRESS:
**1268 IRELAND DR
FAYETTEVILLE, NC 28304**



| | |
|-------------|----------|
| DRAWN BY: | GMW |
| CHECKED BY: | CDM |
| DATE DRAWN: | 11-02-17 |
| SUBMISSION: | ZONING |

SHEET TITLE:
VICINITY MAP AND GENERAL INFORMATION

| | |
|---------------|----------|
| SHEET NUMBER: | REV. # |
| T-1 | 1 |

FOR BC INTERNAL USE ONLY: 11-02-17 DWG.DWG 164624 X:\Drawings - 2017\Beacon Towers\Redford - NC232\EDOs - Rev 2/17.dwg

Y:/Drawings - 2017/Beacon Towers/Redford - NC232/_FZD's - Rev 2/A0.dwg
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| LEGEND | |
|----------------|--|
| NEW FENCE | |
| EXIST. FENCE | |
| SETBACK | |
| EASEMENT | |
| LEASE | |
| PROPERTY LINE | |
| EXIST. CONTOUR | |
| NEW CONTOUR | |
| TYP. BUILDING | |
| TYP. ROAD | |



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| SHEET REVISION | | |
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| NO. | DESCRIPTION | BY DATE |
| 1 | CLIENT COMMENTS | GMW 11-6-17 |
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SITE NAME:
REDFORD

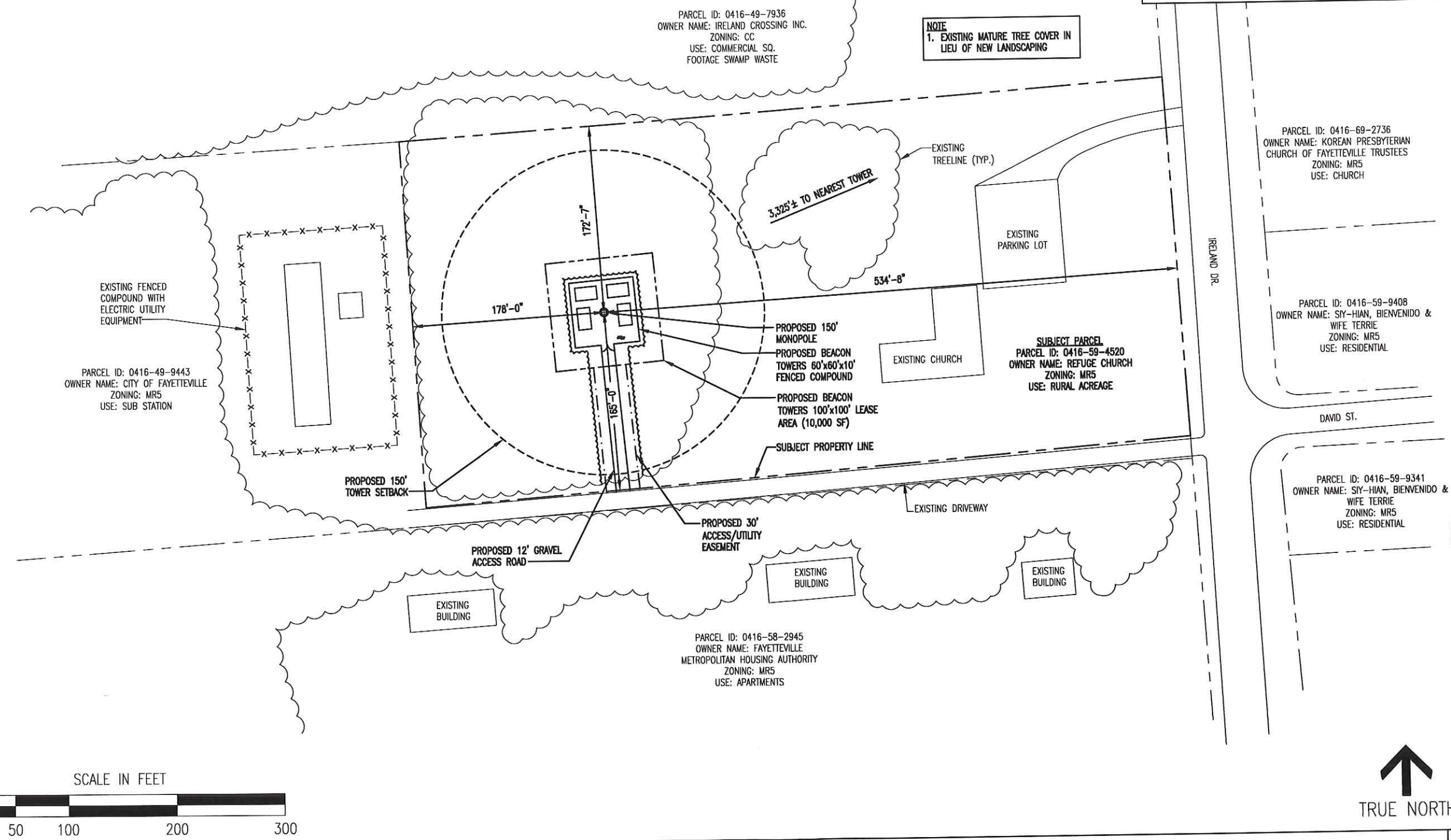
SITE NUMBER:
NC-232

SITE ADDRESS:
1268 IRELAND DR
FAYETTEVILLE, NC 28304



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| DRAWN BY: | GMW |
| CHECKED BY: | CDM |
| DATE DRAWN: | 11-02-17 |
| SUBMISSION: | ZONING |
| SHEET TITLE: | |

| SITE PLAN | |
|---------------|----------|
| SHEET NUMBER: | REV. # |
| A-0 | 1 |



PARCEL ID: 0416-49-7936
OWNER NAME: IRELAND CROSSING INC.
ZONING: CC
USE: COMMERCIAL SQ.
FOOTAGE SWAMP WASTE

NOTE
1. EXISTING MATURE TREE COVER IN LIEU OF NEW LANDSCAPING

PARCEL ID: 0416-69-2736
OWNER NAME: KOREAN PRESBYTERIAN CHURCH OF FAYETTEVILLE TRUSTEES
ZONING: MR5
USE: CHURCH

PARCEL ID: 0416-59-9408
OWNER NAME: SIY-HIAN, BIENVENIDO & WIFE TERRIE
ZONING: MR5
USE: RESIDENTIAL

PARCEL ID: 0416-59-9341
OWNER NAME: SIY-HIAN, BIENVENIDO & WIFE TERRIE
ZONING: MR5
USE: RESIDENTIAL

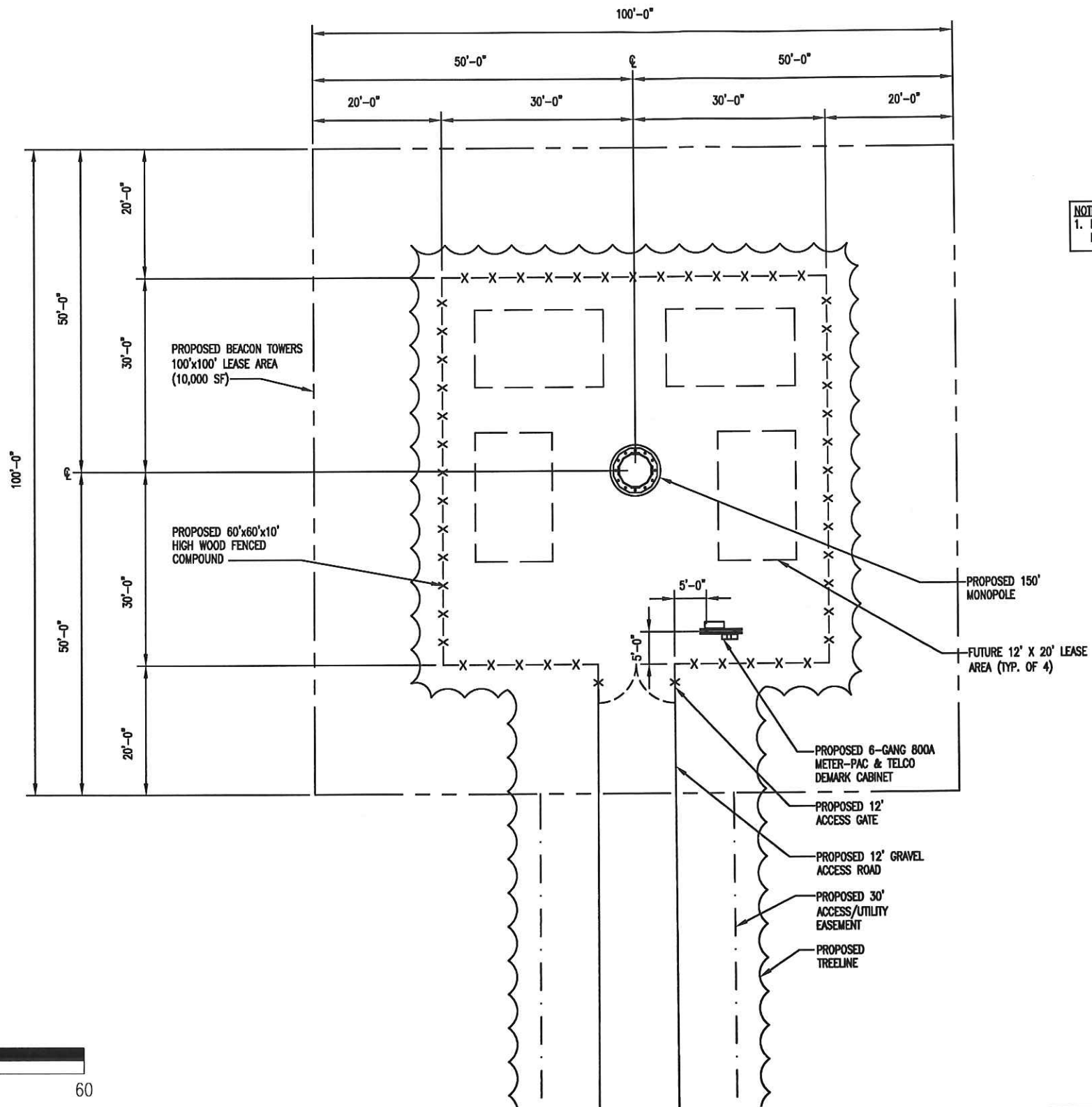
PARCEL ID: 0416-58-2945
OWNER NAME: FAYETTEVILLE METROPOLITAN HOUSING AUTHORITY
ZONING: MR5
USE: APARTMENTS

PARCEL ID: 0416-49-9443
OWNER NAME: CITY OF FAYETTEVILLE
ZONING: MR5
USE: SUB STATION

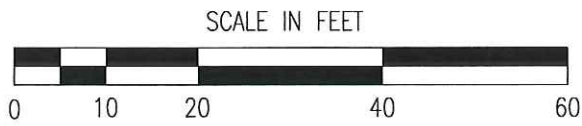


SITE PLAN

11-06-17 GWOLO 16:40:41 Y:/Drawings - 2017/Beacon Towers/Redford - NC232/_FZD's - Rev 2/A1.dwg



NOTE
1. EXISTING MATURE TREE COVER IN LIEU OF NEW LANDSCAPING



1"=20'

ENLARGED SITE PLAN



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BC

architects
engineers

5661 COLUMBIA PIKE, SUITE 200
FALLS CHURCH, VA 22041-2868
TEL: (703) 671-6000
FAX: (703) 671-6300

| SHEET REVISION | | |
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| NO. | DESCRIPTION | BY DATE |
| 1 | CLIENT COMMENTS | GMW 11-6-17 |
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SITE NAME:
REDFORD

SITE NUMBER:
NC-232

SITE ADDRESS:
1268 IRELAND DR
FAYETTEVILLE, NC 28304



| | |
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| DRAWN BY: | GMW |
| CHECKED BY: | CDM |
| DATE DRAWN: | 11-02-17 |
| SUBMISSION: | ZONING |

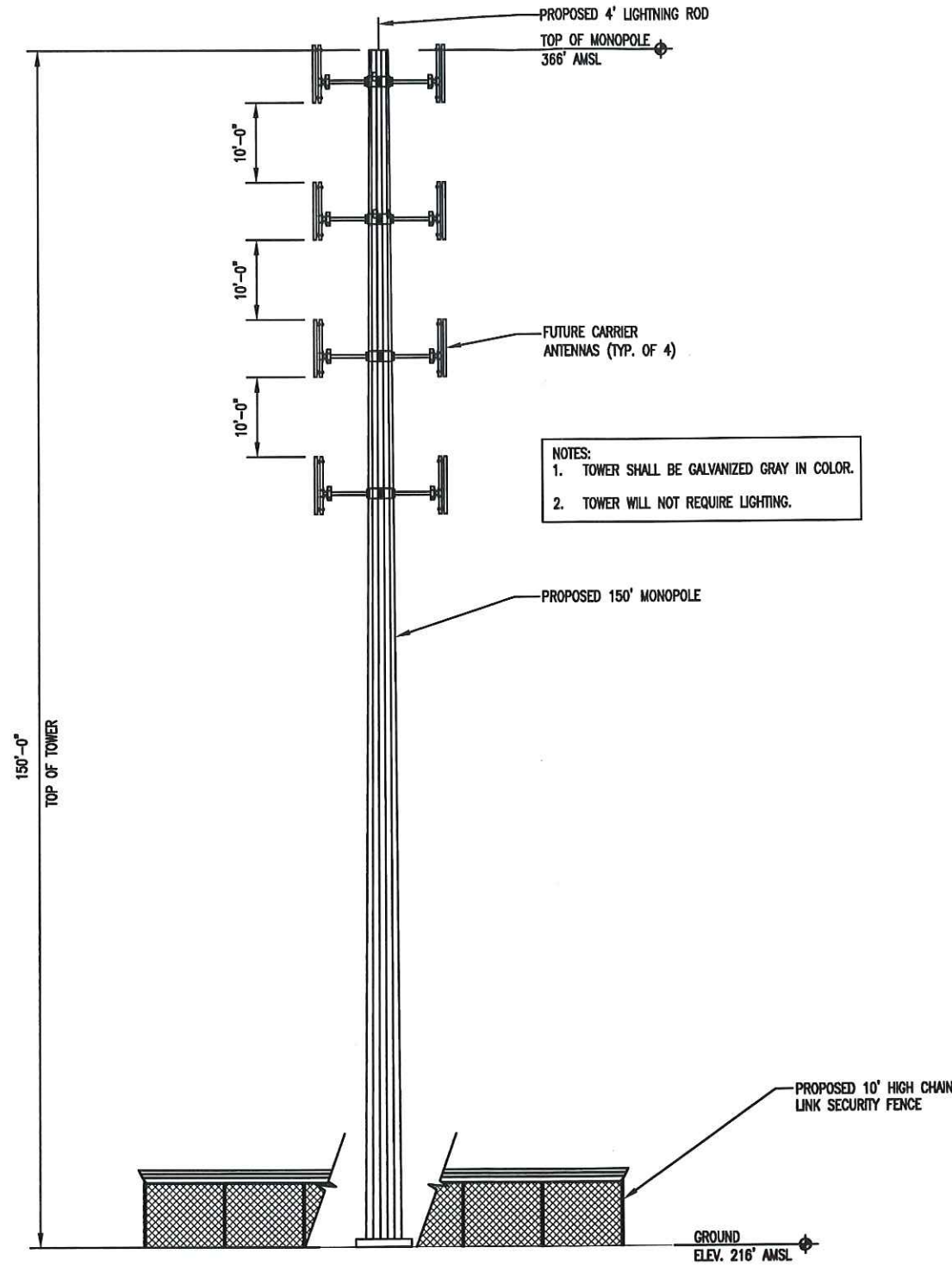
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ENLARGED
SITE PLAN

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 11-06-17 GWLO 16:40:09



NOTES:
 1. TOWER SHALL BE GALVANIZED GRAY IN COLOR.
 2. TOWER WILL NOT REQUIRE LIGHTING.



1"=20'

TOWER ELEVATION

BEACON TOWERS-VA, LLC
 P.O. BOX 685
 MT. PLEASANT, SC 29465

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| NO. | DESCRIPTION | BY | DATE |
| 1 | CLIENT COMMENTS | GMW | 11-6-17 |
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SITE NAME:
REDFORD

SITE NUMBER:
NC-232

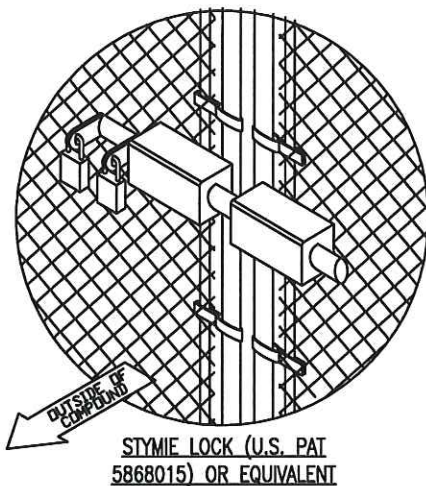
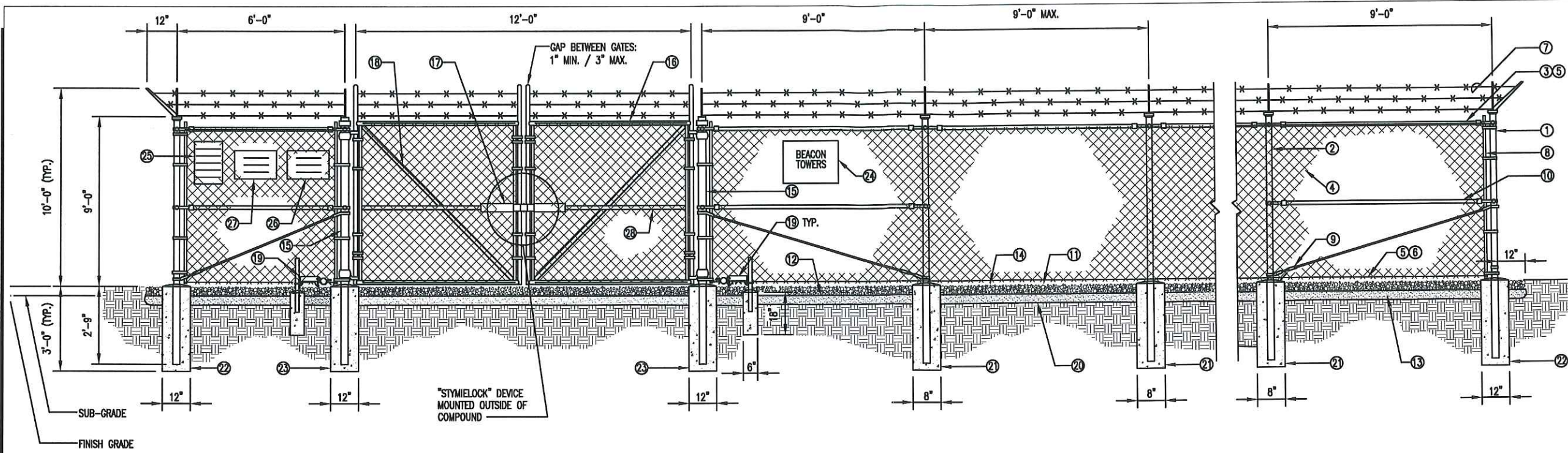
SITE ADDRESS:
**1268 IRELAND DR
FAYETTEVILLE, NC 28304**

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| DRAWN BY: | GMW |
| CHECKED BY: | CDM |
| DATE DRAWN: | 11-02-17 |
| SUBMISSION: | ZONING |

**TOWER
ELEVATION**

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| SHEET NUMBER: A-2 | REV. # 1 |
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REFERENCE NOTES:

- ① CORNER END OR PULL POST 4" SCHEDULE 40 PIPE.
- ② LINE POST: 2 1/2" SCHEDULE 40 PIPE, PER ASTM-F1083. LINE POSTS SHALL BE EQUALLY SPACED AT MAXIMUM 8'-0" O.C.
- ③ TOP RAIL & BRACE RAIL: 1 1/2" PIPE, PER ASTM-F1083.
- ④ FABRIC: 9 GA CORE WIRE SIZE 2" MESH, CONFORMING TO ASTM-A392.
- ⑤ TIE WIRE: MINIMUM 11 GA GALVANIZED STEEL AT POSTS AND RAILS A SINGLE WRAP OF FABRIC TIE AND AT TENSION WIRE BY HOG RINGS SPACED MAX. 24" INTERVALS.
- ⑥ TENSION WIRE: 9 GA. GALVANIZED STEEL.
- ⑦ BARBED WIRE: DOUBLE STRAND 12-1/2" O.D. TWISTED WIRE TO MATCH WITH FABRIC 14 GA, 4 PT. BARBS SPACED ON APPROXIMATELY 5" CENTERS.
- ⑧ STRETCHER BAR.
- ⑨ 3/8" DIAGONAL ROD WITH GALVANIZED STEEL TURNBUCKLE OR DIAGONAL THREADED ROD.
- ⑩ FENCE CORNER POST BRACE: 1 5/8" DIA. EACH CORNER EACH WAY.
- ⑪ 1 1/2" MAXIMUM CLEARANCE FROM GRADE.
- ⑫ 2" FINISH OR AS DETERMINED BY CONSTRUCTION MANAGER DURING BID WALK.
- ⑬ 4" COMPACTED 95% BASE MATERIAL OR AS DETERMINED BY CONSTRUCTION MANAGER DURING BID WALK.
- ⑭ FINISH GRADE SHALL BE UNIFORM AND LEVEL.
- ⑮ GATE POST 4", SCHEDULE 40 PIPE, FOR GATE WIDTHS UP THRU 10 FEET OR 20 FEET FOR DOUBLE SWING GATE, PER ASTM-F1083.
- ⑯ GATE FRAME: 1 1/2" PIPE SCH. 40, PER ASTM-F1083.
- ⑰ "STYMILOCK" OR EQUIVALENT
- ⑱ GATE DIAGONAL GALVANIZED STEEL 1 1/2" PIPE.
- ⑲ DUCK BILL OPEN GATE HOLDER. VERIFY LOCATION IN FIELD PRIOR TO INSTALLATION.
- ⑳ GEOTEXTILE FABRIC.
- ㉑ LINE POST: CONCRETE FOUNDATION (3000 PSI).
- ㉒ CORNER POST: CONCRETE FOUNDATION (3000 PSI).
- ㉓ GATE POST: CONCRETE FOUNDATION (3000 PSI).
- ㉔ 18" x 24" BEACON TOWERS SIGN. W/ CONTACT INFO.
- ㉕ 12" x 18" YELLOW CAUTION RADIO FREQUENCY SIGN.
- ㉖ 12" x 18" COMPETENT CLIMBERS ONLY SIGN.
- ㉗ 12" x 18" DANGER NO TRESPASSING/AUTHORIZED PERSONNEL ONLY SIGN.
- ㉘ GATE FRAME BRACE: 1 5/8" DIAMETER.

GENERAL NOTES:

1. INSTALL FENCING PER ASTM F-567
2. INSTALL SWING GATES PER ASTM F- 900
3. LOCAL ORDINANCE OF BARBED WIRE PERMIT REQUIREMENT SHALL BE COMPLIED IF REQUIRED.
4. POST & GATE PIPE SIZES ARE INDUSTRY STANDARDS. ALL PIPE TO BE 1 1/2" GALV. (HOT DIP, ASTM A120 GRADE "A" STEEL). ALL GATE FRAMES SHALL BE WELDED. ALL WELDING SHALL BE COATED WITH (3) COATS OF COLD GALV. (OR EQUAL).
5. ALL OPEN POSTS SHALL HAVE END-CAPS.
6. USE GALVANIZED HOG-RING WIRE TO MOUNT ALL SIGNS.
7. ALL SIGNS MUST BE MOUNTED ON INSIDE OF FENCE FABRIC.

STORE EXTRA PARTS OF STYMILOCK DEVICE IN TELCO CABINET.

NO PLUNGER OR MUSHROOM HEAD REQUIRED.



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 architects
 engineers
 5661 COLUMBIA PIKE, SUITE 200
 FALLS CHURCH, VA 22041-2868
 TEL: (703) 671-6000
 FAX: (703) 671-6300

| SHEET REVISION | | | |
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| NO. | DESCRIPTION | BY | DATE |
| 1 | CLIENT COMMENTS | GMW | 11-6-17 |
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SITE NAME:
REDFORD

SITE NUMBER:
NC-232

SITE ADDRESS:
 1268 IRELAND DR
 FAYETTEVILLE, NC 28304



| | |
|-------------|----------|
| DRAWN BY: | GMW |
| CHECKED BY: | CDM |
| DATE DRAWN: | 11-02-17 |
| SUBMISSION: | ZONING |

SHEET TITLE:
FENCE, GATE AND COMPOUND CROSS SECTION DETAIL

| | |
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| SHEET NUMBER: | REV. # |
| A-3 | 1 |

N.T.S.

FENCE, GATE AND COMPOUND CROSS SECTION DETAIL

11-06-17 GWOLO 16:40:18 Y:/Drawings - 2017/Beacon Towers/Redford - NC232/_FZD's - Rev 2/A4.dwg

FOR SITE LEASING INFORMATION
PLEASE CONTACT

BEACON TOWERS



"Leading the Way"

(843) 324-9731

QTY: (3) EACH SIDE OF MAIN COMPOUND GATE, (1) AT ACCESS ROAD GATE


NOTICE

COMPETENT CLIMBERS ONLY
BEYOND THIS POINT

Climbers of this antenna/tower structure must comply 100% with all governing State and Federal regulations. Climbers must also comply with all OSHA regulations. This includes, but not limited to, being tied-off 100% at all times. Failure to comply could result in serious injury or death.

10"x7" ALUMINUM
NOTICE SIGN QTY: (1)
MOUNT SIGN ON CLIMBING LEG OF TOWER AT EYE LEVEL.

CAUTION




CAUTION

RADIO FREQUENCY ENVIRONMENT AREA
AUTHORIZED PERSONNEL ONLY BEYOND THIS POINT! RADIO FREQUENCY EMISSIONS AT THIS SITE MAY EXCEED THE FEDERAL OCCUPATIONAL CONTROLLED EXPOSURE LIMITS.
Personnel proceeding beyond this point must obey all posted signs, site guidelines and Federal Regulations for working in radio frequency environments.
IN ACCORDANCE WITH FEDERAL REGULATIONS ON RADIO FREQUENCY EMISSIONS

WHITE / YELLOW BACKGROUND W/ BLACK LETTERING
QUANTITY: (1)
(TO BE MOUNTED AT EYE LEVEL ON TOWER NEAR SAFETY CLIMB)

NOTICE



Radio frequency fields beyond this point may exceed the FCC general public exposure limit.
OBEY ALL POSTED SIGNS AND SITE GUIDELINES FOR WORKING IN RADIO FREQUENCY ENVIRONMENTS.
In accordance with Federal Communications Commission rules on radio frequency emissions 47 CFR 1.1307(b)

WHITE / GREEN BACKGROUND W/ BLACK LETTERING
QUANTITY: (1)
(TO BE MOUNTED ON COMPOUND ACCESS GATE)

**FCC ANTENNA
STRUCTURE REGISTRATION #**

FCC# TBD

**BEACON TOWER ID: NC-232
REDFORD**

QTY: (1) MAIN COMPOUND GATE

SIGNAGE NOTES

1. CONTRACTOR TO PROVIDE AND INSTALL ALL SIGNAGE
2. ALL SIGNS SHALL BE MOUNTED ON INSIDE OF FENCE FABRIC, UNLESS NOTED OTHERWISE.

BEACON TOWERS



"Leading the Way"
BEACON TOWERS-VA, LLC
P.O. BOX 685
MT. PLEASANT, SC 29465

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BC

a r c h i t e c t s
e n g i n e e r s

5661 COLUMBIA PIKE, SUITE 200
FALLS CHURCH, VA 22041-2868
TEL: (703) 671-6000
FAX: (703) 671-6300

| SHEET REVISION | | | |
|----------------|-----------------|-----|---------|
| NO. | DESCRIPTION | BY | DATE |
| 1 | CLIENT COMMENTS | GMW | 11-6-17 |
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SITE NAME:
REDFORD

SITE NUMBER:
NC-232

SITE ADDRESS:
1268 IRELAND DR
FAYETTEVILLE, NC 28304



| | |
|-------------|----------|
| DRAWN BY: | GMW |
| CHECKED BY: | CDM |
| DATE DRAWN: | 11-02-17 |
| SUBMISSION: | ZONING |

SHEET TITLE:
SIGNAGE

| | |
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| SHEET NUMBER: | REV. # |
| A-4 | 1 |



Mail Processing Center
 Federal Aviation Administration
 Southwest Regional Office
 Obstruction Evaluation Group
 10101 Hillwood Parkway
 Fort Worth, TX 76177

Aeronautical Study No.
 2017-ASO-18055-OE
 Prior Study No.
 2017-ASO-15000-OE

Issued Date: 09/25/2017

Martin Deputy
 Beacon Towers-VA
 P.O. Box 685
 Mt Pleasant, SC 29465

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Monopole Redford
 Location: Fayetteville, NC
 Latitude: 35-02-23.95N NAD 83
 Longitude: 78-56-56.90W
 Heights: 205 feet site elevation (SE)
 199 feet above ground level (AGL)
 404 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part 1)
- Within 5 days after the construction reaches its greatest height (7460-2, Part 2)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/ lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 L Change 1.

This determination expires on 03/25/2019 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (817) 222-5928, or chris.smith@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2017-ASO-18055-OE.

Signature Control No: 342627156-344616713
Chris Smith
Technician

(DNE)

Attachment(s)
Case Description
Frequency Data
Map(s)

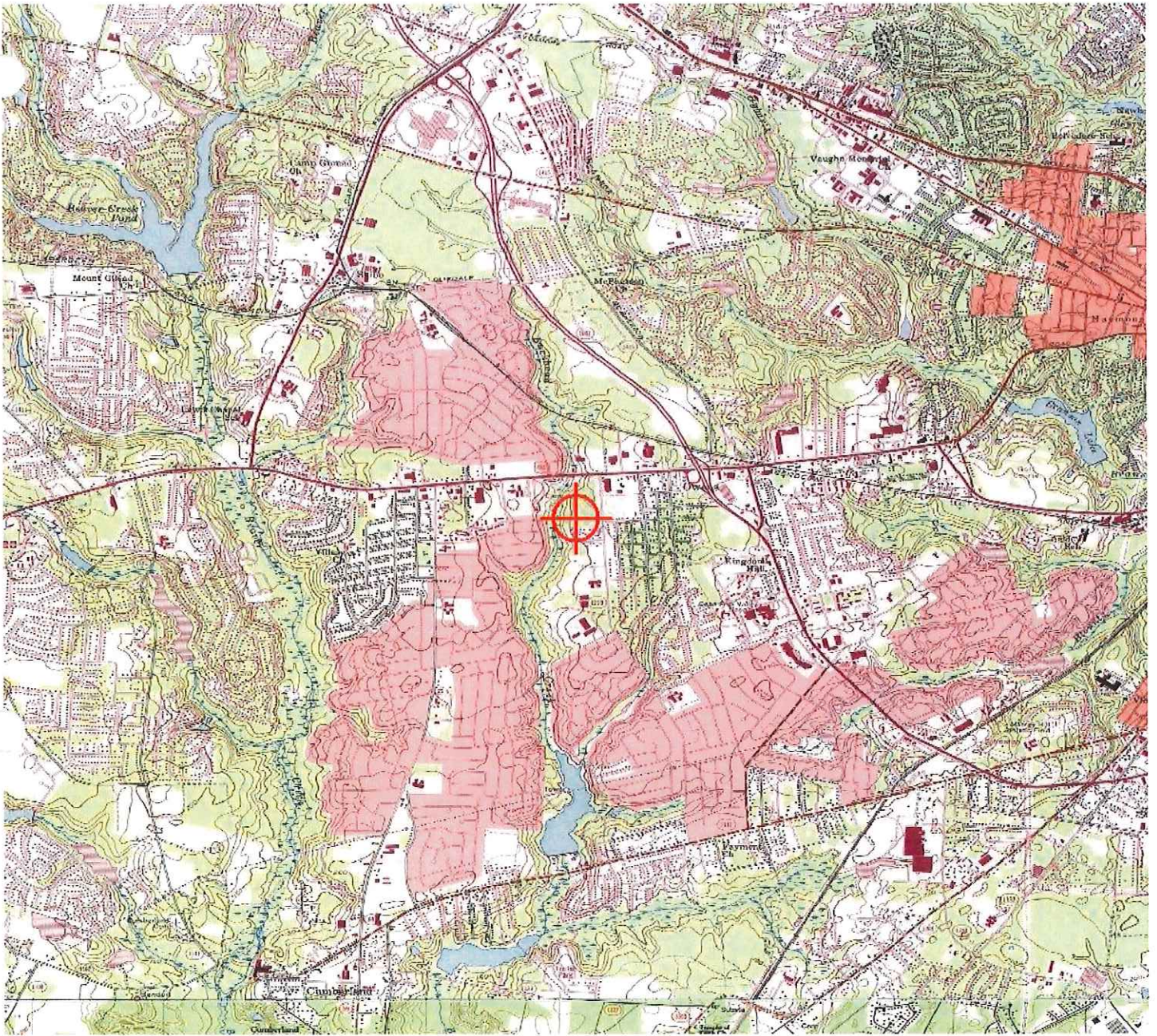
cc: FCC

Case Description for ASN 2017-ASO-18055-OE

Tower

Frequency Data for ASN 2017-ASO-18055-OE

| LOW FREQUENCY | HIGH FREQUENCY | FREQUENCY UNIT | ERP | ERP UNIT |
|------------------|-------------------|-------------------|------|-------------|
| 6 | 7 | GHz | 55 | dBW |
| 6 | 7 | GHz | 42 | dBW |
| 10 | 11.7 | GHz | 55 | dBW |
| 10 | 11.7 | GHz | 42 | dBW |
| 17.7 | 19.7 | GHz | 55 | dBW |
| 17.7 | 19.7 | GHz | 42 | dBW |
| 21.2 | 23.6 | GHz | 55 | dBW |
| 21.2 | 23.6 | GHz | 42 | dBW |
| 614 | 698 | MHz | 1000 | W |
| 614 | 698 | MHz | 2000 | W |
| 698 | 806 | MHz | 1000 | W |
| 806 | 901 | MHz | 500 | W |
| 806 | 824 | MHz | 500 | W |
| 824 | 849 | MHz | 500 | W |
| 851 | 866 | MHz | 500 | W |
| 869 | 894 | MHz | 500 | W |
| 896 | 901 | MHz | 500 | W |
| 901 | 902 | MHz | 7 | W |
| 929 | 932 | MHz | 3500 | W |
| 930 | 931 | MHz | 3500 | W |
| 931 | 932 | MHz | 3500 | W |
| 932 | 932.5 | MHz | 17 | dBW |
| 935 | 940 | MHz | 1000 | W |
| 940 | 941 | MHz | 3500 | W |
| 1670 | 1675 | MHz | 500 | W |
| 1710 | 1755 | MHz | 500 | W |
| 1850 | 1910 | MHz | 1640 | W |
| 1850 | 1990 | MHz | 1640 | W |
| 1930 | 1990 | MHz | 1640 | W |
| 1990 | 2025 | MHz | 500 | W |
| 2110 | 2200 | MHz | 500 | W |
| 2305 | 2360 | MHz | 2000 | W |
| 2305 | 2310 | MHz | 2000 | W |
| 2345 | 2360 | MHz | 2000 | W |
| 2496 | 2690 | MHz | 500 | W |



Letter of Explanation by Samuel Black for the proposed cell tower in Cumberland County, NC on Located on Tax ID Parcel 0416-49-9443, on 1268 Ireland Drive

I do hereby swear that my name is Samuel Black and a citizen of the United States of America

For the past eight years I have worked in the wireless industry to qualify properties and structures suitable for wireless broadcasting facilities. I have leased multiple sites for multiple wireless companies in the state of North Carolina. My Scope of Work includes: Site Reconnaissance, Candidate Submittal, Leasing, Zoning and Permitting

Past Site Acquisition Projects include:

SAI (AT&T) / Virginia / West VA

Nsorro (AT&T) / Carolinas

Dynis (AT&T) / Virginia / West VA

Dynis (AT&T)/ West Va Bechtel Summit BSA Camp Project DAS/ODAS/Micro/Macro

Dynis (AT&T)/ Cell on Wheels Special Events

Bechtel (AT&T) / Virginia / West VA

Beacon Towers (Carolina West)/NC/SC Rural Site Development

GDN Sites (Verizon) / Virginia/ West VA

GDN Sites (Verizon)/ Virginia/Small Cell and Polygon 4G project

GDN Sites (Verizon)/ Kentucky/ Ohio

SBA Site Development/ North Carolina

Beacon Towers (AT&T)/ West Virginia

Beacon Towers/ North Carolina/ Site Development

GDN Sites (Verizon) Virginia/ Site Development/Small Cell Utility Infrastructure

Site qualification is a very involved process. A property owner must be willing to lease the property. The property must also be eligible to meet all zoning criteria for the local jurisdiction. The property must meet all criteria set forth by the Federal Communications Commission (FCC) to comply with historical, environmental and species standards as dictated by the FCC. Finally, the property must be viable from both a radio frequency and construction standpoint.

Beacon Towers assigned a search area for me to locate a viable property for a wireless facility near Reaford Rd and Ireland Drive. My search concluded that there are no existing structures in the search area that are viable to meet coverage objective in a high density area. Increased data and voice usage along with densely populated and busy commercial areas require carriers to place antennas on structures within areas that produce the most demand. There are additional structures, but due to limited antenna height and ground space for radio equipment, there are no structures to provide a location that will meet coverage requirements for wireless coverage in the area. The existing structures in the area are either not structurally sound to provide antenna space, do not offer enough antenna height options and are located too far away to provide adequate coverage for wireless customers. The structure will be built with the structural capacity for up to 4 carriers.

- There were several property owners in the area that were interested in allowing a tower to be built on their property, and Beacon Towers is developing sites in commercial areas where there is a limited coverage, as well as areas that are developing rapidly, both commercially and residentially with high densities. Refuge Church property allows for tower setbacks and is located next to a power substation. The site is within close proximity to commercial development and located on a parcel with existing wooded buffers. The location meets the 2000' setbacks from all existing structures in the area.
- The parcel that Beacon Towers is planning to build a new tower on was targeted as a potential candidate in the design due to poor coverage along Reaford Road and Ireland Drive and to provide better service for indoor coverage in the Fayetteville area. This parcel was also chosen because the surrounding commercial use and distance from existing residential structures.

Information contained in the forgoing justification is true and correct.

Certified By:



Samuel Black
Site Acquisition Specialist
828-964-8282



November 3, 2017

Craig Harmon, AICP, CZO
Senior Planner
City of Fayetteville Zoning Department
433 Hay Street
Fayetteville, NC 28301

Re: Beacon Towers - Site Name: Redford- Site Number: SC-232- Site Address: 1268 Ireland Drive, Fayetteville, NC 28304- Telecommunication Facility Application – Collocation Policy Letter

Dear Mr. Harmon,

Beacon Towers shall be willing to allow other users to co-locate on the proposed communications tower in the future, subject to engineering capabilities of the structure, frequency considerations and proper compensation from the additional user.

A handwritten signature in black ink, appearing to read "M. J. [unclear]", is written above the typed name.

Managing Director
Beacon Towers-VA, LLC

**FCC Form 854
Main Form**

Approved by OMD – 3060-0139

See instructions for public burden estimate

Application for Antenna Structure Registration
Purpose of Filing

| | |
|--|--|
| 1) Enter the application purpose: (NE) | |
| AM – Amendment of a Pending Application AU – Administrative Update CA – Cancellation of an Antenna Structure Registration DI – Notification of an Antenna Structure Dismantlement DU – Request for a Duplicate Antenna Structure Registration MD – Modification of a Antenna Structure Registration | NE – Registration of a New Antenna Structure NT – Required Construction/Alteration Notification OC – Ownership Change RE – Registration of a Replacement Antenna Structure WD – Withdrawal of a Pending Application |
| 2a) If the answer to 1 is AU, CA, DI, DU, MD, NT, OC or RE , provide the FCC Antenna Structure Registration (ASR) Number. | FCC ASR Number: |
| 2b) If the answer to 1 is AM or WD, provide the File Number of the pending application on file. | File Number: |
| 2c) If the answer to 1 is MD or NT, provide the date the Antenna Structure was constructed or the date it was last altered (mm/dd/yyyy). | Date: |
| 2d) If the answer to 1 is DI, provide the date the Antenna Structure was dismantled (mm/dd/yyyy). | Date: |

Antenna Structure Ownership Information

| | | | |
|--|--|--|-------------------------|
| 3) Select one of the entity types: | | | |
| () Individual | () Unincorporated Association | () Trust | () Government Entity |
| () Corporation | (X) Limited Liability Company | () General Partnership | () Limited Partnership |
| () Consortium | () Limited Liability Partnership | () Other: _____ | |
| 4) FCC Registration Number (FRN): 0021998927 | | 5) Assignor FCC Registration Number (FRN): | |
| 6) First Name (if individual): | MI: | Last Name: | Suffix: |
| 7) Legal Entity Name (if not an individual): Beacon Towers-VA, LLC | | | |
| 8) Attention To: Martin Deputy | | 9) P.O. Box: P.O. Box 685 | And/Or |
| 10a) Street Address 1: P.O. Box 685 | | 10b) Street Address 2: | |
| 11) City: Mount Pleasant | 12) State: SC | 13) Zip Code: 29465 | |
| 14) Telephone Number (xxx-xxx-xxxx): (843) 324-9731 | | 15) Fax Number: (xxx-xxx-xxxx): (843) 324-9731 | |
| 16) E-mail Address: martindeputy55@gmail.com | | | |

Contact Representative Information

| | | | |
|---|----------------------------|--|---------|
| 17) First Name (if individual): Martin | MI: | Last Name: Deputy | Suffix: |
| 18) Business Name: Beacon Towers-VA, LLC. | | | |
| 19) Attention To: Martin Deputy | 20) P.O. Box 685 | | And/Or |
| 21a) Street Address 1: | | 21b) Street Address 2: | |
| 22) City: Mount Pleasant | 23) State: SC | 24) Zip Code: 29465 | |
| 25) Telephone Number (xxx-xxx-xxxx): (843) 324-9731 | | 26) Fax Number: (xxx-xxx-xxxx): (843) 324-9731 | |
| 27) E-mail Address: martindeputy55@gmail.com | | | |

Antenna Structure Information

| | | | |
|--|-------------------------------------|--|---------------------|
| 28a) Latitude (DD-MM-SS.S): 35- 02- 23.9 | | 28b) North or South: North | |
| 29a) Longitude (DDD-MM-SS.S): 078- 56- 56.9 | | 29b) East or West: West | |
| 30) Street Address or Geographic Location: 1268 Ireland Drive | | 31) City: Fayetteville | |
| 32) County: CUMBERLAND | 33) State: NORTH CAROLINA | 34) Zip Code: 28304 | |
| 35) Elevation of site above mean sea level (meters): | | | 62.5 meters |
| 36) Overall height above ground level (AGL) of the supporting structure without appurtenances: | | | 59.4 meters |
| 37) Overall height above ground level (AGL) of the antenna structure including all appurtenances: | | | 60.7 meters |
| 38) Overall height above mean sea level (add items 35 and 37 together): | | | 123.2 meters |
| 39a) Enter the type of structure on which the antenna will be mounted: (MTOWER) | | | |
| B – Building BANT – Building with Antenna on Top BMAST – Building with Mast BPIPE – Building with Pipe BPOLE – Building with Pole BRIDG – Bridge BTWR – Building with Tower GTOWER – Guyed Structure Used For Communication Purposes LTOWER – Lattice Tower MAST – Mast MTOWER – Monopole NNGTANN – Guyed Tower Array | | NNLTANN – Lattice Tower Array NNMTANN – Monopole Array PIPE – Any type of Pipe POLE – Any type of Pole RIG – Oil or Other Type of Rig SIGN – Any type of Sign or Billboard SILO – Any type of Silo STACK – Smoke Stack TANK – Any type of Tank (water, gas, etc.) TREE – When used as a support for an antenna UPOLE – Utility Pole/Tower used to provide service (electric, telephone, etc.) | |
| 39b) Number of Towers in Array: | | 39c) Position of this Tower in the Array: | |
| 40a) Array Center Latitude (DD-MM-SS.S): | | 40b) North or South | |
| 41a) Array Center Longitude (DDD-MM-SS.S): | | 41b) East or West: | |

Proposed Marking and/or Lighting

| | | |
|--|----------------|-----------------|
| 42) Enter the proposed marking and/or lighting: (1) See Form 854 Item 42 Instructions for detailed tier and lighting information. | | |
| 1) None | 4) FAA Style B | 7) FAA Style E |
| 2) Paint Only | 5) FAA Style D | 8) FAA Style F |
| 3) Other _____ | 6) FAA Style C | 9) FAA Style A |
| | | 10) FAA Style G |

FAA Notification

| | |
|-----------------------|------------------|
| 43) FAA Study Number: | 44) Date Issued: |
|-----------------------|------------------|

Environmental Compliance

| | |
|---|---------------------|
| 45) Does the applicant request a waiver of the Commission's rules for environmental notice prior to construction due to an emergency situation? | (No) Yes or No |
| 46a) If the answer to 45 is No, is another federal agency taking responsibility for environmental review of the Antenna Structure? | (No) Yes or No |
| 46b) If the answer to 46a is Yes, indicate why: 1) The Antenna Structure is on Federal Land and the landholding agency is taking responsibility for the environmental review of the Antenna Structure. 2) Another federal agency has agreed with the FCC in writing to take responsibility for the environmental review of the Antenna Structure. | () 1 or 2 |
| 46c) If the answer to 46a is Yes, provide the name of the federal agency taking responsibility for the environmental review of the Antenna Structure. | Name: |
| 47) If the answers to 45 and 46a are No, provide the National Notice Date for the application to be posted on the FCC's website (mm/dd/yyyy). | Date: 01/23/2018 |
| 48) Is the applicant submitting an environmental assessment? | (No) Yes or No |
| 49) Does the applicant certify that grant of Authorizations at this location would not have a significant environmental effect pursuant to Section 1.1307 of the FCC's rules? | () Yes or No |
| 50) If the answer to 49 is Yes, select the basis for this certification. 1) The construction is exempt from environmental notification (other than due to another agency's review) and it does not fall within one of the categories in Section 1.1307(a) or (b) of the FCC's rules? 2) The construction is exempt from environmental notification due to another agency's review, and the other agency has issued a Finding of No Significant Impact. 3) The environmental notification has been completed, and the FCC has notified the applicant that an Environmental Assessment is not required under Section 1.1307(c) or (d) of the FCC's rules, and the Construction does not fall within one of the categories in Section 1.1307(a) or (b) of the FCC's rules. 4) The FCC has issued a Finding of No Significant Impact. | () 1, 2, 3, 4 |
| 51) If the answer to 50 is 3 or 4, enter the date that Local Notice was provided (mm/dd/yyyy). | Date: |

Certification Statements

- 1) The applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
- 2) The applicant certifies that neither the applicant nor any other party to the application 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. See 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

Signature (Typed or Printed Name of Party Authorized to Sign)

| | | | |
|--|-----|-----------------------------|----------------------------------|
| 52) First Name: Martin | MI: | Last Name: Deputy | Suffix: |
| 53) Title: Managing Director | | | |
| 54) Signature: Martin Deputy | | | 55) Date: Oct 23, 2017 |

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).



November 3, 2017

Craig Harmon, AICP, CZO
Senior Planner
City of Fayetteville Zoning Department
433 Hay Street
Fayetteville, NC 28301

Re: Beacon Towers - Site Name: Redford- Site Number: SC-232- Site Address: 1268
Ireland Drive, Fayetteville, NC 28304- Telecommunication Facility Application - Tower
Removal Letter

Dear Mr. Harmon,

Please accept the signed statement below as confirming Section 30-4.C.3.i.4 (p) of the City of
Fayetteville Ordinance

Beacon Towers, its successors and assigns, provide this statement declaring itself, its successors
and assigns of being financially responsible to assure the proposed communications tower, which
is no longer used for communications purposes, will be dismantled and removed within one
hundred twenty (90) days of the date the tower is taken out of service.

Please contact me should you have any questions.

A handwritten signature in black ink, appearing to read "M. D. [unclear]", is written over the printed name of the Managing Director.

Managing Director
Beacon Towers-VA, LLC

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-055

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 7.02

TO: Mayor and Members of City Council

THRU: Jay Reinstein, Assistant City Manager

**FROM: Craig Harmon, Senior Planner, AICP, CZO
Gerald Newton, AICP, Development Services Director**

DATE: March 26, 2018

RE:

P18-08F rezoning of property from NC - Neighborhood Commercial to MR-5 Mixed Residential Zoning, located at the northwest corner of the intersection of Hoke Loop Road and Cliffdale Road, containing 2.7 acres (of 5.39 total acres) and being the property of HAROLD J & WIFE KIDD and HAROLD KIDD.

COUNCIL DISTRICT(S):

8

Relationship To Strategic Plan:

Growth and Development

Executive Summary:

This is a general rezoning from Neighborhood Commercial (NC) to Mixed Residential 5 (MR-5) zoning. Harold Kidd wishes to have the option to redevelop this property by rezoning to MR-5. The applicant wishes to develop a 72 unit multi-family development. With the combination of MR-5 and NC zoning that currently covers these properties, the applicant can already develop 72 units. The purpose of this rezoning is to allow the developer the option to create a better design and include more open space.

Background:

These properties are located at the intersection of Hoke Loop Road and Cliffdale Roads to the northern side of Hoke Loop and west of Cliffdale Road. The rezoning would affect part of the 3.6 acres on Parcel ID 9487-15-2202 and all 1.79 acres on Parcel ID 9487-05-7158.

Applicant: William H. Owen, United Developers, Inc.
Owner: Harold J Kidd and spouse
Requested Action: NC to MR-5
Property Address: 8620 Cliffdale Road and 0 Hoke Loop Road (parcel ID 9487-05-7158)
Council District: 8
Status of Property: vacant
Size: 5.39 acres +/-
Adjoining Land Use & Zoning:
North - SF-15 - Single Family Residential
South - LC- Limited Commercial and AR-Agricultural Residential
West - SF-10 - Single Family Residential
East: AR-Agricultural Residential
Letters Mailed: 88

2010 Land Use Plan - Low-Density Residential

Strategic Plan:

Goals 2020: 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 residents

Issues/Analysis:

This is a general rezoning from Neighborhood Commercial to Mixed Residential zoning. In the existing zone the purpose of the NC District is to “accommodate small-scale, low-intensity, and "convenience" retail and service uses that provide goods and services serving the residents of the immediately surrounding neighborhood including single-family detached dwellings, two- to four-family dwellings, multi-family dwellings, and other residential development that may include single-family attached dwellings and zero lot line development.” The intent of Mixed Residential 5 (MR-5) districts is established and intended to meet the diverse housing needs of City residents by accommodating a wide variety of residential housing types and arrangements at moderate to high densities.

The applicant’s proposal is congruous with the types of zoning and development along Clifford Road as you travel east towards the center of town. The recommended zoning in the 2010 Future Land Use Plan is Low-Density Residential, which has been accommodated by the surrounding zoning, so it is therefore appropriate for rezoning this area for a denser development. Also, the Unified Development Ordinance encourages multifamily uses to be located along major roads and not within single-family subdivisions.

On February 13, 2018, the Zoning Commission held a public hearing regarding this case. There was one speaker in favor and two in opposition. The speaker in favor stated:

- The development company has been interested in this tract of land for some time.
- The portion zoned as NC (Neighborhood Commercial) was not available in the past, but is now.
- The rezoning to MR-5 is being requested so that the proposed units can be two-stories high and spread out more versus being three stories high and

clustered together.

- The MR-5 district would allow picnic areas, playgrounds, more landscaped areas.
- The units will be furnished with energy star appliances.
- The developer has received a perfect score on all other projects that they have worked on in North Carolina.
- There has not been any investigative work on the impact of the schools in the area. A study would be difficult to do, not knowing what the mix of residents will be. There is no way to estimate or guess the number of children versus adults versus the elderly who will live in each unit. The state requires that 15% of the units must be 1 bedroom.
- There will be 12 - 1 bedroom units.
- There will be 36 - 2 bedroom units.
- There will be 24 - 3 bedroom units.
- The rezoning would allow them to build two-story units. Under the current zoning, they would have to build three-story units.
- There would be two entrances with traffic lights.
- All of the programs must be a 30-year commitment. The developer has never sold any of their developments.
- Per state requirements, 10% of the units must go to a special needs community; this development group commits 20% of their units to the special needs community.
- This development group currently has 20 developments in Cumberland County with an occupancy rate of 96%.
- Some units are family units and some are elderly units
- All of these types of developments go through a finance review by the state on an annual basis.
- This development group builds, manages and owns all of the properties that they develop.

The speakers in opposition stated concerns for:

- The nearby neighbors had many concerns regarding traffic density; noting that this corner is extremely busy already.
- Schools in the area, including Lake Rim Elementary, are at capacity already
- How tall will the building be?
- Why is this complex necessary?
- Only 300 yards up the road is a 92 unit apartment complex and 2 more up the road just a little further.
- The need for low-income housing is understandable, but why here?
- Will there be a Key Target Program? This is a program for the homeless.
- The area is already saturated with children, this will be more of an issue if this is built.
- Why is there such a great need for the low income housing?

The motion to approve was a 2-2 tie. No further motion was made and no discussion was made on the record regarding the Commission's vote.

City staff recommends APPROVAL of the rezoning to MR-5 based on:

1. The proposed rezoning is consistent with prior actions of the city council to identify this portion of the city as appropriate for mixed residential development.
2. The City's land use plan calls for low-density residential; however, trends in the area are for commercial development or high-density residential along major roadways as well as multi-family units to the east along Clifford Road.
3. This property is surrounded by low-density residential development.

Part of Parcel ID 9487-15-2202 is already zoned MR-5 as is the adjacent Parcel ID 9487-15-3494.

4. Under the current zoning, 72 multi-family units are already allowed.

Due to one member being absent and no alternates being available for the meeting, the Zoning Commission recommendation was a split vote 2-2.

Budget Impact:

This action may result in an increase in City services that would be offset by the increased revenue collected through the City's taxes

Options:

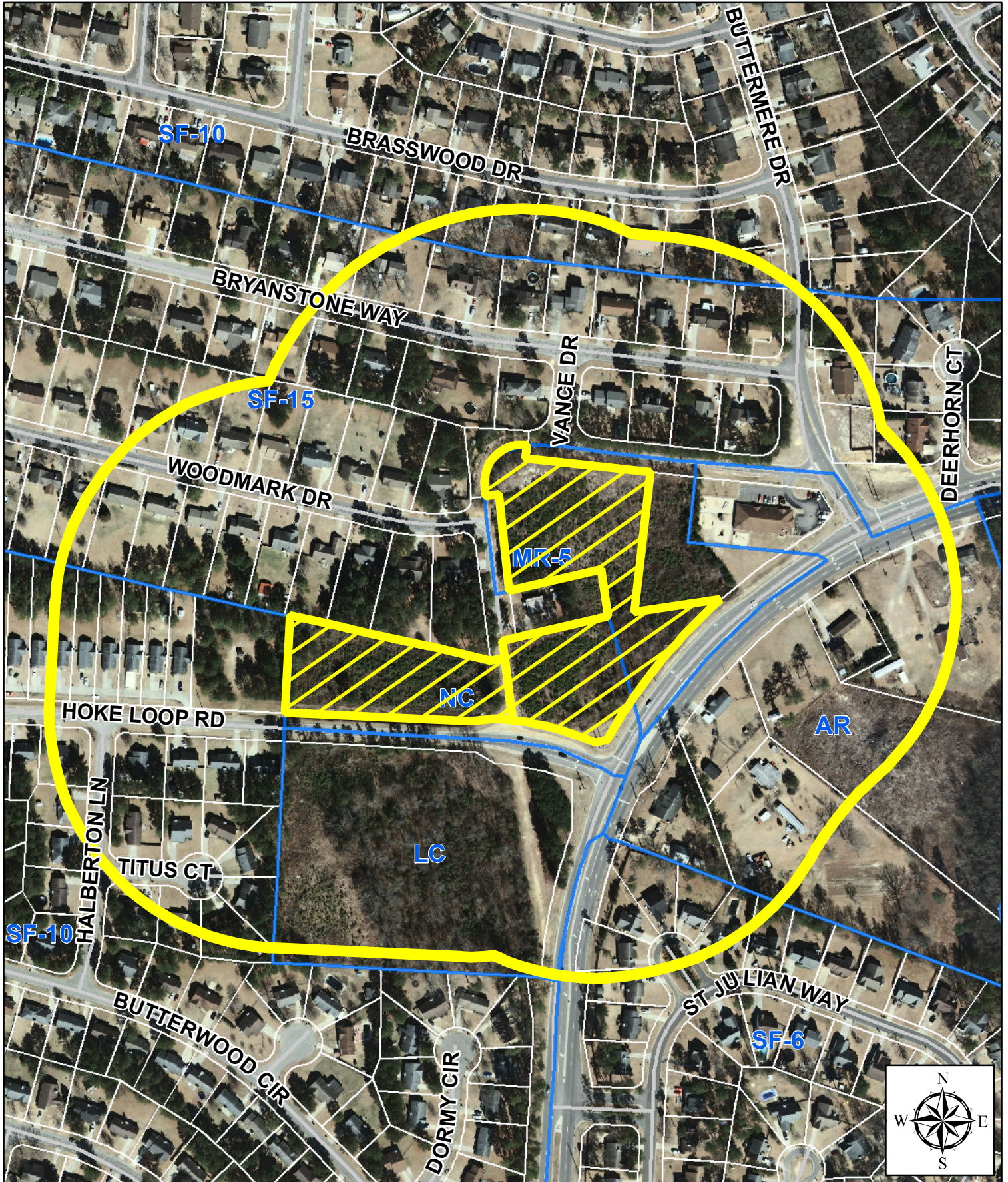
- 1) Approval of the rezoning to LC (recommended)
- 2) Deny the request

Recommended Action:

City staff recommends that the City Council move to APPROVE the rezoning to MR-5 - Mixed Residential, as presented by the staff. The Amendment is consistent with applicable plans because: 1) the City's existing zoning calls for this area to be used for neighborhood commercial that includes multi-family housing and 2) that the uses surrounding this property are all compatible with the proposed zoning and 3) Part of the Parcel ID 9487-15-2202 is already zoned MR-5 and 4) the proposed zoning is reasonable and in the public interest because the proposed zoning does fit with the character of the development in this area. This proposed amendment would replace the 2010 Future Land Use Plan recommendation in keeping with current zoning and use trends.

Attachments:

Zoning Map
Current Land Use Map
Land Use Plan Map
Application
Sample Site Plan
Site Photos



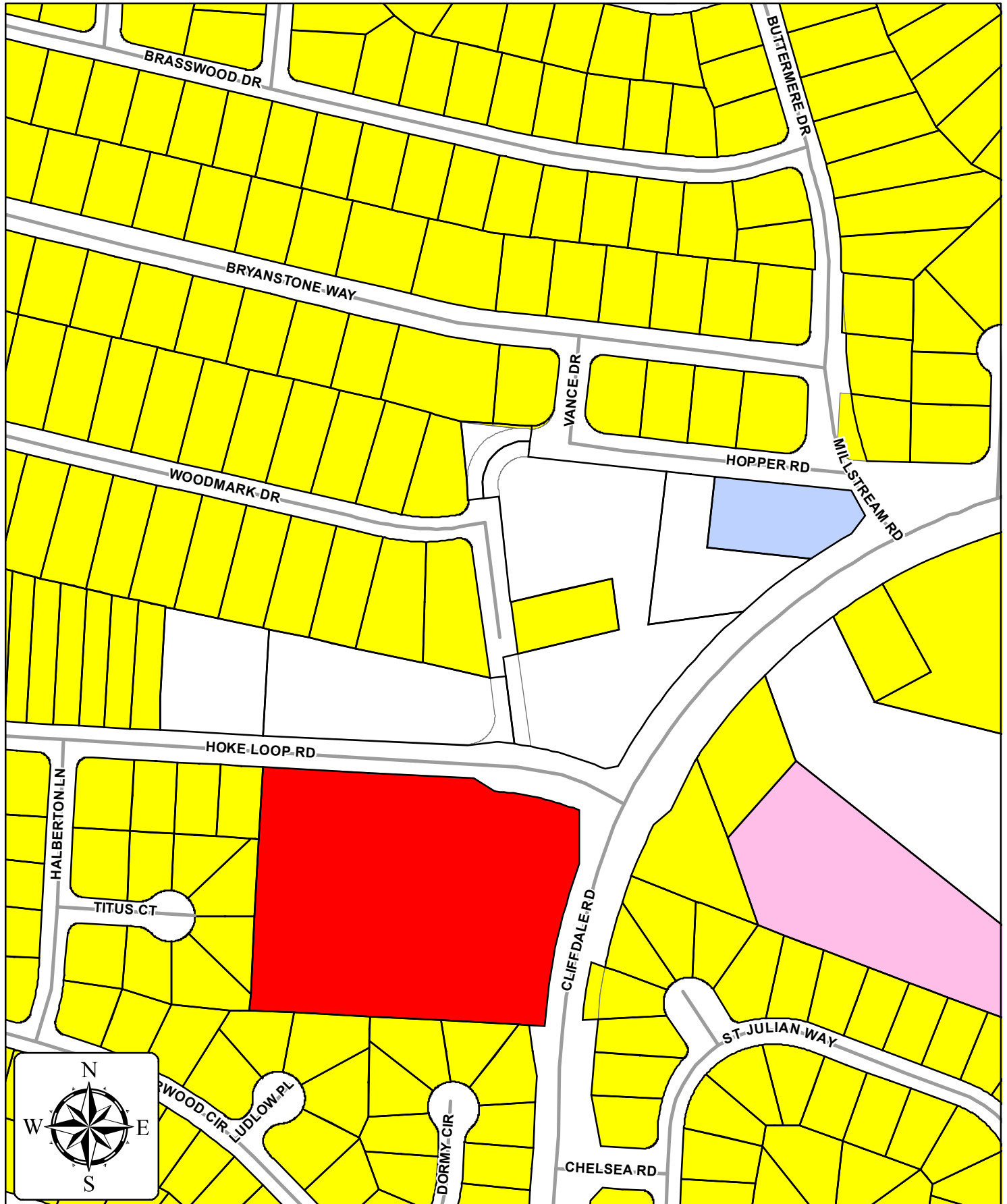
Request: NC to MR-5
Location: Northwest corner of Hoke Loop Rd and Cliffdale Dr
Lot Size: 2.7 (of 5.39) +/- acres

Zoning Commission: 2/13/2018
Pin: 9487-15-2202 & 9487-05-7158

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

Current Land Use

P18-08F

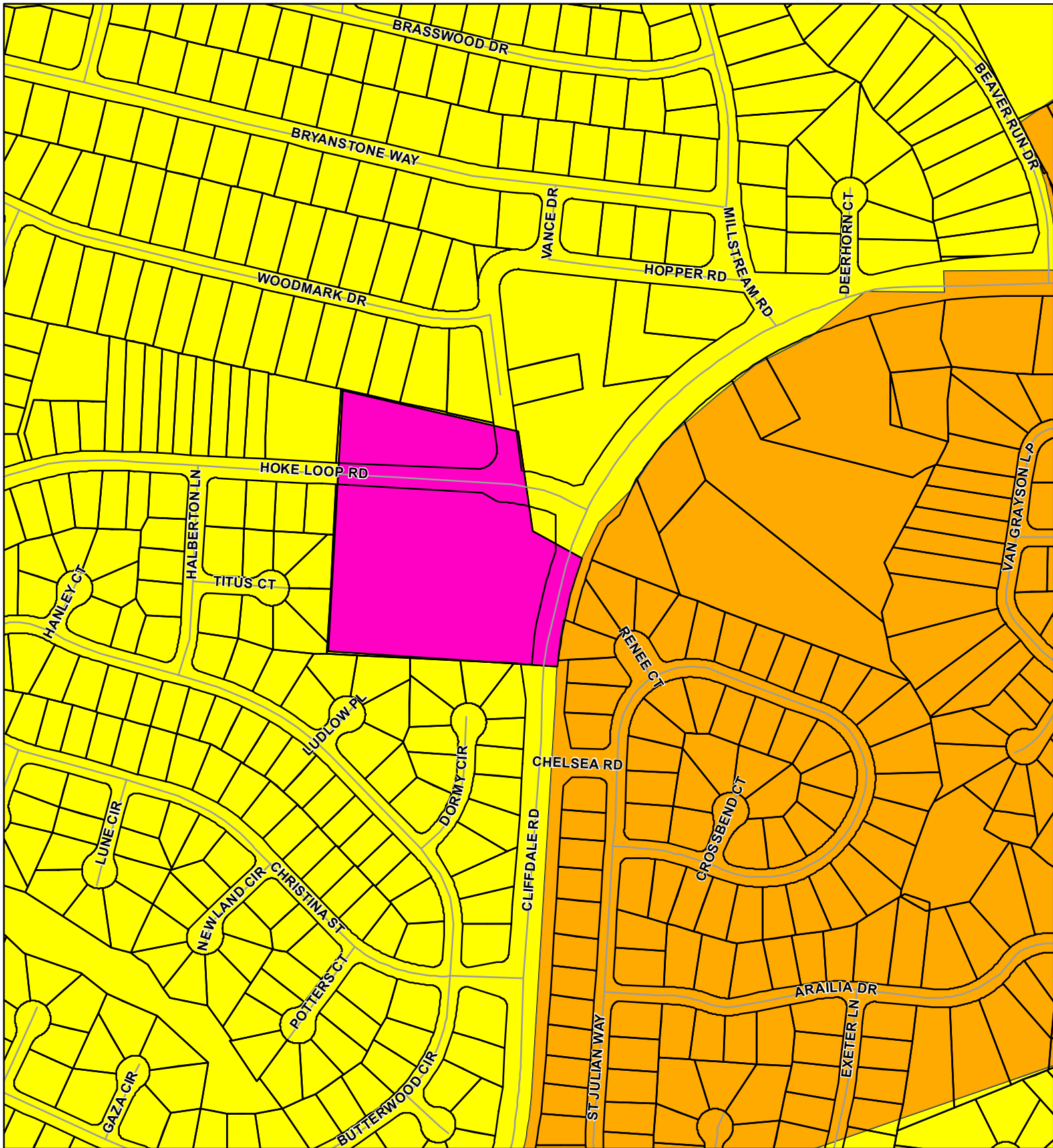


Legend

| | | | | | | | |
|------------------------|-------------|-------------------|---------------|------------------|----------------------|--------------------------|-------------------|
| 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. P18-08F



Legend

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



Map Amendment Application Form

433 Hay Street, Fayetteville, North Carolina 28301
910-433-1612 Fax # 910-433-1776

Submittal Date: 12-11-17 Approval/Denial Date: _____

Fee: \$700.00 Received By: Karen Estep

- Notes:**
1. A pre-application conference is mandatory prior to submission of an application for a map amendment.
 2. Map amendment applications proposing re-classification from a Conservation (CD) zoning district to MR-5, OI, NC, LC, CC, MU, DT, LI, or HI require neighborhood meetings to be conducted prior to application submittal.
 3. A map amendment application should be consistent with the comprehensive plan.
 4. The City Council may not apply conditions of approval to a map amendment application.
 5. All allowed uses within a proposed zoning district must be considered when considering a map amendment application, not just the particular use that the applicant is desiring to place on the property.
 6. Applications seeking to "single out" a lot or site and applying for an exceptional zoning district designation may constitute illegal "spot zoning".

1. General Project Information

| | | |
|---|--|---|
| Project Address: | | |
| Tax Parcel Identification Number: | | <u>9487-05-7158 AND 9487-15-2202 (SOUTHERN PORTION)</u> |
| Project Name: | | <u>Hoke Loop Commons</u> |
| Current Zoning District: | <u>NC</u> | Proposed Zoning District: <u>MR-5</u> |
| Does an overlay district apply to this site? <input type="checkbox"/> Yes <input type="checkbox"/> No If so, which one(s)? _____ | | |
| Has the land been the subject of a map amendment application in the last five years? <input type="checkbox"/> Yes <input type="checkbox"/> No When? _____ | | Case #? _____ |
| Amount of land to be rezoned (in acres): | <u>2.7 +/-</u> | Is this application related to an annexation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Existing/proposed water service: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private | Existing/proposed sewer service: <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private | |

A) Please describe all existing uses of the land and existing structures on the site, if any (attach additional sheets if necessary).

LAND IS CURRENTLY VACANT

B) Please describe the zoning district designation and existing uses of lands adjacent to and across the street from the subject site.

REQUESTING REZONING TO MATCH ADJACENT PROPERTY THAT IS ZONED MR-5. THE DENSITY CHANGE IS NEEDED TO ACCOMMODATE A PROPOSED 72 UNIT DEVELOPMENT OVER THE 6.4 +/- ACRES.

RECEIVED
DEC 11 REC'D
Karen Estep

2. Amendment Justification – Answer all the questions under this section. Attach additional sheets as necessary.

A) State the extent to which the proposed amendment is consistent with the comprehensive plan and all other applicable long-range planning documents.

RESIDENTIAL DEVELOPMENT IS LOCATED TO THE SOUTH AND EAST OF THE PROPERTY.

B) Are there changed conditions that require an amendment?

No.

C) State the extent to which the proposed amendment addresses a demonstrated community need.

MARKET STUDY HAS INDICATED A SUFFICIENT NEED FOR AFFORDABLE HOUSING.

D) State the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land, and why it is the appropriate zoning district for the land.

ADJACENT LAND IS CURRENTLY ZONED MR-5.

E) State the extent to which the proposed amendment results in a logical and orderly development pattern.

CHANGE WOULD PERMIT THE PROPOSED DEVELOPMENT TO HAVE ADDITIONAL GREENSPACE AND MAKE THE DEVELOPMENT LESS CROWDED. MR-5 PERMITS 18 UNITS PER ACRE. CHANGE WOULD HAVE 11.5 PER ACRE.

F) State the extent to which the proposed amendment might encourage premature development.

G) State the extent to which the proposed amendment results in strip-style commercial development.

WOULD CONSOLIDATE ALL PROPERTY WITH ONE ZONING.

H) State the extent to which the proposed amendment results in the creation of an isolated zoning district unrelated to adjacent and surrounding zoning districts.

CONSOLIDATES CURRENT MIXED ZONING.

I) State the extent to which the proposed amendment results in significant adverse impacts on the property values of surrounding lands.

WOULD NOT ADVERSELY AFFECT ADJACENT PROPERTY VALUES.

J) State the extent to which the proposed amendment results in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.


WOULD NOT HAVE ADVERSE AFFECT. WOULD IMPROVE WITH STORM WATER RETENSION PONDS.

3. Submittal Requirement Checklist

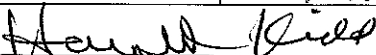
(Submittals should include 2 copies of listed items, unless otherwise stated.)

| | |
|--------------------------|---|
| <input type="checkbox"/> | Pre-application conference completed |
| <input type="checkbox"/> | Map Amendment Application Form |
| <input type="checkbox"/> | Copy of an approved Certificate of Appropriateness (COA) if located within the HLO |
| <input type="checkbox"/> | Rezoning Application Fee |
| <input type="checkbox"/> | Site Plan Application fee |
| <input type="checkbox"/> | A copy of the recorded deed, or a written legal description if application is for a portion of a larger tract |
| <input type="checkbox"/> | Scaled drawing showing all existing structures, site features, and setbacks |
| <input type="checkbox"/> | Elevations required if rezoning involves new construction or changes to an existing building |
| <input type="checkbox"/> | Transportation analysis, if required |

4. Primary Contact Information

| | | | |
|--------------------------------|---|----------|------------------|
| Primary Point of Contact Name: | WILLIAM H. OWEN - UNITED DEVELOPERS, INC. | | |
| Mailing Address: | 2939 BREEZEWOOD AVE. FAYETTEVILLE, 28303 | Fax No.: | 910-483-8674 |
| Phone No.: | 910-624-3523 | Email: | OWENBILL@AOL.COM |
| Signature: |  | Date: | 12/8/2017 |

5. Property Owner Information (if different from the primary point of contact)

| | | | |
|---|---|--------------|---------------------|
| Property Owner Contact Name: | Harold Kidd | | |
| Mailing Address: | 6885 Cliffdale Road, Fay, NC 28314 | Fax No.: | |
| Phone No.: | 910-864-9727 | Email: | hkidd1947@gmail.com |
| Property Owner or Authorized Signature: |  | Date Signed: | 12-8-2017 |

HOKE LOOP COMMONS SITE PLAN

PROJECT DATA

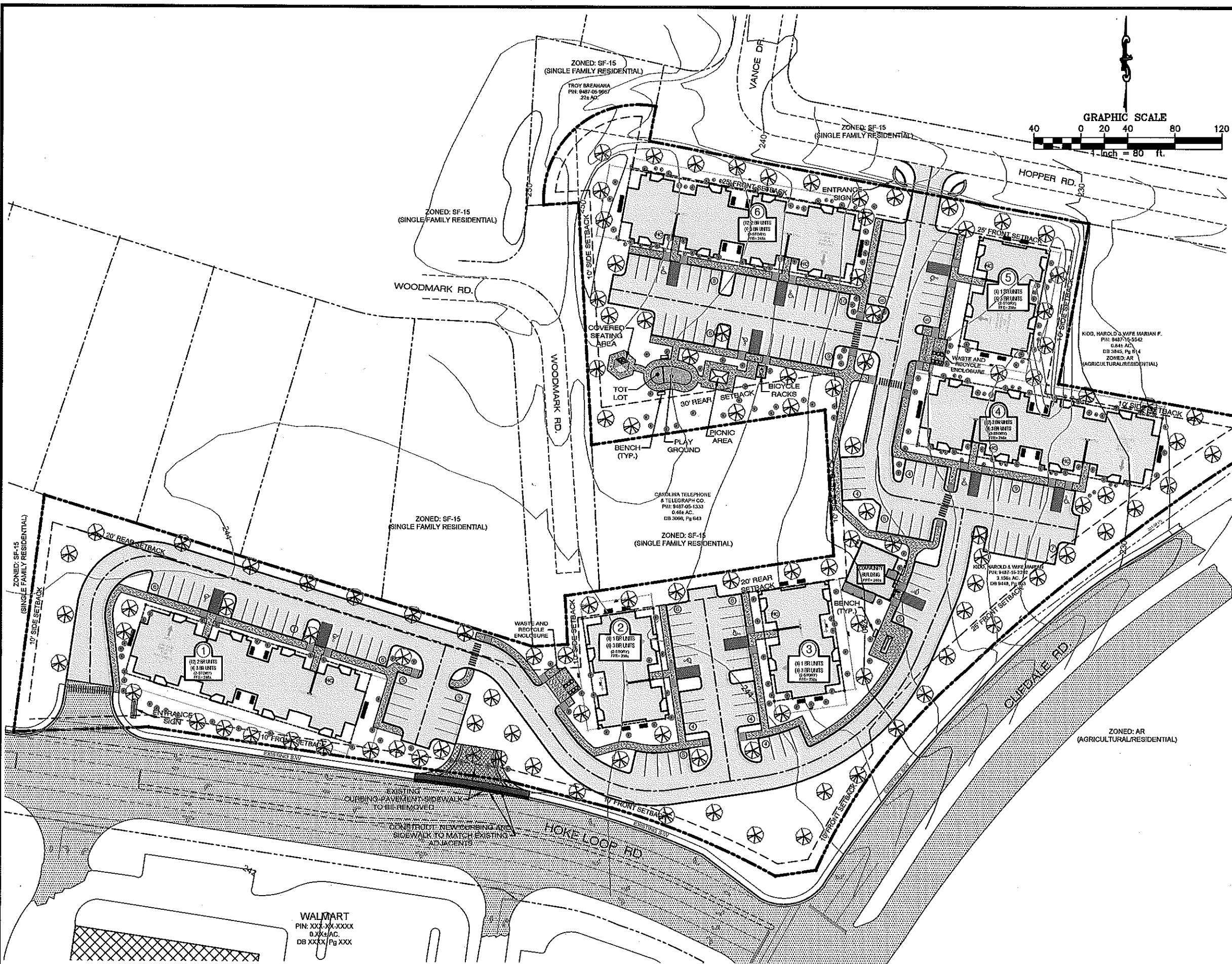
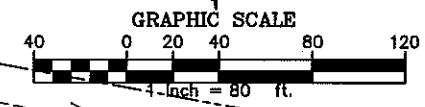
PROJECT: HOKE LOOP COMMONS

DEVELOPER/FINANCIALLY RESPONSIBLE PARTY:
UNITED DEVELOPERS, INC.
2939 BREEZEWOOD AVENUE
SUITE 201
FAYETTEVILLE, NC 28303

PROJECT PINS: NORTHERN PARCEL: 9487-15-2202-
SOUTHERN PARCEL: 9487-05-7158-

DEED BOOK/PAGE: NORTHERN PARCEL: 94480603
SOUTHERN PARCEL: 94480603

PARCEL AREAS: NORTHERN PARCEL: X.XX AC±
SOUTHERN PARCEL: X.XX ±
TOTAL PROJECT SITE: 6.24 AC±



ZONING:..... MR-5 (MIXED RESIDENTIAL 5)
NC (NEIGHBORHOOD COMMERCIAL)

SETBACKS:
MIXED RESIDENTIAL 5
25' FRONT
10' SIDE
30' REAR
NEIGHBORHOOD COMMERCIAL
10' FRONT
10' SIDE
20' REAR

TOTAL NO. PROPOSED UNITS:
72 UNITS = 11.5 DU/AC
(24-3 BR UNITS, 36-2 BR UNITS, 12-1 BR UNITS)
6 ADA UNITS INCLUDED (2)-1BR+(2)-2 BR+(2)-3 BR

BUILDING FOOTPRINT SIZES
NO. 1..... 9,817 SF
NO. 2..... 4,750 SF
NO. 3..... 4,750 SF
NO. 4..... 9,817 SF
NO. 5..... 4,750 SF
NO. 6..... 9,817 SF

PARKING= 9'X20' W/24' DRIVING LANES
(9'X20' ADA AISLES)
1.8 SP/DU=130 SP MIN. (9 ADA SPACES INCLUDED)
133 SPACES PROVIDED (11 ADA SPACES INCLUDED)
+8 ADDITIONAL COMMON AREA SPACES (2 ADA SPACES)

DUMPSTERS: SCREENED FROM ADJACENT

SITE AMENITIES
THE FOLLOWING ITEMS HAVE BEEN NOTED ON THE SITE PLAN TO BE PROVIDED WITH THE PROJECT:

- PLAY GROUND W/ EQUIPMENT & BENCH
- TOT LOT W/ EQUIPMENT & BENCH
- COVERED PICNIC AREA W/TWO TABLES & GRILL(150 SF)
- OUTDOOR SITTING AREAS W/BENCHES(3 LOCATIONS)
- COVERED POSTAL FACILITY
- LANDSCAPED ENTRY + ENTRANCE SIGNS
- IRRIGATED LAWNS

COMMUNITY BUILDING WITH THE FOLLOWING:
OFFICE W/ STORAGE AND HC TOILETS
LAUNDRY ROOM W/ 4 WASHERS & DRYERS
COMPUTER CENTER W/ HIGH SPEED INTERNET(2 STATIONS)
MULTI-PURPOSE ROOM (250 SF MIN)
COMMUNITY ROOM W/ KITCHENETTE

WALMART
PIN: XXX-XX-XXXX
0.XX± AC.
DB XXX Pg XXX





©2016 Google

Walmart
Supercenter

1.13

ONE WAY

KEEP
RIGHT

8650

COURTNEY
DRIVE

Pharmacy
Drive Thru

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-088

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 7.03

TO: Mayor and Members of City Council

THRU: Jay Reinstein, Assistant City Manager

FROM: Craig Harmon, AICP, CZO, Senior Planner
Gerald Newton, AICP, Development Services Director

DATE: March 26, 2018

RE:

Small Cell Antennas Text Amendment to align the City's Unified Development Ordinance with the State General Statute recently adopted regarding reform of wireless communications infrastructure licensing and permitting to aid in the deployment of new technologies and Budget Ordinance Amendment 2018-22 to amend the fee schedule for related fees.

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Growth and Development

Executive Summary:

N.C. General Statutes have been amended to include a section on the siting and placement of small cellular antennas. The proposed text amendment attached will align the City's Unified Development Ordinance (UDO) with the amended State Statute. Budget Ordinance Amendment (BOA) 2018-22 will amend the City's fee schedule to add fees for applications for small cell antenna right-of-way encroachment and for associated technical reviews.

Background:

The City Code must be consistent with the NC General Statutes. The State Statutes were recently amended to include a section on small cellular antennas. The proposed text amendments add text to comply with: 1) The use of public right-of-way for wireless communications infrastructure and 2) The collocation of small cell antennas on existing

utilities poles and 3) The siting of new utility poles for the sole purpose of housing small cellular antennas and their equipment.

Issues/Analysis:

Text amendments are required by Code to be reviewed by the Planning Commission and forwarded to City Council for final disposition. The Planning Commission is set to review this amendment at their March 20th meeting.

The proposed text amendments align the City's Unified Development Ordinance with the NC General State Statute regulations regarding small cell antennas. The State legislation falls under 160A-400.52 and is treated the same as the review of a traditional cell tower. A municipality can review (1) "aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones" and (2) information regarding "an identified public safety, land development or zoning issue," including whether other approved structures can "reasonably be used;" whether residential, historic, or scenic areas can be served from outside the area; and that the height is "necessary to provide the applicant's designed service." A municipality can also require applicants to evaluate collocation. Once built, an antenna can be replaced in-kind without municipal review and is subject to future "eligible facilities requests." The municipality can also review any encroachment request and can deny such request under GS (160A-296(a)(6)).

Under the new State Statute 160A-400, small cell antennas are not subject to zoning review or approval, if located in municipal ROW and:

- Does not obstruct or hinder the usual travel or public safety.
- Does not obstruct legal use by other utilities.
- Does not exceed greater than 50 feet in height or 10 feet in height above tallest existing utility pole (as of July 1, 2017) within 500 feet of a new pole.

(Historic Districts are the exception to this. These antennas are bound to the restrictions of those districts and require Certificates of Appropriateness before being constructed.)

If height limits aren't met for the pole and antenna, the municipality may not prohibit a new pole if it complies "with all applicable zoning requirements." Applicants "shall comply" with "undergrounding requirements" in areas zoned for single-family residential. Municipalities can charge for use of municipal ROW; fee shall not exceed "direct and actual costs of managing" ROW and shall not exceed charge "imposed" on municipal utilities (which means fee to use ROW will most likely be \$0 for most municipalities).

The State legislation is silent as to what happens in NCDOT ROW. GS136-189.3A was added to give NCDOT some authority. Municipality may not prohibit or regulate collocation of small wireless facilities "except as expressly provided in this Part." (160A-400.54) this removes all proprietary authority and all authority to regulate in NCDOT ROW by a municipality.

Municipalities are allowed to charge a review fee as follows:
\$100 for the first 5 combined

\$50 each for all additional antennas
(Up to 25 antennas may be applied for on a single application)

This item is scheduled to be heard by the Planning Commission on March 20th.

Budget Impact:

Additional staff time will be required to review each antenna application; the small cellular antenna technical review fee will help to offset this cost.

Options:

Approve the Amendment to align the City's UDO with the NC General Statutes, and adopt BOA 2018-22 to add the associated fees to the fee schedule.

Note: In this situation the City Code must align with the NC General Statute therefore there is no option to deny the Amendment.

Recommended Action:

Staff recommends that Council move to approve the Amendment to align the City's UDO with the NC General Statute, and to adopt Budget Ordinance Amendment 2018-22 to add fees for small cell antenna right-of-way encroachment applications and technical reviews.

Attachments:

Proposed amendments to Article 30 to include ordinance small cell antennas
Proposed amendments adding definitions for small cell towers
UDO Use Table Amendment
Budget Ordinance Amendment 2018-22 (Fee Schedule Update)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING SECTION 30-4.C.3.i, TELECOMMUNICATIONS FACILITIES, UNDER ARTICLE 30-4., , USE STANDARDS, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Section 1. Section 30-4.C.3i.1., Purpose, is amended by deleting the word “and” at the end of paragraph h and adding the following paragraphs after paragraph i:

- j. Encourage the location and collocation of small wireless facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- k. Establish review procedures to ensure that applications for telecommunications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law; and
- l. Encourage the use of existing buildings and structures as locations for small wireless facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.

It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communications services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the small wireless facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the City must approve under state or federal law. The provisions of Section 30-4.C.3.i are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the City.

Section 2. Section 30-4.C.3.i., Telecommunications Facilities, is amended by adding a new subsection 7 as follows:

- 7. *Small Wireless Facilities*

a. *Siting*

To protect the unique aesthetics of the City, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the City prefers that small wireless facilities be located outside the public right-of-way; collocated on existing utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.

b. *Applicability; Compliance with Law; Exemptions*

1. The standards established herein shall apply only to qualifying small wireless facilities, qualifying utility poles, and qualifying city utility poles, as defined herein. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of, any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of small wireless facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.
2. Unless expressly set forth herein, the following categories of small wireless facilities are exempt from the requirements in Section 30-4.C.3.i., provided they meet the location and design requirements set forth below:
 - A. Any telecommunications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
 - B. Over the air reception devices covered under 47 C.F.R. § 1.4000, so long as it satisfies the requirements set forth in Section 30-4.C.3.i.

- C. Eligible facilities requests that satisfy the requirements set forth in 30-4.C.3.i.
- D. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities (as defined in G.S. Chapter 160A, Article 19, Part 3E) that are suspended on cables strung between existing utility poles or city utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or (a)(6).
- E. A temporary small wireless facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City of Fayetteville; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.
- F. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras, so long as the facilities are designed to match the supporting structure.
- G. A small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, provided that the small wireless facility complies with applicable codes.

c. *Collocation of Small Wireless Facilities*

Collocation of small wireless facilities on land used as single-family residential property or vacant land that is zoned for single-family development, and any small wireless facility that extends more than ten (10) feet above the utility

pole, city utility pole, or wireless support structure on which it is collocated, are subject to UDO Section 30-4.C.3.i.7.d. Notwithstanding the foregoing, replacement of an existing streetlight for which the city is financially responsible with a streetlight capable of including a collocated, concealed small wireless facility is permitted on land used as single-family residential property or vacant land that is zoned for single-family development, pursuant to the requirements of Section 30-4.C.3.i.

Collocations of qualifying small wireless facilities in city right-of-way or outside of city right-of-way on land that is in a non-residential zoning district or land that is used for non-single-family residential property are subject to the following requirements:

1. *Application.* Applicants must complete an application as specified in form and content by the city.
2. *Height.* Each new small wireless facility shall not extend more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.
3. *Public Safety.* In order to protect public safety:
 - A. Small wireless facilities shall cause no signal or frequency interference with public safety facilities or traffic control devices and shall not physically interfere with other attachments that may be located on the existing pole or structure.
 - B. A structural engineering report prepared by an engineer licensed by the State of North Carolina, certifying that the host structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennae and other equipment, extensions, and appurtenances associated with the installation.
 - C. A traffic and pedestrian management plan must be submitted for any installation that requires work in the public right-of-way.

- D. No portion of a small wireless facility may be placed in the public right-of-way in a manner that:
 - i. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - ii. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.
- E. An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment.

4. *Objective Design Standards.*

- A. No advertising signs or logos are permitted on small wireless facilities.
- B. Small wireless facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Small wireless facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

5. *Stealth and Concealment.*

All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed.

6. *Screening, Landscaping, and Spacing Requirements for Ground Equipment.*

Ground equipment shall be screened, to the extent possible, with evergreen plantings or other acceptable alternatives approved by the Technical Review Committee (TRC).

7. *Historic Preservation.*

Small wireless facilities located in designated historic districts or on property designated as a landmark (pursuant to G.S. Chapter 160A, Article 19, Part 3C) shall be required to obtain a Certificate of Appropriateness as required by the city's UDO Section 30-3.H.3.

8. *Applicable Codes.*

Small wireless facilities must meet all applicable codes.

d. *Utility Poles and City Utility Poles Associated with Small Wireless Facilities*

The placement of new utility poles is prohibited by the city's underground facility requirements in both the City Code (Section 24-64) and UDO Section 30-5.J.4.c, unless permitted by those sections. Modification or replacement of qualifying utility poles and qualifying city utility poles existing as of March 26, 2018, is not prohibited; however, the maintenance, modification, operation, or replacement of qualifying utility poles and qualifying city utility poles associated with small wireless facilities are subject to the following requirements:

1. *Application.*

Applicants must complete an application as specified in form and content by the city.

2. *Height.*

Each modified or replacement utility pole or city utility pole shall not exceed (i) forty (40) feet above

ground level on property zoned for or used as single-family residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground, unless a variance is granted pursuant to UDO Section 30-2.C.14; or (ii) fifty (50) feet above ground level on all other property. Each new small wireless facility shall not extend more than ten (10) feet above the associated utility pole, city utility pole, or wireless support structure on which it is collocated.

3. *Small Wireless Facilities.*

All requirements of UDO Section 30-4.C.3.i.7. apply to small wireless facilities located on a utility pole, city utility pole, or wireless support structure.

4. *Public Safety.*

In order to protect public safety:

- A. No replacement utility poles or city utility poles associated with a small wireless facility are permitted in the right-of-way unless the replacement pole is breakaway rated.
- B. No portion of a utility pole or city utility pole associated with a small wireless facility may be placed in the public right-of-way in a manner that:
 - i. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - ii. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.

5. *Objective Design Standards.*

Utility poles or city utility poles associated with a small wireless facility shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Utility poles or city utility poles associated with a small wireless facility shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

6. *Stealth and Concealment.*

All antenna and accessory equipment must be shrouded or otherwise concealed.

7. *Historic Preservation.*

Utility poles or city utility poles associated with a small wireless facility located in designated historic districts or on property designated as a landmark (pursuant to G.S. Chapter 160A, Article 19, Part 3C) shall be required to obtain a Certificate of Appropriateness as required by UDO Section 30-3.H.3.

8. *Applicable Codes.*

Utility poles and city utility poles associated with a small wireless facility must meet all applicable codes.

e. *Standard Conditions.*

1. Applicant must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section 30-4.C.3.i. is not in lieu of any other permit required under the UDO

or City Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO, is not valid. No person may maintain a small wireless facility in place unless required state or federal authorization remain in force.

2. All small wireless facilities and related equipment, including, but not limited to, fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The small wireless facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the city. In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification.
3. The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
4. The applicant or owner shall maintain onsite at the facility contact information for all parties responsible for maintenance of the facility.
5. Small wireless facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.

6. After written notice to the applicant and/or owner, the city may require the relocation, at the applicant/owner's expense, of any small wireless facility, and the associated utility pole, city utility pole, or wireless support structure on which it is collocated, located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the city.
7. Collocation or modification of small wireless facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.

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 part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-9, DEFINITIONS, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Section 1. Subsection 30-9.D., definitions, is amended by deleting the definition for “antenna” in its entirety and substituting with the following:

Antenna

Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signal used in the provision of all types of wireless communications services.

Section 2. Subsection 30-9.D., definitions, is amended by alphabetically inserting the following definitions:

Accessory Equipment

Means any equipment installed and owned by a third party used to deliver a service (other than a communications service) to a telecommunications facility, such as an electric meter.

Applicable Codes

The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national organization together with state or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Application (Wireless Facilities)

A request that is submitted to the city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

Base Station

A structure or equipment at a fixed location that enables Federal Communications Commission licensed or authorized wireless communications between user

equipment and a communications network. The term does not encompass a wireless support structure or any equipment associated with such structure. The term includes wireless facilities.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Collocation

The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes that, at the time the relevant application is filed with the City that supports or houses equipment as described herein. The term includes, but is not limited to, radio transceivers, antennae, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small wireless facilities). The term “collocation” does not include the installation of new utility poles, city utility poles, or wireless support structures.

Communication, Facility

The set of equipment and network components including wires and cables and associated facilities used by a communications service provider to provide communications service.

Communication, Service

Cable service as defined in 47 USC § 153; information service as defined in 47 USC § 153(24), telecommunications service as defined in 47 USC § 153(23), or wireless services.

Communication, Service Provider

A cable operator as defined in 47 USC § 522(5); a provider of information service as defined in 47 USC § 153(24); a telecommunications carrier as defined in 47 U.S.C. § 153(51); or a wireless provider.

Eligible Facilities Request

Any request for modification of an existing wireless support structure or base station that does not substantially change the physical dimensions of such

telecommunications tower or base station, as defined in either 47 C.F.R. 1.40001(b) or G.S. Chapter 160A, Article 19, Part 3E.

Micro Wireless Facility

A small cell wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Monopole

A single, self-supporting, freestanding pole-type structure built for the sole purpose of supporting one or more antennae. For the purposes of this UDO, a utility pole is not a monopole.

Qualifying Small Wireless Facility

A new small wireless facility that does not extend more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated and is located either (i) in the city right-of-way or (ii) outside of city right-of-way on property other than single-family residential property.

Qualifying Utility Pole, City

A modified or replacement city utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such city utility pole.

Right-of-Way, City

A right-of-way owned, leased, or operated by the city including any public street or alley that is not a part of the state highway system.

Small Wireless Facility

1. A wireless facility where each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of antenna that has exposed elements, the antenna and all of its exposed elements if enclosed, could fit within an enclosure of no more than six cubic feet; and
2. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. The following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches,

cut-off switches, vertical cable runs for the connection of power and other services or other support structures.

Substantial Modification

The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure pursuant to N.C.G.S. § 160A-400.51(7b)

Telecommunications Facility

A facility consisting of a base station and accessory equipment, and the utility pole, city utility pole, or support structure, if any, associated with the facility.

Utility Pole

The same meaning as the term “utility pole” as defined in G.S. Chapter 160A, Article 19, Part 3E.

Utility Pole, City

A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

Wireless Facility

Equipment at a fixed location that enables wireless communications between user equipment and a communications network pursuant to N.C.G.S. § 160A-400.51(9).

Wireless Infrastructure Provider

Any person with a certificate to provide telecommunications service in the state who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless Provider

A wireless infrastructure provider or a wireless services provider.

Wireless Services

Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless Support Structure

A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities pursuant to N.C.G.S. § 160A-400.51(10)

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 part of the Code or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-4, USE STANDARDS, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Section 1. Section 30-4.A.2., Use Table, is amended by alphabetically adding a new row to the Transportation/Communication use category as follows:

| | | | | | | | | | | | | | | | | | | | | | |
|----------------------------------|---------------------------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|----|----|--------------|
| Transportation/ Communication | Small Wireless Facilities | / | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | MP | MP | MP | 30-4.C.3.i.7 |
|----------------------------------|---------------------------------|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|----|----|----|--------------|

Section 2. 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 or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

2017-2018 BUDGET ORDINANCE AMENDMENT
CHANGE 2018-22

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

That the City of Fayetteville Budget Ordinance adopted June 26, 2017 is hereby amended as follows:

Revision:

Section 8. The fee schedule adopted effective July 1, 2017, as amended on December 11, 2017 and February 26, 2018, is hereby further amended to add the following fees:

Public Services

Engineering & Infrastructure Fees and Penalties

Right of Way Encroachment

Small Cell Antenna Application Fee

\$100 total for the first 5 antennas, \$50 each for any additional antennas. Limit of 25 antennas per application.

Small Cell Antenna Technical Review Fee

Actual costs not to exceed \$500 per application

Adopted this 26th day of March, 2018.

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-098

Agenda Date: 3/26/2018

Version: 3

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 7.04

TO: Mayor and Members of City Council

**THRU: Jay Reinstein, Assistant City Manager
Gerald A. Newton, AICP, Development Services Director**

FROM: Michael L. Martin, Assistant Development Services Director

DATE: March 26, 2018

RE:

Code Amendments to clarify an Administrative Zoning Permit review and approval process within the following Code Sections: Review Procedures, Standards and Requirements for Development Applications, and Definitions

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

The City will be designed to include vibrant focal points, desirable industrial, commercial, and residential opportunities with high quality and sustainable infrastructure.

Executive Summary:

The intent of this proposed amendment is to clarify existing code language regarding permit requirements that currently address zoning regulations related to projects that may be exempted from the State Building Code. This proposed amendment will clearly delineate the requirements of building permits and administrative zoning permits.

Background:

Building permits have a statutory definition specifically relating to the compliance requirements of the State Building Code. Smaller projects (such as smaller outdoor sheds or fences less than 6' in height) are exempted from building code requirements, yet still have to meet the zoning requirements within the Code. These requirements include but are not limited to the minimum set-backs from lot lines, restrictions on the placement

in right-of-way's and easements, and approval of certain temporary uses.

The change to the code will allow clarity in the requirement of permits and subsequent applicable regulations for projects that are required to meet either or both the State Building Code and zoning ordinances.

The Planning Commission held a public hearing on February 20, 2018 and unanimously recommends approval.

Issues/Analysis:

The proposed amendment will better align the review and approval process for projects

The factors against which a proposed amendment should be evaluated are:

1. The extent the amendment is consistent with City adopted plans.
 - The amendment is proposed to align language and requirements that currently exist within the code.
2. Is proposed amendment in conflict with the Code?
 - The proposed amendment would remove any conflicts and confusion.
3. Are there changed conditions that require an amendment?
 - The distinctly different characteristics of building permits and administrative zoning permits require separate processes and references of requirements.
4. Does the amendment address a community need?
 - The proposed amendment improves efficiency and clarity in review and approval of development projects.
5. Is the amendment consistent with the purpose and intent of the Code?
 - The amendment is consistent and clearly references existing regulations currently adopted in the Code.
6. Would the amendment result in logical and orderly development patterns?
 - The proposed amendment would facilitate in the application of current zoning requirements that would result in logical and orderly development patterns.
7. Does the amendment result in adverse impacts on the environment?
 - The proposed ordinance has no apparent adverse environmental impacts.

Budget Impact:

The proposed amendment will not require modification to the fee schedule. All fees relating to building permits and administrative zoning permits are already incorporated in the current adopted fee schedule.

Options:

1. Recommend Approval of the Amendments as proposed. (Recommended)
2. Recommend Approval of the Amendments with modifications.
3. Deny the Amendments and provide direction to the City Manager.

Recommended Action:

Option 1: Recommend approval for the amendments as proposed.

Attachments:

Current Code w/amendments in Red

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-2.A., REVIEW AND DECISION-MAKING BODIES, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Section 1. The table under Section 30-2.A.2, Summary Table of Permit Review Procedures, is amended by adding the following permits to the permits section:

| Procedure | City Council | Planning Commission | Zoning Commission | Reserved | Historic Resources Commission | Technical Review Committee | City Manager |
|------------------------------|--------------|---------------------|-------------------|----------|-------------------------------|----------------------------|--------------|
| Building Permit [6][7][10] | | | | | | | D |
| Administrative Zoning Permit | | | | | | | D |

Section 2. 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 or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-9, DEFINITIONS, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Section 1. Subsection 30-9.D., definitions, is amended by alphabetically adding the following definition.

Administrative Zoning Permit

Administrative zoning permits are intended to ensure compliance for setbacks, types of uses, height, parking requirements, design, and similar concerns related to specific activities that are specifically regulated by this Ordinance. Administrative zoning permits are not to be confused with other types of zoning-related documents (such as special use and neighborhood compatibility permits) which require legislative approval from the Planning Commission and/or City Council.

Section 2. 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 or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

ADOPTED this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING ARTICLE 30-2.C.12., BUILDING PERMIT, OF CHAPTER 30, THE UNIFIED DEVELOPMENT ORDINANCE, 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:

Section 1. Section 30-2.C.12, “Building Permit”, is amended by deleting the same in its entirety and substituting the following:

30-2.C.12. Building and Administrative Zoning Permits

a. Purpose

1. Building Permits are approved and issued by the City Manager in accordance with Section 160A-417 of the North Carolina General Statutes and the North Carolina State Building Code. The Building Permit is intended to certify that the proposed construction, moving, alteration, or repair of structures complies with the construction standards in the State Building Code and with all other applicable state and local laws—including this Ordinance. The Building Permit thus serves as a method to check and verify a structure’s compliance with the requirements of this Ordinance.
2. Administrative Zoning Permits are approved and issued by the City Manager in accordance with this Ordinance and Section 160A-361 of the North Carolina General Statutes. The Zoning Permit is intended to ensure compliance for setbacks, types of uses, height, parking requirements, design, and similar concerns that are specifically regulated by this Ordinance

b. Applicability

1. *Building Permit:* No construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure may occur until a Building Permit has been applied for and issued in accordance with this section and the State Building Code.
2. *Administrative Zoning Permit:* A zoning permit is required prior to the commencement of the following activities for which a permit is required:
 - i. Installation of Fences
 - ii. Installation of Accessory Buildings (Sheds/Garages)

- iii. Clear Cutting
- iv. Outdoor Dining and/or Merchandise Area
- v. Pushcarts (Food/Drink and Non-Food)
- vi. Sidewalk Entertainment
- vii. Temporary Uses
- viii. Yard Sale
- ix. Installation of Signs

c. **Procedure**

1. *Generally*

Building Permits: The procedures applicable to the review and approval of applications for Building Permits are established in Section 204.3 of the Administrative Code and Policies portion of the State Building Code.

Administrative Zoning Permits: An application for a zoning permit shall be filed with the Development Services Department. The City Manager shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in this Ordinance.

2. *Basic Procedures*

Except as modified by Sections 30-2.C.12.c.3 through 5 below, procedures and requirements for the submission, completeness determination, review, recommendation, and decision on applications are as established in Section 30-2.B, Common Review Procedure.

3. *Review and Action by City Manager*

The City Manager shall review and take action on the application in accordance with the procedures of Section 30-2.B.9, Decision by Technical Review Committee or City Manager, and the standards in Section 30-2.C.12.d, Building Permit Review Standards.

4. *Appeal*

Building Permits: In accordance with Section 160A-434 of the North Carolina General Statutes, an appeal from a decision on a Building Permit application shall be appealed to the North Carolina Commissioner of Insurance.

Administrative Zoning Permits: An appeal from a decision on a zoning permit shall comply with Section 30-2.C.18 of this Ordinance.

5. *Expiration*

A permit shall automatically expire if the work authorized by the Building Code and/or this Ordinance is not commenced within six months after the date of issuance of the permit.

d. **Building Permit Review Standards**

In addition to compliance with the State Building Code, the City Manager shall approve a Building Permit only upon a finding that the proposed construction or other work complies with all relevant standards of this Ordinance and the terms and conditions of development permits or approvals granted in accordance with this Ordinance.

Section 2. 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 or Ordinances, City of Fayetteville, North Carolina, and the section of this ordinance may be renumbered to accomplish such intention.

Adopted this the _____ day of _____, 2018.

CITY OF FAYETTEVILLE

MITCH COLVIN, Mayor

ATTEST:

PAMELA J. MEGILL, City Clerk

Article 30 – 2. Administration Section A. Summary Table of Permit Review Procedures and Section C. Standards and Requirements for Development Applications:

Add Text for: Administrative Zoning Permit

30-2.A.2. Table 30-2.A.2 Development Review Structure

Add to the table, a new row under Building Permit as follows:

| Procedure | City Council | Planning Commission | Zoning Commission | Reserved | Historic Resources Commission | Technical Review Committee | City Manager |
|-------------------------------------|--------------|---------------------|-------------------|----------|-------------------------------|----------------------------|--------------|
| Building Permit [6][7][10] | | | | | | | D |
| Administrative Zoning Permit | | | | | | | D |

30-2.C.12. Building and Administrative Zoning Permit

A. Purpose

1. *Building Permits* are approved and issued by the City Manager in accordance with Section 160A-417 of the North Carolina General Statutes and the North Carolina State Building Code. The Building Permit is intended to certify that the proposed construction, moving, alteration, or repair of structures complies with the construction standards in the State Building Code and with all other applicable state and local laws—including this Ordinance. The Building Permit thus serves as a method to check and verify a structure's compliance with the requirements of this Ordinance.
2. *Administrative Zoning Permits* are approved and issued by the City Manager in accordance with this Ordinance and Section 160A-361 of the North Carolina General Statutes. The Zoning Permit is intended to ensure compliance for setbacks, types of uses, height, parking requirements, design, and similar concerns that are specifically regulated by this Ordinance.

B. Applicability

1. Building Permit: No construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building or structure may occur until a Building Permit has been applied for and issued in accordance with this section and the State Building Code.
2. Administrative Zoning Permit: A zoning permit is required prior to the commencement of the following activities for which a permit is required:
 - i. Installation of Fences
 - ii. Installation of Accessory Buildings (Sheds/Garages)
 - iii. Clear Cutting
 - iv. Outdoor Dining and/or Merchandise Area
 - v. Pushcarts (Food/Drink and Non-Food)
 - vi. Sidewalk Entertainment
 - vii. Temporary Uses
 - viii. Yard Sale
 - ix. Installation of Signs

C. Procedure

1. *Generally*

Building Permits: The procedures applicable to the review and approval of applications for Building Permits are established in Section 204.3 of the Administrative Code and Policies portion of the State Building Code.

Administrative Zoning Permits: An application for a zoning permit shall be filed with the Development Services Department. The City Manager shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in this Ordinance.

2. *Basic Procedures*

Except as modified by Sections 30-2.C.12.c.3 through 5 below, procedures and requirements for the submission, completeness determination, review, recommendation, and decision on applications are as established in Section 30-2.B, Common Review Procedures.

3. *Review and Action by City Manager*

The City Manager shall review and take action on the application in accordance with the procedures of Section 30-2.B.9, Decision by Technical Review Committee or City Manager, and the standards in Section 30-2.C.12.d, Building Permit Review Standards.

4. *Appeal*

Building Permits: In accordance with Section 160A-434 of the North Carolina General Statutes, an appeal from a decision on a Building Permit application shall be appealed to the North Carolina Commissioner of Insurance.

Administrative Zoning Permits: An appeal from a decision on a zoning permit shall comply with Section 30-2.C.18 of this Ordinance.

5. *Expiration*

~~In accordance with Section 160A-418 of the North Carolina General Statutes,~~ A **building** permit shall automatically expire if the work authorized by the Building Code **and/or this Ordinance** is not commenced within six months after the date of issuance of the **building** permit.

D. Building Permit Review Standards

In addition to compliance with the State Building Code, the City Manager shall approve a Building Permit only upon a finding that the proposed construction or other work complies with all relevant standards of this Ordinance and the terms and conditions of development permits or approvals granted in accordance with this Ordinance.

Article 30 – 9. Definitions

Add Definition: Administrative Zoning Permit

Administrative Zoning Permit: Administrative zoning permits are intended to ensure compliance for setbacks, types of uses, height, parking requirements, design, and similar concerns related to specific activities that are specifically regulated by this Ordinance. Administrative zoning permits are not to be confused with other types of zoning-related documents (such as special use and neighborhood compatibility permits) which require legislative approval from the Planning Commission and/or City Council.

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-105

Agenda Date: 3/26/2018

Version: 2

Status: Agenda Ready

In Control: City Council Regular Meeting

File Type: Public Hearing

Agenda Number: 7.05

TO: Mayor and Members of City Council

THRU: Kristoff T. Bauer, ICMA-CM, Deputy City Manager

FROM: Kecia N. Parker, NCCP, Real Estate Manager

DATE: March 26, 2018

RE:

Resolution and Order for Closing a Portion of Merrimac Drive

COUNCIL DISTRICT(S):

6

Relationship To Strategic Plan:

Desirable Place to Live, Work and Recreate

Executive Summary:

NCGS §160A-299 gives authority to the City to close a street or alley. Several adjacent property owners have petitioned to close a portion of Merrimac Drive that is currently unopened and not constructed. Closing this portion of Merrimac Drive will not deny access to any property owners. The first step in the process is to have a resolution granting the public hearing which was passed on February 12, 2018. The property has been posted and all certified mail has been sent to the adjoining property owners as required by North Carolina General Statute.

Background:

- NCGS §160A-299 gives authority and procedures required for the City to close a city street or alley.
- Notice of Public Hearing has been published for 4 consecutive weeks prior to this hearing as required by North Carolina General Statute.
- Notice of Public Hearing has been posted on said property and mailed to the adjoining property owners as required by North Carolina General Statute.

Issues/Analysis:

- No access will be denied to anyone as a result of the proposed closing.
- Easements will be retained over the closed portion of Merrimac for existing and needed utilities.
- The County Mapping Division is responsible for determining how the property is divided amongst the adjoining property owners.

Budget Impact:

There is no significant impact to the budget for closing a portion of Merrimac Drive.

Options:

- Adopt the Resolution and Order Closing a Portion of Merrimac Drive.
- Reject the Resolution and Order Closing a Portion of Merrimac Drive.

Recommended Action:

Staff recommends that Council move to pass the Resolution and Order Closing a Portion of Merrimac Drive.

Attachments:

Resolution
Map

A RESOLUTION AND ORDER CLOSING A PORTION OF MERRIMAC DRIVE

WHEREAS, under authority of NCGS 160A-299, a public hearing before the City Council of the City of Fayetteville, North Carolina was advertised as required by law, and duly held on the 26th day of March, 2018, in accordance with the notice calling for said public hearing, and all adjoining property owners having been notified by certified mail of the time, place and purpose of said meeting, the purpose of which was to determine whether that certain street portion in the City of Fayetteville, North Carolina, known as the portion of Merrimac Drive, should be closed as a public street; and a notice of said hearing having been posted on said portion of street for four weeks prior to the holding of said hearing;

WHEREAS, during the said public hearing all interested citizens were invited to comment and state any objections they may have to the closing of that portion of Merrimac Drive as a public street; and

WHEREAS, the City Council, following such public hearing, after considering all of the facts, has determined that the closing of that portion of Merrimac Drive is not contrary to the public interest and that no individual owning property in the vicinity of said street portion will thereby be deprived of reasonable means of ingress and egress to his or her property;

NOW THEREFORE, BE IT RESOLVED on behalf of the people of Fayetteville, the City Council orders and directs that the portion of Merrimac Drive, within the limits covered by the following description only, be closed as a public street under the following terms and conditions:

1. Description of area closed as a public street

BEGINNING at the end of pavement of Merrimac Drive where it intersects with the northeast corner of Lot 1 Wells Subdivision Section IV as recorded in Plat Book 49, Page 67 of the Cumberland County Registry and continuing thence with the eastern line of that tract of land known as Lot 2 Wells Subdivision as recorded in Plat Book 19, Page 45 of the Cumberland County Registry with a curve to the left having a radius of 418.29 with an arc distance of 138.76 and a chord bearing and distance of North 01 degrees 06 minutes 47 seconds West 138.13 feet to a point, thence North 10 degrees 37 minutes 00 seconds West 175 feet to the southern right of way margin of Raeford Road, thence with said southern right of way margin North 79 degrees 03 minutes 00 seconds East 60 feet to a point in the western margin of Lot 3 Wells Subdivision as shown on Plat Book 19, Page 45 of the Cumberland County Registry and continuing thence with said western margin South 10 degrees 37 minutes 00 seconds East 175 feet to a point with a curve to the right having a radius of 478.29 and arc length of 158.66 with a chord bearing and distance of South 01 degrees 09 minutes 20 seconds East 157.93 feet to a point, thence North 81 degrees 57 minutes 00 seconds West 60 feet to the BEGINNING, and containing 0.45 acres more or less.

2. That the closing of the portion of Merrimac Drive will not affect an easement being reserved in and over said area in behalf of the City of Fayetteville and its Public Works Commission for overhead and underground electric lines and existing utilities but also for any needed future utilities for either entity.
3. That the closing of the portion of Merrimac Drive will not affect a waterline easement being reserved in and over said area on behalf of Aqua America aka Aqua N.C.

4. That a copy of this order be recorded in the office of the Register of Deeds of Cumberland County.

IN WITNESS WHEREOF, the City of Fayetteville has caused this instrument to be signed in its name by its Mayor, attested by its City Clerk, and its corporate seal hereto affixed, all by order of its City Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, on this, the 26th day of March, 2018; such meeting was held in compliance with the Open Meetings Act, at which meeting a quorum was present and voting.

CITY OF FAYETTEVILLE

(SEAL)

By: _____
MITCH COLVIN, Mayor

ATTEST:

PAMELA MEGILL, City Clerk

EXHIBIT 'A'



SITE

VICINITY MAP N.T.S.

RAEFORD ROAD (US 401) R/W 100'

9496-68-7167-
STEVENS, DONALD B & WIFE
DB. 9657 PG. 58
PB. 19 PG. 45

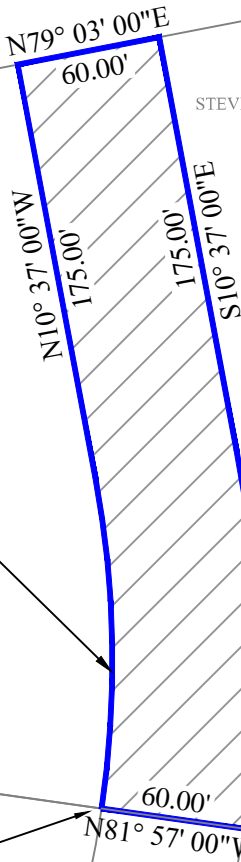
9496-68-6154-
STEVENS, DONALD B & WIFE
DB. 9695 PG. 46
PB. 19 PG. 45

9496-68-4088-
CAULDER, DELLAR C
DB. 3650 PG. 498
PB. 19 PG. 45

9496-68-3066-
CAULDER, DELLAR C
DB. 5540 PG. 182
PB. 19 PG. 45

L=138.76 R=418.29
CH=N1°06'47"W CL=138.13

L=158.66 R=478.29
CH=S1°09'20"E CL=157.93



END OF PAVEMENT

9496-67-4921-
CAULDER, WALTER E & WIFE
DB. 5016 PG. 572
PB. 49 PG. 67

9496-67-6975-
CAPPS, JOHNNY DEAN
DB. 6337 PG. 296
PB. 33 PG. 34

9496-67-6975-
CAPPS, JOHNNY & WIFE
DB. 7130 PG. 146
PB. 33 PG. 34

MERRIMAC DRIVE R/W 60'

MANASSAS STREET R/W 60'

9496-67-4709-
LESTER, ROY & WIFE
DB. 6931 PG. 599
PB. 49 PG. 67



CIVIL ENGINEERING DIVISION
433 HAY ST. 28301
(910) 433-1656

**PROPOSED STREET CLOSING OF THE
UNOPENED PORTION OF MERRIMAC DR
±19442.48 SF/0.45 AC**

THIS MAP IS NOT A CERTIFIED SURVEY AND NO
RELIANCE MAY BE PLACED IN ITS ACCURACY.

DATE **30JAN18** DRAWN BY **CSA**
SCALE **1"=80'** CK'D BY **CSA**

City of Fayetteville

433 Hay Street
Fayetteville, NC 28301-5537
(910) 433-1FAY (1329)

City Council Action Memo

File Number: 18-118

Agenda Date: 3/26/2018

Version: 1

Status: Agenda Ready

In Control: City Council Special Meeting

File Type: Public Hearing

Agenda Number: 7.06

TO: Mayor and Members of City Council

THRU: Douglas J. Hewett, City Manager, ICMA-CM

FROM: Kristoff Bauer, Deputy City Manager

DATE: March 26, 2018

RE:

Prince Charles Holding (“PCH”) Parking Lease, for Hay Street Parking Garage

COUNCIL DISTRICT(S):

All

Relationship To Strategic Plan:

Goal 4: Desirable Place to Live, Work and Recreate

Executive Summary:

The City has executed a Downtown Development Agreement (“DDA”) with Prince Charles Holding, LLC. (“PCH”) relating to the stadium, plaza, and garage/hotel developments, the Prince Charles Hotel redevelopment project and Festival Park Plaza sale. The execution of a lease between PCH and the City for parking in the new garage under development is a key element of that agreement. State law requires that any lease longer than 10 years considered through the same process as a sale of land. This requires a public hearing after the terms have been advertised for 10 days. After the public hearing, Council will be asked to authorize the execution of the attached lease and non-disturbance agreements.

Background:

The City executed a Memorandum of Understanding with PCH in March, 2016. At that time, the main topics of discussion were the availability of parking and how to reconfigure the street system to support the renovation of the Prince Charles into a mixed use building, a hotel, and mixed use development on the site. That process was moving forward when the concept of placing a minor league baseball stadium was introduced in June 2016.

The DDA is a complex legal document the full completion of which is dependent upon the successful completion of design, survey, and other activities performed. The City, however, required control of the land in the development area in order to plat the property creating individual lots for the stadium, garage/hotel development, Amtrak, and a plaza area. These separate lots are required in order to move forward with financing, permitting, and other activities critical to the stadium development and redevelopment of the area.

The final amendment to the DDA and Garage Contract were approved by Council on December 11, 2018. These agreement have been executed and included in part:

Garage/Hotel Project:

- Garage design elements and City design approval
- City surface demolition (anticipated and in process)
- Future requirement for a Garage Purchase Agreement based on cost of construction
- Key terms of parking space leases
- City's authority to approve the hotel flag

Another key term of that agreement is the execution of a lease between the City and PCH. The lease is necessary for PCH to secure funding for the redevelopment of the historic Prince Charles Hotel. The lease will also provide a long-term funding source to the City for the operation of the Hay St. parking garage.

Council acted on March 7 to call for a public hearing on March 19. In order to meet the statutorily required notice period, the public hearing was noticed for March 26.

Issues/Analysis:

The lease must be considered by Council through the same process as a sale. The key terms include:

- 90 spaces subject to joint use
- 33 year initial term
- 3 renewal options of 25 years
- \$50 rent per space per month for first 7 years
- Rental rate subject to increase by up to 5% each year dependent on a number of factors

Due to the length of the lease obligation, state law requires that Council's approval process mirror that of a sale of land. This requires a public hearing with a 10 day advance notification including specific information to be provided in that notice.

The lease will not be effective until the garage is completed.

The lender funding the renovation of the Prince Charles Hotel has also asked for the execution of the attached Recognition and Non-Disturbance agreement. This agreement

simply requires that the lender be notified of any potential breach so that they can choose to cure the breach and maintain the lease. It also requires that the lender approve of any amendment during the term of their loan on the property.

The request for the non-disturbance agreement is evidence of the importance of the parking lease to the financing of the Prince Charles Hotel restoration project. The lender has made the execution of this lease a pre-condition to that financing. That was the reason for including this mutual obligation in the Downtown Development Agreement executed by the City and PCH.

Budget Impact:

Initial revenue, upon completion of the garage and commencement of the lease, will be \$54,000 per year.

Options:

After the Public Hearing,

- Authorize the City Manager to execute the lease and non-disturbance agreements substantially in the form attached.
- Not provide the recommended authorization and provide alternate direction to staff. This would delay the financing for the Prince Charles renovation project.

Recommended Action:

Staff recommends that Council authorize the City Manager to execute the parking lease and non-disturbance agreements substantially in the forms attached.

Attachments:

- Proposed PCH Parking Lease for Hay St. Garage
- Proposed Parking Lease Recognition and Non-Disturbance Agreement

PARKING LEASE AGREEMENT

THIS PARKING LEASE AGREEMENT (the "Agreement") is made as of this ____ day of _____, 2018, between the CITY OF FAYETTEVILLE, a municipal corporation organized and existing under the laws of North Carolina ("City"), and PRINCE CHARLES HOLDINGS, LLC, a North Carolina limited liability company ("Tenant").

RECITALS:

City will own a parking garage (the "Garage") planned to be constructed on the property lying on the north side of Hay Street, Fayetteville, North Carolina, being designated as Lot 3 containing 1.00 acre shown on the plat recorded in Plat Book 139, Page 148. Tenant desires to lease from City parking spaces in the Garage, and City desires to lease parking spaces in the Garage to Tenant.

NOW, THEREFORE, pursuant to N.C.G.S. §§ 160A-272 and 158-7.1, and in consideration of the foregoing, the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Lease of Parking Spaces. During the Term (defined below) of this Agreement, City hereby leases to Tenant, and Tenant hereby leases from City, ninety (90) unreserved parking spaces in the Garage (the "Parking Spaces"). Tenant shall have the exclusive right to use the Parking Spaces twenty four hours a day, seven days a week; provided that at any time during the Term, City may designate in writing to Tenant up to a maximum of thirty six (36) of the Parking Spaces (the "Workday Spaces") for the exclusive use of another user or users between the hours of 8:30 a.m. and 5:30 p.m., Fayetteville, North Carolina time, Monday through Friday, federal holidays excepted. These Workday Spaces will be unreserved Parking Spaces that will be vacated by Tenant during the hours identified. The purpose of this shared use provision concerning the Workday Spaces is to encourage the efficient use of the Garage. After any designation of Workday Spaces by City as permitted herein, City may revoke the designation of any of the Workday Spaces, thereby returning such Workday Spaces to the exclusive use of Tenant twenty four hours a day, seven days a week. At any time during the Term, City may require some or all of the Parking Spaces to be located in a designated area of the Garage. The sole permitted use of the Parking Spaces shall be for the parking of passenger vehicles specifically identified as authorized to use the Parking Spaces pursuant to the reasonable and customary procedures established by the City.

2. Term. The term of the Agreement shall be for an initial period of thirty three (33) years, commencing upon the opening of the Garage for public use (the "Commencement Date"), unless this Agreement is sooner terminated as provided for in this Agreement; provided that Tenant may elect for the Commencement Date to be on the first day of the month after the opening of the Garage for public use in order to provide an orderly transition from temporary parking to parking in the Garage. Provided Tenant is not in default of this Agreement, Tenant shall have three (3) renewal option(s) of twenty five (25) years each to extend the Term by written notice to City on or before the date that is six (6) months prior to the expiration of the Term. The lease rate upon renewal shall be the monthly parking rental rate established by the City Council by ordinance in effect eleven (11) months prior to the expiration of the initial Term (the current Term). Any termination will be effective only upon the last day of next full month after receipt by the City of

the termination notice. The lease term, including any renewal term if exercised, is referred to herein as the "Term."

3. Rent. Beginning on the Commencement Date, Tenant shall pay rent in the amount of \$50.00 per month, per space for the Parking Spaces for the first seven (7) years of the initial Term. Thereafter, for the balance of the initial Term and any renewal Term, the rent may be adjusted annually by the Fayetteville City Council, at the beginning of any City fiscal year upon ninety (90) days written notification to the Tenant; provided that such adjustment shall not result in an increase of more than five percent (5%) of the rent established in the prior fiscal year. Rate adjustments after the initial seven (7) year Term shall be based upon one (1) or more of the following factors: (1) debt service cost of the Garage; (2) any cost increases in the operation of the Garage; (3) any City of Fayetteville parking system-wide cost increases; (4) comparative rates of other parking decks owned and operated by the City located in downtown Fayetteville; and/or (5) system value adjustment for inflation as determined by the annual Consumer Price Index (CPI) for the south region for the previous twelve (12) month period. Notwithstanding the foregoing, the rent per Parking Space shall not exceed the rent for parking spaces in other parking garages owned and/or operated by the City. Payment shall be due on the first day of the month and shall be paid by the Tenant in one check or electronic payment made payable to "City of Fayetteville," at the City's address for payment as City may designate in writing from time to time. Partial month's rent will be prorated based on the number of days in the partial month. If Tenant fails to make the monthly rent payment by the 5th of any month, a late fee of four percent (4%) of the monthly invoice amount past due, or such lesser amount as may be established by the City in its fee schedules, will be assessed. Furthermore, any past due payments shall also accrue interest at the rate of one percent (1%) per month for any portion of the payment thirty (30) days or more in arrears until the full amount is paid, with any payments being applied first to any interest and late fees due.

4. Operation and Maintenance.

a. City or its designated operator shall operate the Garage with all services and facilities normally associated with comparable public parking garages in the City of Fayetteville, including lighting and signage to ensure the safe flow of vehicular and pedestrian traffic. City shall allow Tenant unimpeded and open access to the Parking Spaces subject to the designation of Workday Spaces. City may number individually the spaces in the Garage and will provide adequate signage for the orderly management of the Garage. The City will enforce the use of the Garage using the standard ticketing, booting, and towing policies in operation for management of other downtown City parking garages. City will provide access fobs or cards to Tenant, at least one per space, and will offer replacement fobs or cards for a reasonable fee.

b. City will maintain the Garage in good working condition, including routine cleaning and all maintenance, repair and replacement. City will coordinate in advance any maintenance or repair with Tenant prior to any such work, and will use commercially reasonable efforts to minimize interference with the use, occupation and enjoyment of the Parking Spaces by Tenant. Maintenance and repairs will be confined to the area actually being so maintained or repaired to the extent reasonably possible. In the event that Tenant is denied the use of any Parking Spaces because of any such maintenance or repairs, City will provide substitute parking spaces (in the Garage, if available) on a space by space basis for the period of time the Parking Spaces are unavailable to Tenant, at no additional cost to Tenant. The substitute parking spaces will be at a

location within reasonable walking distance of the Prince Charles Hotel property and mutually agreeable to the City and Tenant, which agreement shall not to be unreasonably withheld.

5. Casualty and Condemnation. If any portion of the Garage is damaged or destroyed as a result of a casualty event such that the use of the Parking Spaces is compromised, then City shall promptly repair and/or rebuild the Garage, including any affected Parking Spaces. For any casualty that renders more than half of the parking spaces in the Garage unusable, City shall have up to eighteen (18) months to repair and/or rebuild the Garage, provided that City will use its best efforts to complete the repair and/or reconstruction in a shorter time. For any period of time that any Parking Spaces are unavailable, subject to the force majeure provisions of Section 8 below, City shall provide Tenant substitute parking spaces, on a space by space basis, as contemplated in above Section 4.b. In the event that any or all of the Parking Spaces become unavailable as a result of condemnation, City shall provide substitute parking spaces as contemplated in Section 4.b. above on a space by space basis.

6. Tenant Default.

a. Each of the following shall constitute a default hereunder by Tenant (each a “Default”):

i. The failure by Tenant to make any payment due to City hereunder within fifteen (15) days after written notice of nonpayment is given by City to the Tenant;

ii. The failure by Tenant to perform any of its other covenants or obligations hereunder within sixty (60) days after written notice of nonperformance is given by the City to the Tenant; provided, however, that if such failure to perform cannot reasonably be cured within sixty (60) days, the Tenant shall not be in default if it commences within sixty (60) days steps reasonably calculated to cure the nonperformance and in good faith pursues those steps diligently and in good faith to completion (not to exceed ninety (90) days).

b. Upon the occurrence of a Default as set forth in Section 6.a. above, the City may immediately terminate this Agreement by written notice to the Tenant. In addition to this right to terminate this Agreement, the City may also in the event of a Default by Tenant hereunder exercise any and all other rights and remedies available to the City at law or in equity, including without limitation the recovery of any and all monetary damages that the City has suffered as a result of such Default, provided that City shall make commercially reasonable efforts to mitigate Tenant’s damages.

c. The City agrees to give Tenant’s first deed of trust lender on the Project, by certified mail, return receipt requested, a copy of any notice of default sent to Tenant, provided that the City has been notified in writing of the address of Tenant’s lender. The City further agrees that if Tenant shall have failed to cure any default under this Agreement within the time provided for in this Agreement, then prior to the City exercising any right to terminate this Agreement on account of such default, Tenant’s lender shall have an additional sixty (60) days within which to cure such default. If such default cannot be cured within that time, Tenant’s lender shall have such additional time as may be necessary if within such sixty (60) days, Tenant’s lender has commenced and is diligently pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings, if necessary to effect such cure), provided that Tenant’s lender shall not

have more than ninety (90) days to cure. The City may not exercise any right to terminate this Agreement on account of any such default by Tenant's, whether available under this Agreement, at law or in equity, while such remedies are being so diligently pursued by Tenant's lender.

7. City Default. In the event of any default, nonperformance, or breach of any of the terms or conditions of this Agreement by the City, Tenant shall be entitled to the repayment of monies paid by Tenant to the City or a deduction from any payment due from Tenant to the City for any Parking Spaces that are not able to be used due to such default, nonperformance, or breach for the period of time of such inability to use the Parking Spaces. In addition to the remedies set forth in the prior sentence, if the City is in default, nonperformance, or breach of any of the terms or conditions of the Agreement, Tenant may provide the City with written notice of the same and the City shall have sixty (60) days following receipt of such notice from the Tenant to cure any such default, nonperformance, or breach, provided if such default, nonperformance, or breach cannot be cured within sixty (60) days from the date of receipt of the notice from the Tenant, the City, and/or its mortgagee shall be deemed to have cured the default as long as the City undertakes to remedy the same within sixty (60) days following receipt of notice and the City diligently proceeds to remedy such default, nonperformance, and/or breach.

8. Force Majeure. A delay in, or failure of, performance by any party, shall not constitute a default, nor shall the Tenant or the City be held liable for loss or damage, or be in breach of this Agreement, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such party, and its agents, employees, contractors, subcontractors, and consultants, including results from Acts of God or the public enemy, compliance with any order or request of any governmental authority or person authorized to act therefore, acts of declared or undeclared war, public disorders, rebellion, sabotage, revolution, earthquake, floods, riots, strikes, labor or equipment difficulties, delays in transportation, inability to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities or any other causes, whether direct or indirect, and which by the exercise of reasonable diligence said party is unable to prevent. For purposes of this Agreement any one delay caused by any such occurrence shall not be deemed to last longer than six (6) months and the party claiming delay caused by any and all such occurrences shall give the other party written notice of the same within thirty (30) days after the date such claiming party learns of or reasonably should have known of such occurrence. Notwithstanding anything else set forth above, after a total of nine (9) months of delays of any type have been claimed by a party as being subject to force majeure, no further delays or claims of any type shall be claimed by such party as being subject to force majeure and/or being an excusable delay.

9. Insurance Requirements. Tenant shall maintain commercial general liability insurance in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence, with a General Aggregate limit per location of at least Two Million and No/100 Dollars (\$2,000,000.00) and statutory workers' compensation coverage if Tenant hires any employees. Such insurance coverage shall be obtained at the Tenant's sole expense and maintained during the Term of this Agreement and shall be effective prior to the beginning of any performance by the Tenant or others under this Agreement. All insurance companies providing the coverages required hereunder must be lawfully authorized to do business in North Carolina and be acceptable to City's risk manager, in its reasonable discretion. Certificates evidencing required insurance shall be delivered to the City prior to any use of the Spaces and upon renewal of the applicable policies.

Notice of cancellation or reduction or elimination of coverage shall be provided to additional insureds in accordance with the terms of the applicable policy.

10. Indemnity. Tenant hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless City and its council members, officers, employees, agents, contractors, subcontractors, successors, assigns, licensees, mortgagees of City and invitees (individually a "City Indemnitee" and collectively, "City Indemnitees") from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a City Indemnitee, as applicable (collectively, "City Claims"), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by Tenant under this Agreement (including breach of any representation, warranty or covenant of Tenant contained herein); or (ii) any negligent act or omission of Tenant, including, without limitation, injury to or death of any person or damage to property arising out of Tenant's use of the Parking Spaces, except in all cases to the extent such City Claims are caused by the negligent act or omission or willful misconduct of City or City Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Tax Liability. The provisions of this Agreement shall not be deemed to require Tenant to pay, by whatever name called, income or receipts or excess profits taxes assessed against City, or any capital levy, rent, gift or transfer taxes incurred by City, pertaining to the ownership or operation of the Garage.

12. Title to Property; Memorandum.

a. City covenants that it has full right to enter into this Agreement as of the date hereof and City is or, by the Commencement Date, will be seized in fee simple of and have good and marketable title to the Garage, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent City from performing its obligations hereunder.

b. Within fifteen (15) days of Tenant's request, City will execute and deliver to Tenant, or upon execution of this Lease if requested, City will execute and deliver to Tenant an original memorandum of this Agreement in form reasonably satisfactory to City and Tenant, and Tenant may record the memorandum in the land records. Tenant will pay all recording taxes or fees required in connection with recording such memorandum.

13. Assignment and Leasing. Tenant may assign all or part of its interest in this Lease, including collateral assignment to Tenant's lender(s), and may sublease any or all of the Parking Spaces from time to time, with notice to the City, provided that no notice shall be required for any sublease or subleases to residents of apartments in the Prince Charles Hotel property. Notwithstanding that Tenant's assignment and sublease of the Parking Spaces is permitted without City consent, within fifteen (15) days of Tenant's request, City will execute and deliver to Tenant a written consent to an assignment of its interest hereunder or sublease of any or all of the Parking Spaces.

14. Notices. Except where other forms of notice are expressly and specifically authorized in this Agreement, all notices or other communications required or desired to be given

with respect to this Agreement shall be in writing and shall be addressed as follows:

| | |
|-----------------|--|
| To the City | City of Fayetteville 433 Hay Street Fayetteville, NC 28401 Attn: City Manager |
| With a copy to: | City of Fayetteville 433 Hay Street Fayetteville, NC 28401 Attn: City Attorney |
| To Tenant: | Prince Charles Holdings, LLC PO Box 650 Durham, NC 27702 Attn: Jordan Jones |
| With a copy to: | Kennon Craver, PLLC 4011 University Dr., Ste. 300 Durham, NC 27707 Attn: William A. Anderson, III |

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

15. Entire Agreement. This Agreement, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties hereto with respect to the matters addressed herein and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by City and Tenant.

16. Miscellaneous.

a. The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

b. In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

c. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of North Carolina.

d. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

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[City signature page to Parking Lease Agreement]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY:

City of Fayetteville

By: _____

Name: _____

Title: _____

ATTEST:

_____, City Clerk

Approved as to form:

_____, City Attorney

[Tenant signature page to Parking Lease Agreement]

TENANT:

Prince Charles Holdings, LLC

By: _____

Name: Michael Lemanski

Title: Manager

RECOGNITION AND NON-DISTURBANCE AGREEMENT

THIS RECOGNITION AND NON-DISTURBANCE AGREEMENT dated March ____, 2018 (the "**Agreement**"), by and among **PRINCE CHARLES HOLDINGS LLC**, a North Carolina limited liability company ("**Tenant**"), **CARTER BANK & TRUST**, a Virginia banking corporation ("**Bank**"), and **THE CITY OF FAYETTEVILLE, NORTH CAROLINA**, a public body corporate and politic ("**Landlord**").

BACKGROUND

A. Bank has provided a loan (the "**Loan**") to Tenant, secured by, among other things, a lien on the Property described on **Exhibit A** attached hereto (the "**Property**"), and secured by a Deed of Trust and certain other instruments, dated on or about the date hereof (the "**Security Instruments**") covering the Property.

B. Tenant entered into a Parking Lease Agreement dated March __, 2018, with Landlord, a complete copy of which has been provided to the Bank (the "**Lease**"), covering certain property as described in the Lease (the "**Leased Premises**"); and

C. Bank desires to be assured of continued occupancy of the Leased Premises under the terms of the Lease in the event of a default by Tenant under the terms of the Loan, and Landlord has agreed to provide such assurance, subject to the terms and conditions set forth herein.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, agree as follows:

AGREEMENT

1. **RECITALS AND DEFINITIONS.** The Recitals set forth above are hereby incorporated by reference and made a part of this Agreement as if fully stated herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

2. **RECOGNITION; NON-DISTURBANCE.** Landlord agrees that in the event Bank steps into the shoes of Tenant under the terms of the Lease due to a default by Tenant under the terms and conditions of the Security Instruments (the "Recognition Date"), Landlord shall recognize the Lease as a direct lease between Landlord and Bank and shall not disturb Bank's use and occupancy of the Leased Premises so long as Bank (i) is not in default under the Lease past any applicable notice and cure periods and (ii) complies with the terms of this Agreement.

3. **COLLATERAL ASSIGNMENT OF LEASE.**

Landlord acknowledges notice of and consents to the Tenant's collateral assignment of the Lease included as part of the Security Instruments. Landlord acknowledges that Bank has not assumed any liability for Tenant's performance under the Lease, and Landlord agrees that Bank's payment of rent or other exercise of Tenant's rights or obligations under the Lease shall not render Bank liable for any obligations of the Tenant under the Lease unless Bank takes

assignment of the Lease as provided herein or specifically so agrees in writing. An undertaking by Bank to cure or cause the cure of a default or series of defaults shall not in itself be construed as evidencing an agreement on Bank's part to assume liability for Tenant's obligations under the Lease.

4. **LIMITATION OF LIABILITY.**

In the event that Bank succeeds to the interest of Tenant under the Lease, Bank and any successor shall assume and be bound by the obligations of Tenant under the Lease which accrue from and after such party's succession to Tenant's interest in the Leased Premises, but Bank and such successor shall not be: (a) liable for any act or omission of any prior tenant (including Tenant); or (b) bound by any amendment, modification or termination of the Lease affecting the interests of Bank, made after the date hereof without Bank's prior written consent. Nothing in this section shall be deemed to waive any of Bank's rights and remedies against any prior landlord.

5. **RIGHT TO CURE DEFAULTS.**

Landlord agrees to give written notice to Bank of any default by Tenant under the Lease, specifying the nature of such default, and thereupon Bank shall have the right (but not the obligation) to cure such default, all in accordance with the terms and conditions of Section 6(c) of the Lease. Landlord acknowledges that this Agreement constitutes notice of Bank's address for delivery of notices.

6. **COVENANTS AND REPRESENTATIONS.**

Each of Tenant and Landlord hereby covenants and agrees with Bank that so long as the Loan remains outstanding, Tenant and Landlord shall: (a) not amend or modify the Lease without Bank's prior written consent; and (b) deliver to Bank, from time to time and within ten (10) days from the date of request, a written estoppel certificate in form and substance reasonably satisfactory to Bank certifying to certain factual matters relating to the Lease.

7. **MISCELLANEOUS.**

(a) **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns. Nothing contained in this Agreement shall in any way affect or impair the lien created by the Security Instruments, except as specifically set forth herein.

(b) **Modifications.** This Agreement may not be supplemented, amended or modified unless set forth in writing and signed by the parties hereto.

(c) **Notices.** All notices and communications under this Agreement shall be in writing and shall be given by either (a) hand delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid) to the addresses listed in this Agreement. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United

States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

(d) **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of North Carolina.

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EXHIBIT A

DESCRIPTION OF PROPERTY