



City of Jonesboro

900 West Monroe
Jonesboro, AR 72401

Council Agenda City Council

Tuesday, May 3, 2011

6:30 PM

Huntington Building

PUBLIC WORKS COMMITTEE MEETING AT 5:30 P.M.

City Council Chambers, Huntington Building

NOMINATING AND RULES COMMITTEE MEETING AT 6:15 P.M.

City Council Chambers, Huntington Building

1. CALL TO ORDER BY MAYOR PERRIN AT 6:30 P.M.

2. PLEDGE OF ALLEGIANCE AND INVOCATION

3. ROLL CALL BY CITY CLERK DONNA JACKSON

4. SPECIAL PRESENTATIONS

COM-11:030 Proclamation by the Mayor for Motorcycle Awareness Month

Sponsors: Mayor's Office

5. CONSENT AGENDA

All items listed below will be voted on in one motion unless a council member requests a separate action on one or more items.

MIN-11:034 Minutes for the City Council meeting on April 19, 2011.

Attachments: [Minutes](#)

RES-10:123 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT A PERMANENT DRAINAGE EASEMENT FROM MALL AT TURTLE CREEK, LLC FOR THE PURPOSE OF MAKING DRAINAGE IMPROVEMENTS

Sponsors: Engineering

Attachments: [Exhibit A](#)
[Drainage easement](#)

Legislative History

10/5/10	Public Works Council Committee	Recommended to Council
11/4/10	City Council	Postponed Temporarily

RES-11:034 A RESOLUTION TO ACCEPT A RESTRICTIVE AGREEMENT FOR A GREENSPACE SITE FOR HARPS FOOD STORES INC., A COMMERCIAL PLANNED DISTRICT DEVELOPMENT

Sponsors: Planning

Attachments: [Agreement](#)

Legislative History

4/5/11	Public Works Council Committee	Recommended to Council
4/19/11	City Council	Tabled

RES-11:041 A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF JONESBORO TO CONTINUE THE CONTRACT WITH BRACKETT-KRENNERICH AND ASSOCIATES, P.A. FOR ARCHITECTURAL SERVICES RELATED TO THE CONSTRUCTION OF JONESBORO FIRE STATIONS.

Sponsors: Fire Department

Attachments: [Fire Station 4 Owner Architect Contract](#)

Legislative History

4/19/11	Public Safety Council Committee	Recommended to Council
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RES-11:043 A RESOLUTION FOR THE CITY OF JONESBORO TO ENTER INTO A CONTRACT WITH COLLEGIATE PROPERTIES, INC FOR CORPORATE HOUSING

Sponsors: Police Department

Attachments: [Gainesville FL](#)

Legislative History

4/19/11	Public Safety Council Committee	Recommended to Council
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6. NEW BUSINESS

ORDINANCES ON FIRST READING

ORD-11:037 AN ORDINANCE AMENDING THE 2010 BUDGET ORDINANCE FOR THE CITY OF JONESBORO

Sponsors: Finance

EMERGENCY CLAUSE

Legislative History

4/26/11	Finance & Administration Council Committee	Recommended to Council
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ORD-11:038 AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO I-1 LUO LOCATED AT 300 NORTH KATHLEEN AS REQUESTED BY DEREK BALTZ

Attachments: [Plat](#)

[MAPC Report](#)

ORD-11:039 AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE ELAVON TO PERFORM PROFESSIONAL SERVICES FOR COLLECTION OF ALL PAYMENTS MADE TO THE CITY OF JONESBORO BY CREDIT CARDS

Sponsors: Finance

EMERGENCY CLAUSE

Legislative History

4/26/11	Finance & Administration Council Committee	Recommended to Council
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ORD-11:040 AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF RADIO UPGRADES FOR PUBLIC SAFETY, PUBLIC WORKS AND PARKS INFRASTRUCTURE.

EMERGENCY CLAUSE

Legislative History

4/26/11	Finance & Administration Council Committee	Recommended to Council
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7. UNFINISHED BUSINESS

8. MAYOR'S REPORTS

9. CITY COUNCIL REPORTS

10. PUBLIC COMMENTS

Public Comments are limited to 5 minutes per person for a total of 15 minutes.

11. ADJOURNMENT



City of Jonesboro

515 West Washington
Jonesboro, AR 72401

Legislation Details (With Text)

File #: COM-11:030 **Version:** 1 **Name:**
Type: Other Communications **Status:** To Be Introduced
File created: 4/18/2011 **In control:** City Council
On agenda: **Final action:**
Title: Proclamation by the Mayor for Motorcycle Awareness Month
Sponsors: Mayor's Office
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
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Title
Proclamation by the Mayor for Motorcycle Awareness Month



City of Jonesboro

515 West Washington
Jonesboro, AR 72401

Legislation Details (With Text)

File #: MIN-11:034 **Version:** 1 **Name:**
Type: Minutes **Status:** To Be Introduced
File created: 4/25/2011 **In control:** City Council
On agenda: **Final action:**
Title: Minutes for the City Council meeting on April 19, 2011.
Sponsors:
Indexes:
Code sections:
Attachments: [Minutes](#)

Date	Ver.	Action By	Action	Result
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title
Minutes for the City Council meeting on April 19, 2011.



City of Jonesboro

900 West Monroe
Jonesboro, AR 72401

Meeting Minutes City Council

Tuesday, April 19, 2011

6:30 PM

Huntington Building

PUBLIC SAFETY COMMITTEE MEETING AT 5:30 P.M.

1. CALL TO ORDER BY MAYOR PERRIN AT 6:30 P.M.

2. PLEDGE OF ALLEGIANCE AND INVOCATION

3. ROLL CALL BY CITY CLERK DONNA JACKSON

Present 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

4. SPECIAL PRESENTATIONS

COM-11:026 Proclamation by the Mayor for Goodwill Industries Week

Sponsors: Mayor's Office

Mayor Perrin proclaimed the week of May 1 - May 9, 2011, as Goodwill Industries Week and encouraged the citizens to support Goodwill industries.

COM-11:029 Proclamation by the Mayor to CASA - Child Abuse Month

Sponsors: Mayor's Office

Mayor Perrin proclaimed April, 2011, as Child Abuse Prevention Month and asked everyone to participate in efforts to prevent child abuse.

COM-11:031 Proclamation concerning Junior Auxiliary Week

Sponsors: Mayor's Office

Mayor Perrin proclaimed April 3 - April 9, 2011, as Junior Auxiliary Week

5. CONSENT AGENDA

Approval of the Consent Agenda

A motion was made by Councilman Chris Moore, seconded by Councilman Gene Vance, to Approve the Consent Agenda with the exception of RES-11:034. A motion was made that these files be approved by consent voice

vote

Aye: 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

MIN-11:030 Minutes for the City Council meeting on April 5, 2011

Attachments: [Minutes](#)

This item was PASSED on the consent agenda.

RES-11:028 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT RIGHT-OF-WAY FROM ROBERT S APPLETON (APPLETON BROTHERS FARMS INC.) FOR ROAD IMPROVEMENTS

Sponsors: Engineering

Attachments: [Appleton - Tract 1.pdf](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-032-2011

RES-11:029 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT RIGHT-OF-WAY FROM ROBERT S APPLETON (APPLETON BROTHERS FARMS INC) FOR ROAD IMPROVEMENTS

Sponsors: Engineering

Attachments: [Appleton - Tract 2.pdf](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-033-2011

RES-11:030 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT RIGHT-OF-WAY FROM MARYSTEL APPLETON (APPLETON FAMILY LIMITED PARTNERSHIP) FOR ROAD IMPROVEMENTS

Sponsors: Engineering

Attachments: [Appleton - Tract 3.pdf](#)

This item was PASSED on the consent agenda.

Enactment No: R-EN-034-2011

RES-11:033 A RESOLUTION TO CONTRACT WITH INTEGRITY FIRST BANK FOR SPONSORSHIP OF A CONCESSION STAND SIGN AT JOE MACK CAMPBELL PARK

Sponsors: Parks & Recreation

Attachments: [Integrity First Bank](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-035-2011

RES-11:038 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID AND ENTER INTO A CONTRACT WITH GILLIS, INC. FOR THE 2011 WILKINS-IVY GREEN DETENTION IMPROVEMENTS - JOB NO. 2011:06

Sponsors: Engineering

Attachments: [Contract Documents.pdf](#)
[Bid Tab.pdf](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-036-2011

RES-11:039 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID AND ENTER INTO A CONTRACT WITH ATLAS ASPHALT, INC. FOR THE 2011 INDUSTRIAL PARK ROAD IMPROVEMENTS - JOB NO. 2011:05

Sponsors: Engineering

Attachments: [Contract Documents.pdf](#)
[Bid Tab.pdf](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-037-2011

RES-11:044 A RESOLUTION TO MAKE APPOINTMENTS/REAPPOINTMENTS TO BOARDS AND COMMISSIONS AS RECOMMENDED BY THE MAYOR

Sponsors: Mayor's Office

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-038-2011

RES-11:045 A RESOLUTION TO ACCEPT A MAINTENANCE AGREEMENT FOR STORMWATER MANAGEMENT FACILITIES FOR FLOY RED COMMONS ON STADIUM AVE., A COMMERCIAL DEVELOPMENT

Attachments: [Maintenance agreement](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-039-2011

RES-11:046 A RESOLUTION TO AMEND THE FACILITY USAGE AGREEMENT FOR ASSOCIATION USE OF JOE MACK CAMPBELL PARK BETWEEN JONESBORO BASEBALL BOOSTERS AND THE CITY OF JONESBORO PARKS AND RECREATION DEPARTMENT

Sponsors: Parks & Recreation

Attachments: [Exhibit A - Original JBB Agreement](#)
[JBB Agreement Amendment 1](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-040-2011

RES-11:047 A RESOLUTION TO CONTRACT WITH COMFORT SUITES FOR SPONSORSHIP OF A CONCESSION STAND SIGN AT JOE MACK CAMPBELL PARK

Sponsors: Parks & Recreation

Attachments: [Comfort Suites](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-041-2011

RES-11:050 A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO ACCEPT THE LOW BID AND ENTER INTO A CONTRACT WITH BECKER FAB & ERECTION, INC. FOR THE DESIGN/BUILD - CRAIGHEAD FOREST PARK PAVILION BUILDING

Sponsors: Parks & Recreation

Attachments: [Project Manual for Pavilion mar 17 2011.pdf](#)
[Bid Tab.pdf](#)

This item was **PASSED** on the consent agenda.

Enactment No: R-EN-042-2011

6. NEW BUSINESS

RES-11:034 A RESOLUTION TO ACCEPT A RESTRICTIVE AGREEMENT FOR A GREENSPACE SITE FOR HARPS FOOD STORES INC., A COMMERCIAL PLANNED DISTRICT DEVELOPMENT

Sponsors: Planning

Attachments: [Greenspace Restriction and Use Agreement - Harp's Foods](#)

A motion was made by Councilman John Street, seconded by Councilman Chris Moore, that this matter be Tabled . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

ORDINANCES ON FIRST READING

ORD-11:035 AN ORDINANCE TO CONTRACT WITH E.C. BARTON AND CO. FOR THE CONSTRUCTION OF A DECORATIVE ENTRANCE AT CITY CEMETERY

Sponsors: Parks & Recreation

Attachments: [Barton's Agreement](#)
[Stuck & Associates drawing](#)

Councilman Moore offered the ordinance for first reading by title only.

Councilman Street motioned, seconded by Councilman Moore, to suspend the rules and waive second and third readings. All voted aye.

A motion was made by Councilman Chris Moore, seconded by Councilwoman Ann Williams, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover;Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

Enactment No: O-EN-026-2011

ORD-11:036

AN ORDINANCE TO CONTRACT WITH ST. BERNARDS FOR THE CONSTRUCTION OF A DECORATIVE ENTRANCE AT CITY CEMETERY

Sponsors: Parks & Recreation

Attachments: [St. Bernards Agreement](#)

Councilman Moore offered the ordinance for first reading by title only.

Councilman Street motioned, seconded by Councilman Vance, to suspend the rules and waive second and third readings. All voted aye.

A motion was made by Councilman Chris Moore, seconded by Councilwoman Ann Williams, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover;Ann Williams;Charles Frierson;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

Enactment No: O-EN-027-2011

7. UNFINISHED BUSINESS

Councilman Frierson stated due to the next ordinances all being on second or third readings. Councilman Frierson motioned, seconded by Councilman Moore, to limit discussion on each side to ten minutes and to allow for more than one person to speak for each side within the respective ten minute allotment. All voted aye, with the exception of Councilman Vance and Councilman Johnson who abstained from voting.

ORDINANCES ON SECOND READING

ORD-11:028

AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-2 TO PD-RM FOR PROPERTY LOCATED AT 1711 ARCH STREET AS REQUESTED BY WESLEY ABERNATHY

Attachments: [Plat](#)
 [MAPC Report](#)
 [Layout](#)
 [Opposition material](#)

Mr. Burl Turman spoke in favor of the rezoning in order to control what Mr. Abernathy builds on the property. He noted at the March 15th meeting it was asked for Mr. Abernathy to meet with the neighborhood to discuss the plans for the property and that has not happened. He explained he reserved the Huntington Building in which to hold the meeting, but Mr. Abernathy did not show. He further explained a friend of Mr. Abernathy's offered a neighboring resident, Mr. Percival, \$15,000 for his house and three lots. He stated Mr. Percival informed him of the offer, to which he reported it to the Mayor's Office and was directed to the Planning Department. He added when he contacted City Planner Otis Spriggs about the offer, Mr. Spriggs spoke rudely to him. He then made an appointment with Mr. Spriggs and Mr. Spriggs showed up an hour late to the meeting and informed him the rezoning was a done deal, so there would be no point in complaining. Mr. Turman stated he did not like people building on the property and they don't need another Links or Villas.

Councilman Moore asked for clarification and questioned if Mr. Abernathy is asking for one less apartment than what he would be allowed to build if the rezoning wasn't passed. Mr. Spriggs stated that's correct. He also noted the rezoning will restrict Mr. Abernathy to a more preferred layout of the property.

Ms. Julie Sartain stated Mr. Abernathy was asked by the Mayor to meet with the residents about the rezoning and Mr. Abernathy has not made any effort to do so.

Mr. Wesley Abernathy explained Wednesdays are his day to see his daughter. He further explained they arrived at the Huntington Building to meet with the neighbors, but the doors were locked. He noted the land is currently zoned R-2 and that the man he bought the property from hadn't heard from anyone in the neighborhood in 25 years.

Mr. Turman spoke and stated the day the meeting was supposed to be held they did not hear from Mr. Abernathy by 3:00 p.m., so he informed the City he would not be needing to use the building.

Councilman Frierson questioned whether the current zoning limits the buildings to single-stories. Mr. Spriggs stated the height limit is 35 feet, so townhomes could be built on the property. He added the proposed zoning is for single-story structures.

Councilman Moore motioned, seconded by Councilman Street, to suspend the rules and waive the third reading. All voted aye.

Ms. Sartain added since the last time the Council met the residents have had to wait an hour for the nearby train to move and there has been a time when the trains on each end of the neighborhood ended up blocking them in, which backed up traffic and caused a lot of problems.

Councilman Dover questioned what the significant differences are between what the current zoning is and the proposed zoning. Mr. Spriggs explained the current zoning restricts it to one structure per lot, but the proposed zoning will allow for a development such as the one shown in the staff report attached to the ordinance, which is cookie cutter with a street running through the middle. He added the planned development will have a privacy fence, as well as other items that are detailed in the ordinance, and the property owners will have to abide by the layout as approved by

Council. He noted the ordinance will stay with the property, no matter who the owner is.

A motion was made by Councilman John Street, seconded by Councilman Chris Moore, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

Enactment No: O-EN-028-2011

ORD-11:032

AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO RM-12 LUO FOR PROPERTY LOCATED ON THE EAST SIDE OF COMMERCE BETWEEN MOORE CREEK AND PACIFIC ROAD AS REQUESTED BY ROBERT REES

Attachments: [Plat](#)
[MAPC Report](#)
[Citizen email message - Jennifer Easley](#)
[Opposition petition and email](#)

Ms. Jennifer Easley, 5910 Pacific Road, presented the Council with a petition and a letter from the opposition. She noted the petition is signed by more than 50 residents that live on Commerce, Pacific and Easley Lane. She explained every person they have spoken to is against the rezoning. She further explained the infrastructure is not capable of handling the added traffic. She noted their neighborhood was one of the last to receive power when the ice storm hit last year and the infrastructure has not improved. Ms. Easley discussed the neighborhood issues and traffic concerns. She noted they were told by MAPC during the development of the Land Use Map that the area should be low-density. She then discussed the surrounding neighborhood and current apartment openings. Ms. Easley questioned what might happen in the future with other rezonings if this rezoning is approved.

Mr. Robert Rees, property owner, explained they asked for RM-16, but have agreed to RM-12. He added they have calls every day for apartments, but he doesn't have many that are open. He noted plants in the Industrial Park are hiring more employees and those employees need a place to live, but houses are harder for people to buy than it used to be. He further explained his track record shows apartments that are kept up. He stated he will have single-story units.

Councilman Frierson questioned whether the ordinance will have any control over what is being built on the property. Mr. Spriggs stated there are some constraints due to the limited use overlay. He then discussed the limits and stated they are comfortable with the proposed rezoning with MAPC looking at the site plan.

Councilman Street questioned how long it will take to build on the 30 acres. Mr. Rees answered it will take a long time depending on how long it takes to get financing, but he is not expecting to build it all at one time.

Ms. Easley stated there are apartments and asked for single family homes in that area.

Councilman Fears motioned, seconded by Councilman Moore, to suspend the rules and waive the third reading. Councilman Dover questioned how many acres will be developed. Mr. Spriggs stated Mr. Rees originally proposed to develop 80 acres. All

voted aye on the motion, with the exception of Councilman Gibson who voted nay.

A motion was made by Councilman Chris Moore, seconded by Councilman John Street, that this matter be Passed. After a tie vote, Mayor Perrin voted to pass the measure.

Aye: 6 - Ann Williams; John Street; Mitch Johnson; Gene Vance; Rennell Woods and Charles Coleman

Nay: 6 - Darrel Dover; Charles Frierson; Chris Moore; Tim McCall; Chris Gibson and Mikel Fears

Enactment No: O-EN-029-2011

ORDINANCES ON THIRD READING

ORD-11:026

AN ORDINANCE ACCEPTING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF JONESBORO, ARKANSAS, AND MAKING SAME A PART OF THE CITY OF JONESBORO, ARKANSAS, AMENDING THE ZONING ORDINANCE OF JONESBORO, ARKANSAS, AND ASSIGNING SAME TO WARDS

Attachments:

[Plat](#)

[Layout](#)

[MAPC Report](#)

[Annexation Application](#)

[Petition to Accept Annexation](#)

[Opposition - attorneys material for March 15 meeting](#)

[Opposition - citizen material for March 15 meeting](#)

[Opposition - attorneys material for April 5 meeting](#)

[Opposition - citizen emails for April 5 meeting](#)

[Opposition - James Malone information for April 5 meeting](#)

[Opposition - other supporting information for April 5 meeting](#)

[Citizen email message - Carolyn Deal](#)

[Citizen email message - Shelly Jones](#)

[Citizen email message - Shelly Jones #2](#)

[Citizen email message - Shelly Jones #2 supporting info](#)

[Citizen email message - Shelly Jones #3](#)

[Citizen email message - Shelly Jones #3 supporting info](#)

[Citizen email message - Shelly Jones #4](#)

[Citizen email message - Michelle Malone](#)

[Citizen email message - Shelly Jones #5](#)

[Citizen email message - Shelly Jones #5 supporting info](#)

[Citizen email message - Shelly Jones #6](#)

[Citizen email message - Shelly Jones #6 supporting info](#)

[Citizen email message - Shelly Jones #7](#)

[Citizen email message - Catherine Willis](#)

[Citizen email message - Myca Barker](#)

[Citizen email message - Danna Johnson](#)

[Supporting information presented at the April 19 meeting](#)

Councilman Vance, Councilman Johnson and Councilman McCall abstained from discussion and voting.

Attorney Bobby Gibson, representing the property owners, presented the Council with a PowerPoint presentation concerning the annexation. See attached file for presentation information. He noted the land use plan is to be advisory and may be changed at any time. He added the property is outside of the city limits and is not currently zoned. He stated there is a significant commercial node in the area. He explained the Fire and Police Chiefs have indicated, as stated in the MAPC report, they do not foresee a measurable impact on the surrounding area concerning public safety. He then discussed the Conway fairgrounds site, which the demographics show have a higher population around the fairgrounds site compared to where the Jonesboro proposed fairgrounds will be. A signed agreement from the Fair Board to the adjoining residents was presented showing the promises made to the residents.

Attorney Jim Lyons, representing the opposition, stated his clients have no issues with the fairground moving; rather, they just don't want it in their neighborhood. He noted the traffic will be significantly increased due to developments in the area and he added the ordinances enacted by the City need to be followed, namely the ordinances regarding paved parking.

Mr. Brian Malone, a resident in the Oak Subdivision, spoke in opposition to the annexation. He discussed the Conway development and noted the Conway fairground site is county only, while the Jonesboro site is for northeast Arkansas. He also stated the Conway fairground site does not have an amphitheatre, whereas the Jonesboro site will. He explained they have received opinions from professionals stating there will be a negative impact on the surrounding homes. He expressed concern about the statement where the Fair Board indicates they will have the fairground site at that location regardless of the annexation being a bluff. Mr. Malone further explained that while he's been living at that location he has not had to worry about crime in the neighborhood.

Councilman Moore motioned, seconded by Councilman Woods, to allow for extra time to hear the concerns of the citizens. All voted aye, with the exception of Councilmen Johnson, McCall and Vance who abstained from voting.

Mr. Bob Wood stated Highway 49 was designed to carry 50,000 cars a day, while there is currently a count of 20,000 cars per day. The construction of Baptist Hospital will increase that county by 10,000 cars per day. During ASU football games, car count would increase by 8,000 to 10,000 cars per game. Mr. Woods stated that would bring the car count up to 40,000 cars per day and that does not include any further development along Highway 49. He stated he expects the traffic to be at 50,000 cars per day by 2013, possibly sooner. He noted the fairgrounds have made no plans for the added traffic, which could negatively affect ambulances coming from Paragould. Mr. Wood explained Highway 63 as well as other locations would provide for less congested areas for the fairgrounds. He stated he does not think this is a good location for the fairgrounds, but he is supportive of the fairgrounds itself.

Mr. Gibson stated Peters and Associates conducted a traffic study with recommendations that the Fair Board is committed to seeing through. The recommendations were part of the attached packet of information discussed earlier. He noted if there were legitimate concerns regarding traffic in that area, then Peters and Associates would have addressed those issues. He added this shows a commitment by the Fair Board to move forward with the project.

Ms. Catherine Willis spoke against the annexation and expressed concern regarding the effect of the events at the fairgrounds on her children.

Councilman Moore questioned whether the Fair Board will build on the property regardless of the annexation. Mr. Gibson answered yes. Councilman Moore then questioned if the City can annex the property, but not zone the property to what the property owners are requesting. City Attorney Phillip Crego answered he doesn't think so in its current position. He noted the Council could defer a zoning request or request a zoning change in some circumstances. Councilman Frierson added the petitioners would have to go through the County Court again.

Councilman Moore asked if the Fair Board could build on the property without the annexation. Mr. Crego answered yes, that it is his understanding there are no zoning restrictions in the county that would prohibit the Fair Board from building on the property. Councilman Moore questioned if the Council chose to not annex the property and the Fair Board continued to build on the property, if the City could use funds and/or people and equipment on the property. Mr. Crego stated the general answer is no, but there would be some emergency situations and cooperation agreements that would allow the City to offer aide to a county area. He noted the circumstances would be more limited than if it were in the City limits.

After passage of the ordinance, Councilman Moore motioned, seconded by Councilwoman Williams, to adopt the emergency clause. All voted aye.

A motion was made by Councilman Chris Moore, seconded by Councilman Rennell Woods, that this matter be Passed . The motion PASSED by a unanimous vote

Aye: 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman

Enactment No: O-EN-030-2011

ORD-11:029

AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO PD-M FOR PROPERTY LOCATED NORTH OF AGGIE ROAD AND WEST OF PARAGOULD DRIVE AS REQUESTED BY GERRY MCGOUGH

Attachments: [Plat](#)
[MAPC Report](#)
[Layout](#)
[Citizen email message](#)
[Supporting information](#)
[Additional map](#)

Ms. Gerry McGough discussed the rezoning and presented the Council with information regarding the property. She noted there are numerous apartments in the area, but she reiterated she is not building apartments. She explained the property will be for owner residences and include her own house. She added she is not looking to forward to building other houses, but she would do so if she needed the money. She further explained the housing she is describing is a new concept and has spoken with others about it without and derogatory remarks. She then addressed crime issues and questioned how much crime St. Bernard's Village has because that is what she is envisioning to build. Ms. McGough explained she wants to build nice homes with play areas that would be an asset to the City.

Mr. Spriggs discussed the rezoning and explained the request is for 28 lots to be rezoned, with conditions listed in the ordinance. He noted single family homes could be built on the lots, but 50% of the residences could be a form of a duplex arrangement that would be owner-occupied. Councilman Moore questioned whether

the owner owning the residence they reside in is a stipulation in the conditions listed in the ordinance. Mr. Spriggs answered no because there is nothing on their books that would provide for enforcement. Councilman Moore then asked if there are any other thresholds for the property, such as age requirements, since Ms. McGough is referring to building an area such as St. Bernard's Village. Mr. Spriggs answered no and there would be no way to enforce those requirements; rather, they can only enforce the density.

Attorney Jim Lyons, representing the opposition, stated they have no objection to the single family residences. He noted surrounding properties are R-1 and the proposal is not consistent with the Comprehensive Plan. He added that Ms. McGough can build single-family residences, which would allow for people to live with the owners and assist them if needed. Mr. Lyons explained if the zoning is passed there is nothing to control what will happen on the property. He stated the property should remain R-1 unless Ms. McGough wants to prepare a bill of assurance for the property that will lay out what will happen there.

Ms. McGough stated she will make a bill of assurance, but is waiting on the decision of the Council before she proceeds with it.

Councilman McCall questioned whether there were any objections with the property not following the Land Use Plan. Mr. Spriggs stated there are no objections; however, they have to look at other ways to accomplish goals. He explained it would have been nice had they been able to zone the property to a single family district that would allow for accessory dwellings for individuals to assist the owners.

Councilman McCall then questioned why the MAPC passed this rezoning on even though it does not conform to the Land Use Plan. Mr. Spriggs explained Ms. McGough fell under the threshold for single family homes on the property, which is why the request was forwarded to the Council.

Councilman Frierson questioned whether this would be considered spot zoning considering Ms. McGough is staying within the numbers for residential. Mr. Crego agreed.

Councilman Moore then noted a bill of assurance is only enforceable by the property owners, not by the City of Jonesboro. Mr. Crego agreed.

Councilman Gibson expressed concern over allowing the rezoning when Ms. McGough has stated she is mainly concerned with building her own residence.

Councilman Moore clarified that the zoning would continue with future owners. Mr. Crego agreed.

A motion was made by Councilman Charles Frierson, seconded by Councilman Chris Moore, that this matter be Passed . The motion failed by the following vote.

Aye: 1 - Charles Frierson

Nay: 11 - Darrel Dover;Ann Williams;Chris Moore;John Street;Mitch Johnson;Tim McCall;Gene Vance;Chris Gibson;Rennell Woods;Mikel Fears and Charles Coleman

8. MAYOR'S REPORTS

COM-11:032

Discussion concerning settlement of the King's Ranch lawsuit

Attachments: [Letter from Abigail Sutherland](#)

Mayor Perrin discussed the King's Ranch lawsuit. He stated the APERMA attorney stated the settlement is unreasonable. Mr. Crego explained he has forwarded information to the Council regarding the financial aspects of the lawsuit and what would be claimed as damages. He further explained if the settlement is agreed to, it would not place any restrictions on the property concerning future development. He stated restrictions were proposed as part of the settlement and it was rejected by the property owners.

Councilman Street motioned, seconded by Councilman Moore, to allow the courts to make the decision concerning the lawsuit.

Attorney Jim Gramling, representing the property owners, discussed future development on the property. He stated it is his understanding that future development on the 10-acre tract would require a rezoning to R-3, which no longer exists. He referred to the 70-acre tract, which would also require a rezoning and not a conditional use permit. He explained the settlement is concerning the federal lawsuit in which the lawsuit claims the City failed to grant a reasonable accommodation by waiving the definition of family to allow up to 8 unrelated children. He noted there are already five unrelated children living on the property. Mr. Gramling stated if the settlement is agreed to it will not set a precedent because the future development will require a rezoning.

Councilman Frierson noted the two lawsuits are separate matters and questioned what the risk is if the settlement is turned down. He stated he was told the \$75,000 was about half of what the attorney's fees are. Mr. Gramling explained the federal lawsuit will consider the decrease in donations that King's Ranch has suffered since the start of the lawsuit, which is at least \$30,000 a year. He then noted if the settlement concerning the federal lawsuit is accepted by the City, then there is no reason to continue to pursue the state lawsuit.

Discussion was held regarding whether or not further discussion is needed to inform the current Council members of the situation in case they were not part of the Council when the issue was first brought to Council. Mr. Gramling stated they have spoken with the federal judge, Judge Holmes, recently that indicated if there is no settlement tonight by the Council, then the judge is ready to rule and they are confident the judge will rule in their favor.

Discussion was then held regarding possible damages and implications of accepting the settlement. Mr. Spriggs explained due to limited frontage on the road, the 10-acre tract would require a rezoning in order to construct additional homes to house more children. He added the other acreage is not associated with this request. Councilman Johnson expressed concern over future requests in order to house more children.

Attorney Jim Lyons noted proof in court regarding damages due to loss of donations faces a lot of speculation due to having to prove the donations were lost due to improper action by the Council. He added a key to the case is the Coopers have refused to stop at 8 children, which indicates they want to put more children at the location. Mr. Lyons stated the residents of the area are opposed to the City accepting the settlement. Councilman Woods questioned whether Mr. Gramling is correct in stating there could be a ruling in the near future that could go in their favor. Mr. Lyons stated he cannot tell anyone what Judge Holmes will do and it is his understanding after speaking with the APERMA attorney that Judge Holmes does not know how he

will vote. Councilman Street noted the City can appeal the ruling if needed. Mr. Lyons agreed.

Councilman Moore motioned, seconded by Councilman Street, to reject the settlement. All voted aye.

COM-11:033 Financial reports for March, 2011

Attachments: [City Sales and Use Tax Report](#)
[Combined Sales and Use Tax Report](#)
[County Sales and Use Tax Report](#)
[Deposit Collateralization Report](#)
[Expenditure Report-3-31-11](#)
[Franchise Fee Comparison Report](#)
[Hotel Occupancy Tax Comparison Report](#)
[Hotel Occupancy Tax Report](#)
[Required Reserves-3-31-11](#)
[Revenue Report-3-31-11](#)
[State Turnback & Comparison Report](#)
[Stmt of Rev Exp and Changes in FB-3-31-11](#)

Mayor Perrin thanked the public safety officers for their role in the funeral of Trumann Police Officer Jonathan Schmidt, who was killed in the line of duty last week.

9. CITY COUNCIL REPORTS

Councilman Street asked everyone to keep the Schmidt family in their prayers.

Councilman Woods thanked Mayor Perrin and the new Channel 24 for helping with airing information regarding non-profit organizations.

10. PUBLIC COMMENTS

Mr. Kevin Snider questioned how long it takes to get City services after being annexed into the City. Councilman Frierson stated the services are not covered by the City; rather, they are to be negotiated with City Water and Light. Mr. Snider stated he was annexed into the City twelve years ago and still has not received sewer or gas services. He referred to apartments that were annexed into the City receiving services. Councilman Frierson explained they negotiated the services with City Water and Light.

11. ADJOURNMENT

A motion was made by Councilman Chris Moore, seconded by Councilman Mitch Johnson, that this meeting be Adjourned. The motion CARRIED by a Voice Vote.

Aye: 12 - Darrel Dover; Ann Williams; Charles Frierson; Chris Moore; John Street; Mitch Johnson; Tim McCall; Gene Vance; Chris Gibson; Rennell Woods; Mikel Fears and Charles Coleman



Legislation Details (With Text)

File #: RES-10:123 **Version:** 1 **Name:**
Type: Resolution **Status:** Recommended to Council
File created: 9/22/2010 **In control:** Public Works Council Committee
On agenda: **Final action:**
Title: A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT A PERMANENT DRAINAGE EASEMENT FROM MALL AT TURTLE CREEK, LLC FOR THE PURPOSE OF MAKING DRAINAGE IMPROVEMENTS
Sponsors: Engineering
Indexes: Easement
Code sections:
Attachments: [Exhibit A](#)
[Drainage easement](#)

Date	Ver.	Action By	Action	Result
11/4/2010	1	City Council	Postponed Temporarily	Pass
10/5/2010	1	Public Works Council Committee	Recommended to Council	Pass

Title

A RESOLUTION TO THE CITY OF JONESBORO, ARKANSAS TO AUTHORIZE THE MAYOR AND CITY CLERK TO ACCEPT A PERMANENT DRAINAGE EASEMENT FROM MALL AT TURTLE CREEK, LLC FOR THE PURPOSE OF MAKING DRAINAGE IMPROVEMENTS

Body

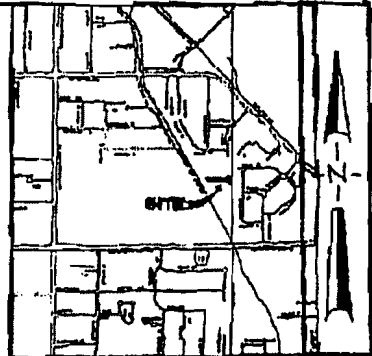
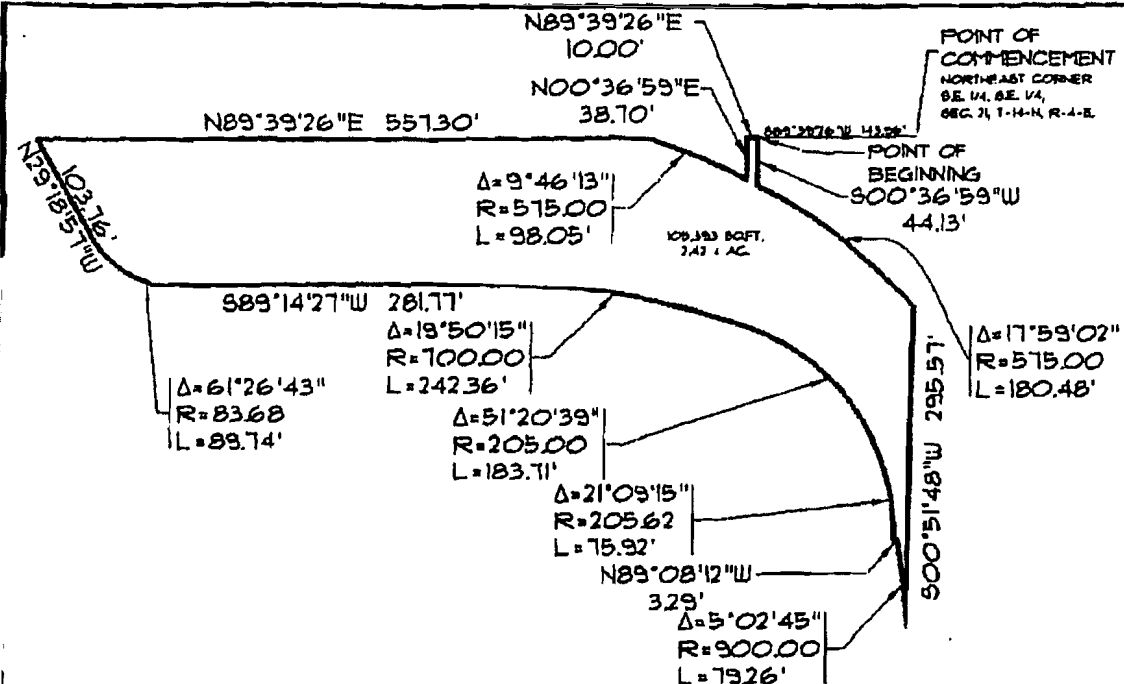
WHEREAS, the City of Jonesboro, Arkansas desires to accept the following described easement for the purpose of making drainage improvements:

Part of the Southeast Quarter of the Southeast Quarter of Section 21, Township 14 North, Range 4 East, Craighead County, Arkansas, being more particularly described as follows, see Attached

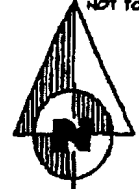
NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

Section 1. The Mayor and City Clerk are hereby authorized by the City Council for the City of Jonesboro, Arkansas to accept the easement described above.

EXHIBIT A



VICINITY SKETCH
NOT TO SCALE



BEARING BASIS
PREVIOUS SURVEY



GRAPHIC SCALE
IN FEET

NOTE: THIS DRAWING DOES NOT REPRESENT A BOUNDARY SURVEY

DESCRIPTION

PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21 TOWNSHIP 14 NORTH, RANGE 4 EAST, CRUICKHEAD COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 21 TOWNSHIP 14 NORTH, RANGE 4 EAST, CRUICKHEAD COUNTY, ARKANSAS; THENCE SOUTH 89°29'26" WEST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21, 10.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00°36'59" WEST DEPARTING SAID NORTH LINE, 44.13 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 515.00 FEET AND WHOSE RADIAL POINT BEARS SOUTH 28°54'26" WEST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 9°46'13", A DISTANCE OF 98.05 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21; THENCE SOUTH 00°36'59" WEST ALONG SAID EAST LINE, 44.13 FEET TO A POINT ON A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 515.00 FEET AND WHOSE RADIAL POINT BEARS SOUTH 86°07'48" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 17°59'02", A DISTANCE OF 180.48 FEET TO A POINT ON A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 515.00 FEET AND WHOSE RADIAL POINT BEARS NORTH 89°29'26" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 21°09'15", A DISTANCE OF 75.92 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 205.62 FEET AND WHOSE RADIAL POINT BEARS SOUTH 10°21'39" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 51°20'39", A DISTANCE OF 183.71 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 205.00 FEET AND WHOSE RADIAL POINT BEARS SOUTH 10°21'39" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 18°50'15", A DISTANCE OF 242.36 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21; THENCE SOUTH 00°36'59" WEST ALONG SAID EAST LINE, 281.77 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 21; THENCE SOUTHWESTERLY ALONG SAID EAST LINE, 281.77 FEET TO A POINT ON A CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 100.00 FEET AND WHOSE RADIAL POINT BEARS SOUTH 61°26'43" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 61°26'43", A DISTANCE OF 89.74 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 21; THENCE NORTH 89°29'26" EAST ALONG SAID NORTH LINE, 557.30 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 900.00 FEET AND WHOSE RADIAL POINT BEARS SOUTH 16°02'45" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 5°02'45", A DISTANCE OF 79.26 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 21; THENCE NORTH 89°29'26" EAST ALONG SAID NORTH LINE, 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING IN ALL 109,183 SQ. FT. OR 2.47 ACRES, MORE OR LESS.

SUBJECT TO EASEMENTS, RESTRICTIONS, RESERVATIONS AND RIGHTS-OF-WAY OF RECORD.

ASSOCIATED ENGINEERING AND TESTING, LLC
 CIVIL ENGINEERING, LAND SURVEYING AND MATERIALS TESTING
 103 SOUTH CHURCH STREET - P.O. BOX 1467 - JONESBORO, AR 72403
 PH: 870-932-3894 FAX: 870-935-063

EASEMENT SKETCH
THE MALL AT TURTLE CREEK
JONESBORO, ARKANSAS

© Copyright 2008 AETC	REV	DATE	REVISIONS	BY

DRAWN: KSD	CHECKED: PFL	DATE: 08/06/08	SHEET: 1 OF 1
SCALE: 1" = 100'	CADD FILE: 0811-00	DRG#: 0414717.0034	

EASEMENT FOR DRAINAGE

KNOW ALL PERSONS BY THESE PRESENTS:

For good and valuable consideration, the receipt of which is hereby acknowledged, Mall at Turtle Creek, LLC, a Delaware limited liability company, by its Co-Manager (“Grantor”) does grant, sale, and convey to the City of Jonesboro, Arkansas and its successors and assigns (“Grantee”) an Easement and right of entry over and across the following described land located in Craighead County, Arkansas, to wit:

SEE EXHIBIT A ATTACHED AND MADE A PART OF THIS EASEMENT.

This Easement is for the purpose of permitting the Grantee and its agents, contractors and employees a right of ingress and egress, maintain, clean, clear and repair Turtle Creek ditch as described in Exhibit A.

Grantee agrees to maintain, clear, clean, and repair this Easement at its sole cost and expense.

Grantee agrees to indemnify and hold Grantor harmless from any claim, loss of life, injury to person, damage to property or cause of action arising out of the construction, maintenance, repair, or use of this Easement by the Grantee, its agents, employees, or the general public. The term indemnification shall include any monetary obligation which Grantor pays or is obligated to pay and shall include all litigation costs, discovery costs, court costs, witness fees, and reasonable attorney’s fees.

This Easement and covenant shall run with the ownership of the land described and shall bind not only the parties to this Agreement but their successors and assigns.

Grantor warrants that it has title to the property and that it has authority to convey the property to the Grantee subject to all existing liens, encumbrances, easements, restrictions, covenants, right-of-ways and other exceptions of record.

This document is executed on this 21st day of April, 2011.

MALL AT TURTLE CREEK, LLC

David E. Hocker
David E. Hocker, Co-Manager

ACKNOWLEDGMENT

STATE OF KENTUCKY

COUNTY OF DAVIESS

On this day before me personally appeared David E. Hocker to me well known who acknowledged himself to be the Co-Manager of Mall at Turtle Creek, LLC, a Delaware limited liability company, and stated that he, as such Co-Manager, being authorized to do so, has executed this instrument for the purposes set forth, by signing the name of the limited liability company by himself as Co-Manager.

Witness my hand and seal on this 21 day of April, 2011.

M.B. Wilson
Notary Public, Kentucky-at-Large
ID # 437293

My commission expires:
2/22/2015



Legislation Details (With Text)

File #: RES-11:034 **Version:** 1 **Name:**
Type: Resolution **Status:** Recommended to Council
File created: 3/16/2011 **In control:** Public Works Council Committee
On agenda: **Final action:**
Title: A RESOLUTION TO ACCEPT A RESTRICTIVE AGREEMENT FOR A GREENSPACE SITE FOR HARPS FOOD STORES INC., A COMMERCIAL PLANNED DISTRICT DEVELOPMENT
Sponsors: Planning
Indexes:
Code sections:
Attachments: [Agreement](#)

Date	Ver.	Action By	Action	Result
4/19/2011	1	City Council		
4/5/2011	1	Public Works Council Committee		

title
A RESOLUTION TO ACCEPT A RESTRICTIVE AGREEMENT FOR A GREENSPACE SITE FOR HARPS FOOD STORES INC., A COMMERCIAL PLANNED DISTRICT DEVELOPMENT
body
WHEREAS, the Developer, as part of the overall development plan for the Property and by stipulation in City Ordinance 10:091, an ordinance amending the Code of Ordinances of Jonesboro, Arkansas, Chapter 117 allowing for a PD-C District for a Neighborhood Grocery Store, has agreed to restrict a certain portion of the Property as greenspace (the "Greenspace Site"), as depicted on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto and incorporated herein; and

WHEREAS, HARP'S FOOD STORES, INC., an Arkansas corporation, has submitted an Agreement to create a mechanism for the restriction of the Greenspace Site a retail grocery store on that approximate 6.32 acre tract of land located at 2005 Harrisburg Road in Jonesboro, Craighead County, Arkansas, and

WHEREAS, the City Surveyor , City Planner and City Attorney have reviewed the attached Maintenance Agreement and find it to be in compliance with the Code of Ordinances for the City of Jonesboro.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

SECTION 1. That the City of Jonesboro accepts a Restrictive Agreement for a Greenspace Site with Harps Food Stores, Inc. and authorizes the filing of a record plat for the development.

SECTION 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.

Above Space for Recorder's Use:

This document prepared by and after recording, return to:

Harp's Food Stores, Inc.
P.O. Box 48
918 S. Gutensohn
Springdale, Arkansas 72762
Attention: J. Max Van Hoose

PROPERTY USE AND RESTRICTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THIS PROPERTY USE AND RESTRICTION AGREEMENT (this "Agreement") is made effective as of _____, 2011 (the "**Effective Date**"), between the **CITY OF JONESBORO, ARKANSAS**, an Arkansas municipal corporation ("**City**"), and **NIX DEVELOPMENT CORPORATION**, an Arkansas corporation ("**Developer**").

BACKGROUND

A. Developer is developing a retail grocery store on that approximate 6.32 acre tract of land located at 2005 Harrisburg Road in Jonesboro, Craighead County, Arkansas, which is depicted generally on the site plan attached hereto and incorporated herein as Exhibit A (the "**Property**").

B. Developer, as part of its overall development plan for the Property and by stipulation in City Ordinance 10:091, an ordinance to amend the Code of Ordinances of Jonesboro, Arkansas, Chapter 117, has agreed to restrict a certain portion of the Property as greenspace (the "**Greenspace Site**"), as depicted on Exhibit A attached hereto and more particularly described on Exhibit B attached hereto and incorporated herein.

C. Developer and City mutually desire to enter into this Agreement to create a mechanism for the restriction of the Greenspace Site.

AGREEMENT

NOW, THEREFORE, in consideration of the agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City agree as follows:

1. **Restrictions on Use.** Developer, for and on behalf of itself and its successors and assigns, expressly covenants and agrees that, from and after the Effective Date, the Greenspace Site shall not be used or operated for any purposes

other than a dedicated, unimproved greenspace to provide for a permanent buffer to abutting properties used as single family residential parcels.

2. **Breach.** In the event of breach or threatened breach of this Agreement, City shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, including, without limitation, the right to exercise any and all remedies afforded under law or at equity, including, but not limited to, the right to obtain injunctive relief.

3. **Rights of Successors.** All provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of City and Developer, and their respective successors and assigns.

4. **Document Execution, Modification and Cancellation.** No modifications or amendments may be made to this Agreement and this Agreement may not be terminated except in writing signed by Developer and City or any successor in interest to Developer and City.

5 **Governing Law.** It is understood and agreed that the construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Arkansas, without considering its law or rules related to choice of law.

6. **Counterparts.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7. **Invalidity.** Every term of this Agreement shall be enforceable to the fullest extent permitted by law. If any term of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

CITY:

CITY OF JONESBORO, ARKANSAS,
an Arkansas municipal corporation

By: _____
Name: _____
Title: _____

Approved and accepted by the Council of the City of Jonesboro, Arkansas, this ____ day of _____, 2011.

Mayor

ATTEST:

City Clerk

SEAL:

DEVELOPER:

NIX DEVELOPMENT CORPORATION, an
Arkansas corporation

By: _____
J. Robin Nix, Sr., President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF CRAIGHEAD)

On this ____ day of _____, 2011, before me appeared _____, to me personally known, who being by me duly sworn did say that he/she is the _____ of **City of Jonesboro, Arkansas**, an Arkansas municipal corporation, and was duly authorized in such capacity to execute the foregoing instrument for and in the name and on behalf of said entity, and further stated and acknowledged that he/she had so signed, executed and delivered said foregoing instrument for the consideration, use and purposes therein mentioned and set forth.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
My commission expires: _____

ACKNOWLEDGEMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF CRAIGHEAD)

On this ____ day of April, 2011, before me appeared **J. Robin Nix, Sr.**, to me personally known, who being by me duly sworn did say that he is the President of **Nix Development Corporation**, an Arkansas corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
My commission expires: _____

EXHIBIT A
Site Plan showing the Property and the Greenspace Site

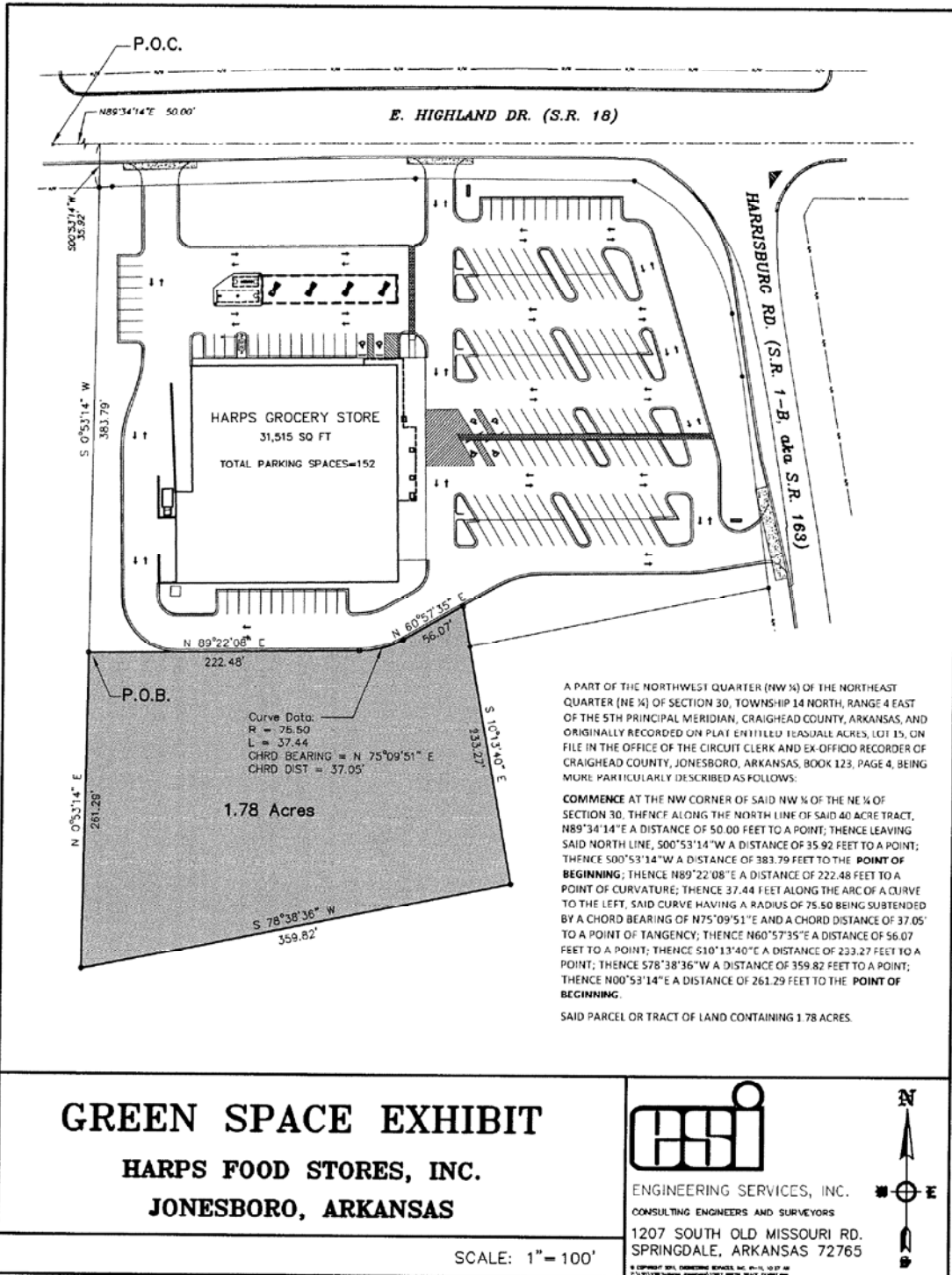


EXHIBIT B
The Greenspace Site

A PART OF THE NORTHWEST QUARTER (NW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 30, TOWNSHIP 14 NORTH, RANGE 4 EAST OF THE 5TH PRINCIPAL MERIDIAN, CRAIGHEAD COUNTY, ARKANSAS, AND ORIGINALLY RECORDED ON PLAT ENTITLED TEASDALE ACRES, LOT 15, ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF CRAIGHEAD COUNTY, JONESBORO, ARKANSAS, BOOK 123, PAGE 4, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NW CORNER OF SAID NW ¼ OF THE NE ¼ OF SECTION 30, THENCE ALONG THE NORTH LINE OF SAID 40 ACRE TRACT, N89°34'14"E A DISTANCE OF 50.00 FEET TO A POINT; THENCE LEAVING SAID NORTH LINE, S00°53'14"W A DISTANCE OF 35.92 FEET TO A POINT; THENCE S00°53'14"W A DISTANCE OF 383.79 FEET TO THE POINT OF BEGINNING; THENCE N89°22'08"E A DISTANCE OF 222.48 FEET TO A POINT OF CURVATURE; THENCE 37.44 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 75.50 BEING SUBTENDED BY A CHORD BEARING OF N75°09'51"E AND A CHORD DISTANCE OF 37.05' TO A POINT OF TANGENCY; THENCE N60°57'35"E A DISTANCE OF 56.07 FEET TO A POINT; THENCE S10°13'40"E A DISTANCE OF 233.27 FEET TO A POINT; THENCE S78°38'36"W A DISTANCE OF 359.82 FEET TO A POINT; THENCE N00°53'14"E A DISTANCE OF 261.29 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OR TRACT OF LAND CONTAINING 1.78 ACRES.



Legislation Details (With Text)

File #: RES-11:041 **Version:** 2 **Name:**
Type: Resolution **Status:** Recommended to Council
File created: 3/28/2011 **In control:** Public Safety Council Committee
On agenda: **Final action:**
Title: A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF JONESBORO TO CONTINUE THE CONTRACT WITH BRACKETT-KRENNERICH AND ASSOCIATES, P.A. FOR ARCHITECTURAL SERVICES RELATED TO THE CONSTRUCTION OF JONESBORO FIRE STATIONS.
Sponsors: Fire Department
Indexes:
Code sections:
Attachments: [Fire Station 4 Owner Architect Contract](#)

Date	Ver.	Action By	Action	Result
4/19/2011	2	Public Safety Council Committee		

title
A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF JONESBORO TO CONTINUE THE CONTRACT WITH BRACKETT-KRENNERICH AND ASSOCIATES, P.A. FOR ARCHITECTURAL SERVICES RELATED TO THE CONSTRUCTION OF JONESBORO FIRE STATIONS.

body
WHEREAS, the mayor and other designated personnel has selected and negotiated a contract with Brackett-Krennerich and Associates, P.A. to continue to provide architectural services for the construction of a new fire station with a 40% reduction in the construction documents phase of phase three of the Jonesboro Fire Departments four phase plan.

WHEREAS, all requirements have been met regarding A.C.A. 19-11-801 for the procurement of services.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO, ARKANSAS THAT:

The Mayor and City Clerk are hereby authorized to execute and accept such documents as necessary to effectuate this agreement.

 **AIA**® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty-second day of March in the year Two Thousand Eleven
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Jonesboro
515 W. Washington Ave.
Jonesboro, Arkansas 72401

and the Architect:
(Name, legal status, address and other information)

Brackett Krennerich & Associates P.A.
100 E. Huntington Ave., Suite D
Jonesboro, AR 72401
Telephone Number: 870-932-0571
Fax Number: 870-932-0975

for the following Project:
(Name, location and detailed description)

Fire Station #4
City of Jonesboro
Jonesboro, Arkansas

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

(1211393107)

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

Estimated to be May 15, 2011

.2 Substantial Completion date:

March 2012

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

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perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$2,000,000.00

.2 Automobile Liability

\$1,000,000.00

.3 Workers' Compensation

\$750,000.00

.4 Professional Liability

\$1,000,000.00

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

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§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

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§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

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- .1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

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§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Owner	
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building information modeling	Not Provided	
§ 4.1.7 Civil engineering	Not Provided	
§ 4.1.8 Landscape design	Not Provided	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	

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§ 4.1.11	Detailed cost estimating	Not Provided	
§ 4.1.12	On-site project representation	Not Provided	
§ 4.1.13	Conformed construction documents	Not Provided	
§ 4.1.14	As-Designed Record drawings	Not Provided	
§ 4.1.15	As-Constructed Record drawings	Contractor	
§ 4.1.16	Post occupancy evaluation	Not Provided	
§ 4.1.17	Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18	Tenant-related services	Not Provided	
§ 4.1.19	Coordination of Owner's consultants	Not Provided	
§ 4.1.20	Telecommunications/data design	Owner	
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22	Commissioning (B211™-2007)	Not Provided	
§ 4.1.23	Extensive environmentally responsible design	Not Provided	
§ 4.1.24	LEED® Certification (B214™-2007)	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™-2007)	Owner	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

On Site Representation: Full time on site representation by the architects is not a part of this agreement. The architects agrees to provide the owner copies of all project observation reports and attend monthly progress meetings with owner, and or representatives, to keep them informed of the project progress.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Ten (10) visits to the site by the Architect over the duration of the Project during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Eighteen (18) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license

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granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

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§ 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

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ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Seven Percent (7%) of cost of construction w/ 40% Discount for Schematic Design, Design Development, and Construction Documents Phases

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Not Applicable

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Hourly in accordance with Paragraph 11.7

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty-five percent (25.00 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (15	%)
Design Development Phase	Twenty	percent (20	%)
Construction Documents Phase	Forty	percent (40	%)
Bidding or Negotiation Phase	Five	percent (5	%)
Construction Phase	Twenty	percent (20	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Exhibit B – Hourly Fee Schedule

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

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- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus One and one-quarter percent (1.25 %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Twenty-one (21) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

5.50 % per annum

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect

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- .2 AIA Document B101™-2007, Exhibit A
- .3 AIA Document A201™-2007, General Conditions of the Contract for Construction

(Paragraphs deleted)

- .4 Other documents: Exhibit B – Hourly Fee Schedule

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

Harold Perrin, Mayor
City of Jonesboro

(Printed name and title)

(Signature)

George J. Krennerich III, President
Brackett – Krennerich & Associates P.A.

(Printed name and title)

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Document B101™ – 2007 Exhibit A

Initial Information

for the following PROJECT:

(Name and location or address)

Fire Station #4
City of Jonesboro
Jonesboro, Arkansas

THE OWNER:

(Name, legal status and address)

City of Jonesboro
515 W. Washington Ave.
Jonesboro, Arkansas 72401

THE ARCHITECT:

(Name, legal status and address)

Brackett Krennerich & Associates P.A.
100 E. Huntington Ave., Suite D
Jonesboro, AR 72401

This Agreement is based on the following information.

ARTICLE A.1 PROJECT INFORMATION

§ A.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Construct Fire Station similar to existing Fire Station #7 with changes as discussed with chief.

§ A.1.2 The Project's physical characteristics:

Site located off Harrisburg Road, property/boundary lines provided by Associated Engineering & Testing, LLC.

§ A.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

\$2,000,000.00

§ A.1.4 The Owner's other anticipated scheduling information, if any, not provided in Section 1.2:

None

§ A.1.5 The Owner intends the following procurement or delivery method for the Project:

(Identify method such as competitive bid, negotiated contract, or construction management.)

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

§ A.1.6 Other Project information:

Not Applicable

ARTICLE A.2 PROJECT TEAM

§ A.2.1 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address and other information.)

Leonard Jadrich, Fire Chief
3215 E. Johnson Ave.
Jonesboro, Arkansas 72401

Telephone Number: 870-932-2428

Mobile Number: 870-897-3773

Email Address: ljadrich@jonesboro.org

§ A.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

1. Arkansas State Building Authority - ADA Review
2. Arkansas State Fire Marshall - Code Compliance
3. Arkansas State Department of Health - Plumbing Review

§ A.2.3 The Owner will retain the following consultants and contractors:
(List discipline and, if known, identify them by name and address.)

Not Applicable

§ A.2.4 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address and other information.)

George J. Krennerich III
100 E. Huntington Ave., Suite D
Jonesboro, AR 72401
Telephone Number: 870-932-0571

Mobile Number: 870-926-6884

Email Address: george@bkarchts.com

§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1 and A.2.5.2.
(List discipline and, if known, identify them by name, legal status, address and other information.)

§ A.2.5.1 Consultants retained under Basic Services:

- .1 Structural Engineer

Engineering Consultants, Inc.
401 West Capitol, Suite 305
Little Rock, AR 72201

Init.

Telephone Number: 501-376-3752
Fax Number: 501-376-7314

.2 Mechanical Engineer

Building Design Services, Inc.

144 Professional Dr., Ste. 1
Cabot, AR 72023
Telephone Number: 501-843-1553
Fax Number: 501-843-7566

.3 Electrical Engineer

Building Design Services

144 Professional Dr., Ste. 1
Cabot, AR 72023
Telephone Number: 501-843-7553
Fax Number: 501-843-7566

§ A.2.5.2 Consultants retained under Additional Services:

Not Applicable

§ A.2.6 Other Initial Information on which the Agreement is based:

(Provide other Initial Information.)

Init.

/

Exhibit "B" – Hourly Fee Schedule

Fee Schedule for Brackett-Krennerich & Associates, P.A.

January 1, 2011

Jerry W. Brackett, Principal Architect	\$175.00 per hour
George J. Krennerich, Principal Architect	\$175.00 per hour
Kyle Cook, Staff Architect	\$75.00 per hour
Jeff Herren, Staff Architect.....	\$75.00 per hour
Todd Welch, Staff Architect	\$75.00 per hour
Steve Schoettle, Intern Architect	\$60.00 per hour
Libii Fairhead, Interior Designer	\$45.00 per hour
Kyle Krennerich, CADD Drafter/Construction Coordinator.....	\$50.00 per hour
Matt Davis, CADD Drafter.....	\$50.00 per hour
Chris Ormond, Computer Drafter	\$25.00 per hour
David Schaefering, Construction Coordinator.....	\$40.00 per hour
Dede Harper-Boysaw, Administrative Assistant	\$55.00 per hour
Donna Jackson, Secretary	\$25.00 per hour

Exhibit "B" – Hourly Fee Schedule

ENGINEERING CONSULTANTS, INC.

401 WEST CAPITOL AVENUE, SUITE 305
LITTLE ROCK, ARKANSAS 72201-3401
PHONE: 501-376-3752 FAX: 501-376-7314
www.ecilr.com

RATE SCHEDULE

Effective December 1, 2009

HOURLY RATES

Principal Engineer	- \$150.00/hour
Senior Project Engineer	- \$130.00/hour
Project Engineer	- \$105.00/hour
Level 2 Engineer Intern	- \$ 95.00/hour
Level 1 Engineer Intern	- \$ 75.00/hour
Senior CAD Technician	- \$ 85.00/hour
CAD Technician	- \$ 60.00/hour
Administrative Assistant	- \$ 65.00/hour
Clerk	- \$ 25.00/hour

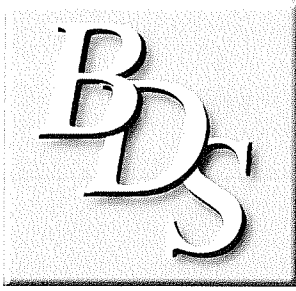
INSPECTIONS & REPORTS

MINIMUM FEE - \$500.00

MISCELLANEOUS EXPENSES

Photographs (35 mm)	- \$ 2.50/photo
Mileage (Automobile)	- \$ 0.75/ mile
Outside Printing	- At Cost
Hotel/Motel Expenses	- At Cost
Meals (During Trips)	- At Cost
Other Expenses (Airfare, etc.)	- At Cost

Exhibit "B" – Hourly Fee Schedule



Building Design Services, Inc.
electrical, mechanical, plumbing, energy design consultants
Barry G. Ferguson John W. Reed
144 Professional Drive, Suite 1
Cabot, AR 72023 (501)843-1553 Fax: (501)843-1566
bdsinc@bdsenergy.com

RATE SCHEDULE
EFFECTIVE January 1, 2010

1. Hourly Rates

a. Electrical Engineer P.E.	\$115.00/hr
b. Plumbing Engineer P.E.	\$115.00/hr
c. Mechanical Engineer P.E.	\$115.00/hr
d. Project Administration Engineer	\$135.00/hr
e. Inspection Engineer	\$75.00/hr
f. Electrical CAD Operator	\$65.00/hr
g. Plumbing CAD Operator	\$65.00/hr
h. Mechanical CAD Operator	\$65.00/hr
i. Electrical Designer	\$75.00/hr
j. Plumbing Designer	\$75.00/hr
k. Mechanical Designer	\$75.00/hr
l. Clerical	\$45.00/hr

2. Inspections & Field Reports

- a. Minimum of \$1,000.00. Will be charged @ hourly rate for Inspection Engineer inside Arkansas.
- b. Minimum of \$1,200.00. Will be charged @ hourly rate for Inspection Engineer outside of Arkansas.

3. Other Expenses

a. In-House Prints (Blacklines):	
i. 24 X 36	\$2.50/print
ii. 42 X 30	\$3.50/print
b. Mileage	\$.495/mile
c. Photographs	\$1.05/photo
d. Outside Printing	At Cost + 20%
e. Hotel/Motel Expense	At Cost + 10%
f. Meals	At Cost
g. Miscellaneous expense	
i. (Airfare, Car Rental, etc)	At Cost + 10%

4. Engineering Design

- a. Minimum of \$1,500 will be charged for Engineering Design of each discipline involved.



Legislation Details (With Text)

File #: RES-11:043 **Version:** 2 **Name:**
Type: Resolution **Status:** Recommended to Council
File created: 3/28/2011 **In control:** Public Safety Council Committee
On agenda: **Final action:**
Title: A RESOLUTION FOR THE CITY OF JONESBORO TO ENTER INTO A CONTRACT WITH COLLEGIATE PROPERTIES, INC FOR CORPORATE HOUSING
Sponsors: Police Department
Indexes:
Code sections:
Attachments: [Gainesville FL](#)

Date	Ver.	Action By	Action	Result
4/19/2011	2	Public Safety Council Committee		

Title

A RESOLUTION FOR THE CITY OF JONESBORO TO ENTER INTO A CONTRACT WITH COLLEGIATE PROPERTIES, INC FOR CORPORATE HOUSING

body

WHEREAS, the City of Jonesboro has received a contract from Collegiate Properties, Inc;

WHEREAS, this contract is for the purposes of providing long term housing for a City of Jonesboro police sergeant during training;

WHEREAS, the City of Jonesboro believes said contract is for the use and benefit of the City of Jonesboro and all its residents; and

WHEREAS, it is in the best interest of the City of Jonesboro, the training is allocated under the 2011 budget, and that the City Council authorize the Mayor and City Clerk to execute this contract.

NOW THEREFORE BE IT RESOLVED by the City Council for the City of Jonesboro, Arkansas that:

1. This contract is for the purposes of providing long term housing for a City of Jonesboro police sergeant during training.
2. That this contract is for the best interest of the residents of the City of Jonesboro.
3. The Mayor and City Clerk are hereby authorized to execute said contract.

Collegiate Properties, Inc.
 1331-A SW 13th Street
 Gainesville, FL 32608
 352-375-4541

Fax

352-375-7226

To: Kenny Oldham From: Amber @Oakbrook Walk
 Fax: 870-932-3892 Pages: 14
 Phone: _____ Date: 3/9/11
 Re: Corporate Housing CC: _____

- Urgent For Review Please Comment Please Reply Please Recycle

• **Comment**

I have attached the leasing documents for our corporate housing. As we discussed, the lease is for 7 months with the option to terminate without penalty after two weeks. Dr. Poe mentioned the class begins on July 11, so I started the lease as of the Friday previous. If that date needs to be changed, just let me know. The rental amount of \$1550/month or \$52/day includes the internet, cable TV, electric, water, sewer, pest control, and parking. Washer & dryers as well as linens and kitchen ware is also provided. Please visit oakbrookwalk.com for more details and pictures. Thank You.

Personal Information Form

All units managed by Collegiate Properties, Inc. are NON SMOKING units.

In order for Collegiate Properties, Inc. db/a Oakbrook Walk to accept your personal checks for payment of rent or deposit, please answer all of the following information.

LESSEE INFORMATION:

Email Address _____

First Name _____ Middle Initial _____ Last Name _____

Address _____

City _____ State _____ Zip Code _____ Day Phone # (____) _____

Driver License # _____ State _____ Date of Birth _____ Social Security # _____

Have you ever been convicted of a felony? No Yes (if yes please explain) _____

By my signature I hereby acknowledge that all of the above statements are true and complete and hereby authorize verification of same, including access to my credit file. I also acknowledge and agree that, having paid an activity charge and/or advance rents, in the event I do not move in for any reason that is out of the control of Collegiate Properties, Inc., all such monies paid will be non-refundable and I will remain liable under the terms of any lease signed.

Lessee/Resident's Signature _____ Date _____

LESSEE INFORMATION:

Email Address _____

First Name _____ Middle Initial _____ Last Name _____

Address _____

City _____ State _____ Zip Code _____ Day Phone # (____) _____

Driver License # _____ State _____ Date of Birth _____ Social Security # _____

Have you ever been convicted of a felony? No Yes (if yes please explain) _____

By my signature I hereby acknowledge that all of the above statements are true and complete and hereby authorize verification of same, including access to my credit file. I also acknowledge and agree that, having paid an activity charge and/or advance rents, in the event I do not move in for any reason that is out of the control of Collegiate Properties, Inc., all such monies paid will be non-refundable and I will remain liable under the terms of any lease signed.

Lessee/Resident's Signature _____ Date _____

ACKNOWLEDGEMENT OF PARENT/GUARANTOR RESPONSIBILITIES:

Email Address _____

First Name _____ Middle Initial _____ Last Name _____

Address _____

City _____ State _____ Zip Code _____ Day Phone # (____) _____

Driver License # _____ State _____ Date of Birth _____ Social Security # _____

I understand that by co-signing the Lease Agreement between Collegiate Properties, Inc., db/a Oakbrook Walk and the above listed Lessee dated _____, I have become jointly and severally liable under the terms of same.

I acknowledge that, before signing this agreement:

- a. I have read the Lease Agreement and fully understand my responsibilities there under;
- b. All of the above statements are true and complete and I authorize verification of same, including accessing my credit file.

Parent/Guarantor's Signature _____ Date _____

LESSOR: As agent for Owner by: X _____

STATEMENT OF RENTAL POLICY**Revised February 15, 2009**

- AVAILABILITY:** Rental premises assignments are made by Lessor, within the limitations imposed by this lease, at Lessor's sole discretion. Where a unit preference is stated by a Lessee, Lessor will attempt to honor such preference if space allows, but Lessor is not otherwise obligated to assign a particular rental premises to this lease.
- RENTAL APPLICATIONS:** To be completed by all applicants or co-signers. An application fee is paid for each.
- OCCUPANCY:** Maximum of four persons in a two-bedroom residence.
- PETS:** No pets of any type will be allowed at Oakbrook Walk in units managed by Collegiate Properties, Inc. unless specified by a pet addendum. Violations of this policy will result in charges as specified in the lease contract.
- VEHICLES:** No recreational or commercial vehicles will be allowed. A parking permit is required to park in resident parking.
- CREDIT WORTHINESS:** In lieu of an approved Guarantor, established credit may, at the Lessor's sole and absolute discretion, be considered satisfactory. In such event, however: a. Applicant must not have bankruptcies or foreclosures in the last 60 months; b. If an agreement for a payment plan has been arranged on an outstanding debt, proper documentation must be provided; c. If an eviction has occurred within the last 60 months, the applicant will be automatically declined; d. Applicant must not have any outstanding debt to a previous landlord within the last 84 months or to any electric, gas or water utility company in the last 36 months, and e. Applicant may not have three credit accounts rated three or higher within the last 24 months or any possible landlord or utility collections in the last 60 months. When management notifies the applicant of debts that need to be satisfied, the applicant has 24 hours to make arrangements or the apartment reserved will go back on the market. All negative accounts that have been paid in full or have payment arrangements must be verified by written documentation.
- CRIMINAL OFFENSES:** Applications may be rejected, at Lessor's sole and absolute discretion, for felonies, misdemeanor convictions (excluding DUI) or crimes against persons.
- INCOME:** In lieu of an approved Guarantor, monthly rent shall not exceed 33% of combined gross monthly income of all residents or guarantors. All income may be verified by the last two paycheck stubs. Scholarships, study subsidies and/or inconsistent income such as alimony, commissions, or tips will require written verification. Self-employed applicants may provide the previous year's tax return. Unemployed applicants may provide documentation in the form of a bank statement, IRA or trust fund reflecting a balance equal to 12 times the amount of rent.
- EMPLOYMENT:** Applicant or Guarantor must have stable employment in this country for 12 months out of the last 15 months or have I-20 verification.
- RENTAL HISTORY:** Present and previous residence of at least 12 months out of the last 15 months must have a payment record reflecting no more than one late or one NSF within a six month period and sufficient notice must have been given prior to vacating.
- PARENT/GUARANTOR:** If, in Lessor's sole and absolute discretion, a guarantor is required, said individual must complete a lease guarantor addendum and meet the qualification requirements of these guidelines.

*We are pledged to the letter and spirit of the United States Policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing programs in which there are no barriers to obtaining housing because of race, color, national origin, ancestry, creed, religion, sex, physical or mental disability, marital status, and familial status (families with children under the age of 18).

I have read and understand the terms and conditions outlined above:

LESSEE: _____

Guarantor: _____

LESSOR: As agent for Owner by: _____

LEASE AGREEMENT

CORPORATE HOUSING LEASE TERMINATION ADDENDUM

Addendum to Lease Agreement, dated 3/9/11, between Collegiate Properties, Inc. dba Oakbrook Walk, as agent for Owner, hereinafter designated as "Lessor" and Kenny Oldham, hereafter designated as "Lessee".

It is hereby agreed that the Lessee has the option to terminate this Lease Agreement after the fourteen (14) day minimum stay with a twenty four (24) hour minimum notice to vacate in order to accommodate the needs of the lessee. It is always appreciated if additional notice is given in order for Oakbrook Walk to schedule the preparation of the unit for the next Lessee.

All other provisions, covenants, addendums, rules and regulations, etc. in the Lease Agreement will become effective on the date of move in.

LESSEE: X _____

LESSEE: X _____

LESSOR: As agent for Owner: By: _____

LEASE AGREEMENT

Agreement made and entered into on 2/9/11 between Collegiate Properties, Inc., as agent for Owner, hereinafter designated as "Lessor", and:

Kenny Oldham

hereinafter designated as "Lessee."

WITNESSETH

- 1) **DEMISE AND TERM:** Lessor, in consideration of the rent reserved to be paid by Lessee and the other covenants, agreements and conditions hereinafter contained to be kept, performed and observed by Lessee, does hereby lease to Lessee an otherwise presently undesignated rental premises located in the county of Alachua at Oakbrook Walk, generally located at Oakbrook Walk, a condominium according to the Declaration Of Condominium for same recorded in the Official Records of Alachua County, at O. R. Book 1667, page 1653, together with the furnishings and equipment shown, if any, as listed on the "INVENTORY AND CONDITION REPORT" as provided upon move-in signed by Lessee. Lessor agrees that the specific rental premises, otherwise physically described in 2) b), below, will be assigned at or before the commencement date of this lease, but that because the Lessor will from this date forward hold a rental premises for Lessee at Oakbrook Walk, and that this lease becomes effective and binding upon execution by all parties. The term of this Lease shall be:

July 8, 2011 through February 7, 2012

2) RENT:

- a. Lessee does hereby promise to pay the Lessor as rental the total sum of:

Ten Thousand Eight Hundred Fifty Dollars and zero cents (\$ 10,850.00)

At the option of the Lessee said rent may be paid in monthly installments of:

One Thousand Five Hundred Fifty Dollars and zero cents (\$ 1,550.00)

on the first (1st) day of each month. An Internet Transaction Administrative Charge will apply if rent is paid by an online Internet service.

- b. Lessee is renting one (1) furnished two (2) bedroom two (2) bathroom premises. Lessee, if a corporate entity (or part of the Shands Transplant Housing Program), shall designate, in a separate written notice to the Lessor, the individuals (hereinafter the occupants), who are entitled to the use of the premises. Lessor shall also designate, in the written notice referred to in this part, what portion of the rent reserved above shall be otherwise payable by the occupants of the rental unit if applicable.
- c. Lessor agrees to provide the following additional services, which will be included in the stated rent: 1) Provide all additional items and supplies as described and listed in "Attachment A." 2) Clean the premises on a biweekly basis in accordance with "Cleaning Check List."
- d. If being paid in monthly installments, any monthly rent installment not actually received by Lessor/Lessor's representative by Five o'clock p.m. (5:00 p.m.) of the third (3rd) day of the calendar month (or the next business day should the 3rd calendar day fall on a weekend or holiday), Lessee shall pay a **LATE CHARGE OF FIFTY DOLLARS (\$50.00)** on the fourth (4th) day plus **FIVE DOLLARS (\$5.00) PER DAY** from the fifth (5th) day, plus any costs and attorney's fees incurred by Lessor as a result of Lessee's failure to pay such rent, whether suit is filed or not.
- e. If this lease commences on a date other than the first (1st) of the month, and rent in excess of the amount needed to pay for that partial month is paid at that time, any excess of the amount needed to pay for that partial month is to be applied to the last month of the term of this lease. In such event the

LEASE AGREEMENT

last rent payment called for hereunder shall be in an amount sufficient, when combined with the aforementioned excess, to pay for the balance of the last month's rent.

- f. Strictly for purposes of any notice to pay or quit issued pursuant to this lease, but for no other purpose, any and all amounts payable under this lease, if not paid when otherwise due, shall be considered additional rent.
- g. In the event the Lessee elects to pay by check, the Lessee shall pay to the Lessor the charges specified in Section 68.065 Fla Stat. (2007) for any check tendered which for any reason fails to clear the issuer's bank. This charge shall be in addition to any and all other charges and remedies arising hereunder for failure on the part of the Lessee to have paid the rent on time. In the event a check is returned as set forth herein, all future payments hereunder must be paid in the form of cashier's check or money order. Lessee agrees and acknowledges that any and all amounts due hereunder, including late charges, shall, if not paid when due, accrue interest at the rate of eighteen percent (18%) per annum until paid. Lessor, in applying funds paid hereunder, and regardless of any designation or other restrictive direction given by the Lessee when making such, shall be entitled to apply such payment to any outstanding and overdue amounts hereunder prior to applying same to current or future rents or other amounts not yet due or which have only then come due (i.e., Lessor can apply any such funds to the "older" amounts due first).
- a. **KEY DEPOSIT** Lessee agrees to pay Lessor the sum of:

Twenty five dollars and zero cents	\$ 25.00
------------------------------------	----------

as a key deposit otherwise refundable pursuant to Section 83.49, Florida Statutes. Lessee acknowledges that under no circumstances shall Lessee be entitled to have the key deposit applied as rent during the term of this lease or any extensions hereof. The key deposit will be returned after the Lessee has moved out, a satisfactory inspection of the premises has been performed by and the keys have been returned to the Lessor.
- h. **SUBLEASE POLICY:** Subleasing will not be allowed.

3) INITIAL PAYMENT SCHEDULE:

1 st Month's Rent	\$ <u>1550</u>	from <u>7/8/11</u> to <u>8/7/11</u>	
Key Deposit	\$ <u>25.00</u>		
Amount Paid	\$ _____	(Check # _____)	(Money Order # _____)
BALANCE DUE	\$ _____	to be paid on or before _____	

- 4) **USE AND OCCUPANCY:** The premises shall be occupied by Lessee's occupants as a private dwelling unit only. The occupancy of the Premises is intended for Lessee's designated occupants only. Lessor acknowledges that Lessee's occupants may entertain guests from time-to-time but it is expressly agreed that Lessee's occupants shall not have guests on the premises for any period in excess of forty-eight (48) hours consecutively without the express written consent of the Lessor. The management reserves the right to issue trespass warnings, in accordance with Florida Statute 810.09, to any person, other than those designated as Lessees, whose continued presence threatens the safety or security of Lessees, guests or employees, property, or disturbs the peaceful enjoyment of the Lessees of the surrounding neighborhood and community.
- 5) **SUBSTITUTION:** It is hereby expressly agreed and acknowledged that the Lessor is leasing to the Lessee an otherwise undesignated rental premises at Oakbrook Walk and not a particular unit therein. In this regard the Lessor reserves the absolute right to substitute an equivalent premise as the one described herein or ultimately

LEASE AGREEMENT

assigned upon reasonable written notice to the Lessee, which notice may be served in the manner prescribed in Section 83.56(4) Fla. Stat. (2008). In the event that the Lessee vacates the rental premises prior to the end of the term of this lease without securing a sublease, the notice requirement set out herein is thereby waived and the Lessor shall be entitled to assign this lease to any other equivalent premises, for any reason including convenience to the Lessor, at Oakbrook Walk without notice to the Lessee. Such substitution shall not be deemed a retaking of said Lessee's original premises for the benefit of the Lessor and Lessee shall remain liable for payment of the rent reserved herein for the balance of the term of this lease. It is expressly agreed that it shall not be a defense, in any action for rent and/or damage due hereunder, that the Lessor has substituted premises as provided herein as long as the Lessor retained and held an otherwise equivalent rental premises open and available for the Lessee for the term of this lease.

6) UTILITIES:

- a. The following utilities are to be paid by the Lessee: All; Electric; Gas; Water; Telephone; Sewer; Trash Collection; Pest Control; Cable TV; High-speed Internet Access.

- b. If utilities are to be paid by the Lessor the following will apply:

i. Monthly allowance for metered utilities will be capped at:

One hundred twenty five dollars and no cents (\$125.00)

for the entire rental premises. Any overage will be billed to Lessee in writing and shall be payable within seven (7) days of said billing.

ii. The telephone is the responsibility of and shall be obtained by the Lessee at Lessee's expense. Except for maintenance of telephone wiring present on the premises at the inception of this lease, Lessor shall not be responsible for maintaining phone lines or phone service to the apartment in any respect.

iii. Lessor will provide connections to utility, basic cable tv and internet service providers as chosen by Lessor. Lessee may find it necessary to purchase a Network Interface Card and/or other equipment to connect Lessee's personal computer to Lessor's network. This equipment and expense will be Lessee's sole responsibility. Any assistance connecting to and/or repair of said internet service shall be the responsibility of and paid for by the Lessee. In the event Lessee is in default under any of the terms of this lease, or in violation of the terms and conditions of any agreement with the Internet Service Provider, Lessor has the right to discontinue Lessee's connections to the Internet Service Provider as provided within the Florida Statutes. Should Lessee desire to use alternative cable TV or internet on-line services, Lessee shall have the right to do so, at Lessee's expense. Lessor will not be liable for any interruption, surge, or failure of utilities or services provided to Lessee or any damage directly or indirectly caused by the interruption, surge or failure.

iv. Should Lessee desire to use/install a satellite and/or antenna television system, Lessee shall have the right to do so, at Lessee's expense so long as the installation is pre-approved, in writing, by the Lessor. An additional security deposit may be required based on the location of the installed equipment in order to return the premises to original condition. Any such installation must be performed by licensed contractors and any such contractor's credentials must be provided to Lessor prior to installation. Lessor has the absolute right to deny installation of satellite and antenna equipment on the structure of the premises.

- 7) **ASSIGNMENT:** Lessee, without written consent of the Lessor, shall not sublet any part of the premises or assign its interest in this lease. Lessee agrees, however, that any approved sublease shall in no way release Lessee from the obligation of the lease.

LEASE AGREEMENT

8) SMOKING POLICY: Smoking is expressly prohibited within the rental premises, including on patios and balconies, managed by Lessor. In violation of this part, the following shall apply, with all such charges to be due and payable within seven (7) days of notification (with such notice to be given as provided in Section 83.56 Fla.Stat. (2006)): first violation—\$50.00 charge; Second violation—\$100.00 charge and the Lessor may, in its sole discretion, declare the lease to be in incurable default. All costs associated with damages that are incurred due to unauthorized smoking in the apartment or on the balcony will also be and remain the responsibility of the Lessee.

9) PET POLICY: No pets are permitted in any units or properties managed by Lessor unless an addendum to this Lease Agreement has been executed. In violation of this part the following remedies shall be available, in addition to each and every other remedy available under this lease or Florida law: a. First violation—written warning (with such notice to be given as provided in Section 83.56 Fla.Stat. (2006)) will be given and a \$100.00 charge assessed, which will be payable within seven (7) days of said notification; b. Second violation— \$200.00 charge assessed and the lease will be considered in non-curable default. All costs associated with damages that are incurred due to having an unauthorized pet in the apartment will be and remain the responsibility of the Lessee.

10) TERMS, RULES AND REGULATIONS: By execution of this lease, Lessee acknowledges receipt of and agrees to abide by all of the terms, rules and regulations established by Lessor, appearing below, as well as any and all applicable local, county, state and federal laws:

- a) No nuisances shall be allowed to exist upon the premises, nor shall any use or practice that is the source of annoyance to Lessees or that interfere with the peaceful possession and proper use of the property by Lessor's Lessees. **The possession and/or use of firearms, pellet guns, BB guns, paint ball guns and other weapons is expressly prohibited and is considered a violation of the lease.** No immoral, improper, offensive or unlawful use shall be made of the premises or any part of it and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.
- b) The common/exterior elements of the premises shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Lessee's and their guests and may not be obstructed, littered, defaced or misused in any manner. No Lessee shall permit any use of the premises or make any use of the common/exterior elements that will increase the cost of insurance on the premises.
- c) No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained on any part of the premises.
- d) **Patios and balconies may contain only the following items:** a) patio furniture in good repair; b) healthy plants in hanging baskets or clay pots (dead plants must be removed); c) doormats (carpet samples or other objects not designed to be used as doormats shall be prohibited). **As otherwise provided by the Fire Prevention Code, Chapter 3-4.9, "barbeque grills and similar cooking equipment shall not be used on balconies, terraces, roofs or porches" of the rental premises.** All drying or hanging, for any purpose, of clothes, towels or any other unsightly objects by line rack or otherwise, and which is visible outside the premises, shall be prohibited. No reflective film or other type of window treatment shall be placed or installed on the inside or outside of any unit. Any drapes, curtains, blinds, shades or other window coverings of any type or kind placed or installed in any and all exterior windows of any unit shall have a white colored surface or drape lining facing the outside. No bed sheets are permitted to hang in any exterior window. All articles of personal property belonging to Lessee's occupants shall be stored only within the individual rental premises or appropriate storage space. In violation of this part the following shall apply, with all such charges being payable within seven (7) days of notification: first violation—written warning (with such notice to be given as provided in Section 83.56 Fla.Stat. (2006)) specifying the complaint and \$25.00 charge; Second

LEASE AGREEMENT

violation—\$50.00 charge and the Lessor may, in its sole discretion, declare the lease to be in incurable default.

- e) All repairs to plumbing or to electrical wiring within a unit shall be made by plumbers or electricians authorized to do such work by proper governmental authorities. Lessee, however, shall be responsible for the replacement of all interior light bulbs and tubes, with all such bulbs and tubes to be operational at the time the unit is vacated for termination of the lease. Default in this part shall entitle the Lessor to replace any non-functional bulbs or tubes and assess a charge of \$1.00 per bulb and \$5.00 per tube for the replacements.
- f) Exterior alterations of the buildings shall not be permitted.

11) **PARKING:** Lessee's occupants may use the parking spaces only as assigned by Lessor. Parking in assigned, unassigned or guest spaces shall be limited to passenger automobiles, passenger station wagons, vans and trucks under a one (1) ton weight. All other vehicles, trailers, boats and other items not specifically authorized herein shall not be permitted in said parking spaces unless the Lessor gives its prior written consent. This prohibition on parking shall not apply to temporary parking of trucks and commercial vehicles such as for pickup, delivery, and other commercial services as may be necessary to effectuate deliveries to Lessee's occupants. Parking is not authorized on areas not specifically designed for vehicles.

- a) Only Lessee's occupants will receive parking decals. Decals must be properly affixed to the windshield of your vehicle using the adhesive provided on the face of the decal.
- b) Handwritten notes put in windows will not suffice as permission to park in a "decal only" paved parking area.
- c) Only Lessee's occupants with parking decals may park on the paved areas, between green lines, of the parking lots.
- d) All guests/visitors (including relatives) must park in the grass area west of the guardhouse. Temporary decals must be taped to the inside of the windshield and are available (on a case by case basis) at the office during business hours: Monday through Friday, 9 a.m. to 5 p.m..
- e) We have a **ROAM TOWING** contract with a towing company to randomly "patrol" the paved parking lot and remove any vehicles that do not have the proper decals or are improperly parked. The towing company patrols 24 hours a day, seven days a week.
- f) Should Lessee's occupants come home late at night and find no parking space is available in the paved parking lot, overflow parking is available in the grass parking lot. Fire lane violators, improperly parked vehicles and vehicles not adhering to the Parking Policy will be towed at all times, decal or no decal, regardless of parking availability.
- g) Performed maintenance on vehicles on Oakbrook Walk property is expressly prohibited.
- h) Paved parking is unassigned parking for Lessees with parking decals only.
- i) If Lessee's occupants suspect someone is improperly parked they should call the towing company at the number shown in e), above. The tow truck operator will make the decision as to whether to tow a vehicle.
- j) Parking decals are not transferable and must remain on the vehicle with the license tag to which it is registered. If any of the information regarding Lessee's car or registration submitted previously to the office changes one will need to stop by the office and update the information prior to parking in the paved areas.
- k) Decals will only be issued to Lessee's occupants with a vehicle registered in their name.
- l) Parking is limited to passenger automobiles, passenger station wagons, vans and trucks with a one ton or less rating. All other vehicles, trailers, boats or other items are prohibited. Vehicles that are abandoned, non-operating or deemed illegal to drive will be towed regardless if they have been issued a decal.

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- m) A replacement fee of \$50.00 will be assessed for lost or stolen decals. If a new car is acquired the old decal should be brought to the office in order to have another decal issued in which event the replacement fee will be waived.
- n) Unauthorized vehicles parked in assigned/marked spaces designated for police, management, model or maintenance personnel will be towed.
- 12) **WAIVER:** The Lessor's enforcement or non-enforcement of any provision of this lease shall not be considered a waiver of the Lessor's right to demand performance of all other terms of the lease, including collection of rent due.
- 13) **DELAYED OCCUPANCY:** If possession of the leased premises is not delivered to the Lessee at the beginning of the term because a. the same are not ready for occupancy (e.g., in need of painting, repairs or other maintenance) after the unit was vacated by the prior tenants or b. the holding over of any previous occupant of said premises or c. complete or partial destruction of the premises by an act of God, fire, flood or other cause not within the control of the Lessor, then and in that event, but subject to the terms set forth below, the Lessor shall not be liable in damages to the Lessee therefore nor shall the Lessee be released from liability under this lease. During the period of such non-availability, however, the rental therefore shall be abated unless the Lessor is able to deliver the Lessee possession of an equivalent rental space within Oakbrook Walk. The decision to provide an equivalent space shall rest within the sole discretion of the Lessor and in the event such an equivalent space is provided any abatement shall only be for that period that Lessee is actually without a rental space. If Lessor is not able to deliver possession of the original space or an equivalent space to Lessee within fifteen (15) days of the date stated herein for commencement of the lease term Lessee may cancel and terminate this lease. In the event of such cancellation, and for this reason only, any funds previously given to Lessor in consideration of this Lease will be refunded. In no event shall non-availability of a rental space constitute grounds for cancellation of this lease prior to the expiration of fifteen (15) days past the original commencement date.
- 14) **INTERRUPTION OF SERVICES:** Lessor shall not be liable for any claim of damages or rebate or charge of any kind in case of the interruption of the supply of water, heat, air conditioning, sewerage, electric current, high-speed internet access or refrigeration occasioned by accident, failure of power supply, or any other cause beyond the control of Lessor. In the event, however, that the interruption of services renders this unit untenantable, the Lessor has the option of terminating this lease whereupon any rent prepaid but unearned shall be refunded to the Lessee. It is understood that if the interruption or casualty is a result of Lessee's occupants' fault or negligence the Rent hereunder shall continue to be due and payable and Lessee shall be liable for the costs of repair to the Premises. In the event of fire or other casualty Lessee shall immediately notify the Lessor or Agent. Lessor shall have no liability for loss or damage to such possessions as clothing, valuables, or other personal property.
- 15) **CONDEMNATION:** If the whole or any part of the leased premises shall be taken by any condemnation proceeding, this lease agreement shall terminate at the time the condemning authority takes possession of the part so taken. All damages awarded for such taking shall belong to and be the sole property of the Lessor.
- 16) **LIABILITY OF LESSOR FOR INJURY OR DAMAGE:** Lessor shall not be liable for any property damage or personal injury from any cause to Lessee's occupants or their property, or to said occupants' guests, invitees, employees, or anyone else on or about the premises of their respective property. BY SIGNING THIS AGREEMENT LESSEE ACKNOWLEDGES AND AGREES THAT UPON SURRENDER OR ABANDONMENT AS DEFINED BY FLORIDA STATUTES LESSOR SHALL NOT BE RESPONSIBLE FOR THE STORAGE OR OTHER DISPOSITION OF THE LESSEE'S OR LESSEE'S OCCUPANTS' PERSONAL PROPERTY LEFT ON THE PREMISES. Lessee acknowledges that Lessor has not made any representations, written or oral, concerning the safety of the community or the effectiveness or operability of any security devices or security measures. Lessee acknowledges that Lessor does not warrant or guarantee the safety or security of Lessee's occupants or their guests or invitees against the criminal wrongful acts of

LEASE AGREEMENT

roommates or third parties. Lessee, for itself and its occupants, hereby specifically and completely releases the Lessor from any and all liability for injuries and damages sustained by the Lessee's occupants. This release relates to all injuries or damages, including property, and personal injury and binds all persons executing the lease, and any and all persons claiming by or through any such parties. Each Lessee, occupant, guest, and invitee is responsible for protecting his or her own person and property. Lessee acknowledges that security devices or measures may fail or be thwarted by criminals or by electrical or mechanical malfunction. It is the Lessee's occupants' responsibility to securely close and fasten all unit windows and doors. Lessee acknowledges that one should not rely on such devices or measures but, rather, should protect themselves and their property as if these devices or measures did not exist. Should Lessee's occupants become seriously ill or injured on-site at Oakbrook Walk this lease constitutes authorization for the Lessor to call 911 emergency services at Lessee's expense, even though the Lessor is not legally obligated to do so.

- 17) **IMPAIRMENT OF USE OF LEASED PREMISES:** In the event of any impairment of the use of the leased premises for a period of three (3) days that does not **MATERIALLY** affect the beneficial use by Lessee's occupants, the obligation to pay rent shall not abate but the full use shall be restored or the rental period reduced proportionally at the option of the Lessor.
- 18) **REDELIVERY UPON EXPIRATION:** Upon the expiration of said term, or upon the termination of this lease agreement for any cause, Lessee shall immediately deliver to Lessor possession of the leased premises together with all the furnishings and equipment therein belonging to the Lessor in a clean and good condition subject only to reasonable wear and tear. **DIRT AND WALL MARKS ARE NOT CONSIDERED NORMAL WEAR AND TEAR.** Lessee also hereby agrees to the terms and conditions of that portion of the Inventory Condition List related to agreed charges for damaged or missing items in the rental unit, which List is provided to Lessee simultaneously herewith, incorporated by reference herein and made a part hereof, whether signed on the form thereof by Lessee or not. **IF ANY LESSEE OCCUPANT HAS NOT VACATED THE PREMISES AT THE EXPIRATION OF THE LEASE LESSEE WILL BE CHARGED HOLDOVER RENT AS DEFINED BY FLORIDA STATUTES.**
- 19) **PERSONAL PROPERTY:** Lessor shall not be liable for the personal property of the Lessee's occupants brought on the premises. Lessee and Lessee's occupants are encouraged to procure and maintain in force renter's insurance. Lessor gives no right of storage to the Lessee or its occupants. Lessee must remove all personal property at termination of the Lease Agreement unless parties enter into a written storage agreement.
- 20) **RENEWAL:** In the event the Lessee wishes to extend this lease beyond the expiration date, Lessee must **MAKE APPLICATION to extend IN WRITING AT LEAST SIXTY (60) DAYS** prior to the ending date of this lease and said extension shall be at the sole discretion of Lessor or his representatives.
- 21) **SUBORDINATION OF LEASE:** Lessor may encumber the premises by one or more mortgages securing such sums and upon such terms and conditions as Lessor may desire and any such mortgages so given shall be a lien on the leased premises superior to the rights of Lessee herein and upon request Lessee shall execute a subordination agreement.
- 22) **EXPENSES OF MISUSE:** Lessee shall be solely liable and fully responsible for and bear the expenses of correcting stoppages or damage to any equipment, appliances, utility, or fixtures in or on the premises caused by the misuse of the same. Lessee shall also be responsible for cleaning/replacement of air conditioning filters on an otherwise reasonable periodic basis. Lessee shall immediately notify Lessor of any stoppages or failures in any plumbing, fixture, utility or other equipment provided by the Lessor. Failure of the Lessee to so notify the Lessor of same shall constitute an absolute defense to any action by the Lessee by breach of the lease for failure on the part of the Lessor to maintain the failed or stopped item.
- 23) **INSPECTION OF PREMISES:** Lessee and Lessee's occupants shall permit the Lessor or any of its agents to enter the leased premises at all times during an emergency to examine and/or to protect the same, and at reasonable times and upon reasonable notice to show the leased premises to prospective buyers or renters or to

LEASE AGREEMENT

make such repairs, additions or alterations thereto as may be deemed necessary. **LOCKS SHALL NOT BE PLACED ON THE DOORS BY LESSEE.** No rubbish, refuse garbage or trash shall be allowed to accumulate in places other than the receptacles provided therefore, so that the premises, the common elements and limited common elements shall at all times remain in a clean and sanitary condition. If, upon inspection, Lessor determines that Lessee is keeping the premises in an unreasonably dirty, unhealthy or unsafe condition Lessor shall have the right to cause such condition(s) to be corrected with a charge (**\$20 per collected 20 gallon bag of trash or \$50 for any item that is too large to fit into a bag**) which shall be assessed against the Lessee where, after twelve hours notice, the violation is not cured and the Lessor, in its sole discretion, must act to correct the same for the preservation of the premises. All costs thereof shall be reimbursed to Lessor by Lessee within twenty four (24) hours of a written request for same. Violation of this part is expressly agreed to constitute a material violation of the lease.

- 24) **DEFAULT:** IN THE EVENT OF A DEFAULT IN THE PERFORMANCE OF ANY OF THE COVENANTS OF THIS LEASE AGREEMENT AND BY REASON THEREOF THE LESSEE OR THE LESSOR EMPLOY THE SERVICES OF AN ATTORNEY TO ENFORCE PERFORMANCE OF THIS AGREEMENT OR TO PERFORM ANY SERVICES RELATING TO SAID DEFAULT, THEN IN ANY OF SAID EVENTS, THE DEFAULTING PARTY AGREES TO PAY REASONABLE ATTORNEY'S FEES AND ALL EXPENSES AND COSTS INCURRED BY THE PREVAILING PARTY THEREIN. THE PARTIES FURTHER AGREE THAT ANY ACTION BROUGHT HEREUNDER WHETHER BY THE LESSOR OR THE LESSEE, SHALL BE BROUGHT IN ALACHUA COUNTY, FLORIDA. If the default shall be made in payment of the rent, or if Lessee shall violate any other covenants of this lease agreement or the TERMS, RULES AND REGULATIONS attached hereto and made a part hereof, the Lessee shall become a tenant of sufferance and Lessor shall be entitled immediately to all remedies provided for by law.
- 25) **ACKNOWLEDGEMENTS:** By their signatures hereon the parties expressly agree and acknowledge that this document contains the entire agreement of the parties and that neither party enters into this lease agreement relying upon, or intending to rely upon, any verbal representation, statement, promise or assurance by the other party or the other party's agents or representatives.
- 26) **PEST CONTROL:** Lessee shall be solely and fully responsible for and bear the expense of all pest control at the rental premises during the term of the lease, with the exception of termite treatment. If, upon inspection, Lessor determines that Lessee is not keeping the premises reasonably pest free, Lessor shall have the right to cause such condition to be corrected and all costs thereof shall be reimbursed to Lessor, by Lessee, upon twenty four (24) hours written request. Violation of this part is expressly agreed to constitute a material violation of the lease.
- 27) **YARD MAINTENANCE:** Lessor shall be responsible for providing lawn care services. Should Lessor be unable to have the lawn mowed due to personal belongings of the Lessee, excess debris, trash or other items being on the lawn, Lessor, at its sole discretion, may have said items removed from the lawn so that lawn mowing can be completed. Lessee shall be responsible for the cost of having said items removed from the lawn and shall pay any associated cost for same upon twenty four (24) hours written request. Violation of this part is expressly agreed to constitute a material violation of the lease.
- 28) **MOLD AND MILDEW:** Lessee acknowledges that it is necessary for the Lessee to provide appropriate climate control, keep the Unit clean and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Lessee agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible and to not to block or cover any of the heating, ventilation or air conditioning ducts in the Unit. Lessee also agrees to immediately report to the management office (i) any evidence of water leaks or excessive moisture in the Unit, as well as in any storage room, garage, or other common areas; (ii) any evidence of mold or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit, and (iv) any inoperable

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doors or windows. Lessee further agrees that Lessee shall be responsible for damage to the Unit and Lessee's Property, as well as injury to Lessee and Lessee's guests, resulting from Lessee's failure to comply with the terms of this lease provision. In this regard, the Lessee agrees, immediately upon written demand (which demand may be made by hand delivery, mail or facsimile), to hold Lessor harmless from and indemnify Lessor for any and all damages, whether to persons or property, which arise out of Lessee's failure to comply with the terms of this lease provision and for which the Lessor may be found to be liable. Default under the terms of this lease provision shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this lease provision and the terms of the Lease, the terms of this lease provision shall control. Any term that is capitalized but not defined in this lease provision that is capitalized and defined in the Lease shall have the same meaning for purposes of this lease provision as it has for purposes of the lease.

29) **RADON GAS NOTIFICATION:** Radon gas is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon testing may be obtained from the County Public Health Unit. Receipt of the foregoing notification is acknowledged below.

LESSOR DISCLOSURE STATEMENT

Pursuant to Chapter 4 of the Rules adopted by the Florida Cabinet under the authority Section 501.205, Florida Statutes, Lessor makes the following disclosures to the Lessee:

Collegiate Properties Inc., 1331A SW 13th Street, Gainesville, Florida 32608, (352) 375-4543 (the Lessor), is authorized to receive notices and demands of the Lessees in regard to the leased premises.

Lessee acknowledges the foregoing lease and its entire contents and agrees to be bound by same.

FOR LESSEE: X _____

Corporate Officers Printed Name: X _____

LESSOR: As agent for Owner By: X _____

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ATTACHMENT A

Corporate rental contents

Furniture:

	Quantity	Remarks
Living Room Couch and Chair	1	
Coffee Table and two end tables	1	
Home Entertainment Center	1	
Table Lamps	4	
Dining Room Table and chairs	1	
Full Size Bed	2	
Bed Frame	2	
Bed Table	2	
Desk	2	
Dresser Drawers	2	
Television	1	

Kitchen:

Coffee Pot	1	
Toaster oven	1	
Pots and Pans	1	
Dishware set for 4	1	
Silverware set	1	
Kitchen Utensil set	1	

Decorations:

Wall Pictures	1	
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Consumables:

Hand soap, bath soap, dishwashing liquid, laundry detergent, etc

Consumables are supplied at move in only and not restocked.

Linens:

Bed in a Bag	2	
Bathroom Towel Set	2	

Corporate Cleaning:

Light cleaning performed on a biweekly basis.

Cleaning Check List



Legislation Details (With Text)

File #: ORD-11:037 **Version:** 1 **Name:**
Type: Ordinance **Status:** First Reading
File created: 4/22/2011 **In control:** Finance & Administration Council Committee
On agenda: **Final action:**
Title: AN ORDINANCE AMENDING THE 2010 BUDGET ORDINANCE FOR THE CITY OF JONESBORO
Sponsors: Finance
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
4/26/2011	1	Finance & Administration Council Committee		

Title

AN ORDINANCE AMENDING THE 2010 BUDGET ORDINANCE FOR THE CITY OF JONESBORO

Body

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS THAT:

SECTION 1: Budget Ordinance #09:113 adopted December 15, 2009, as amended during 2010 is further amended by the increase in budget expenditures as follows:

1. Sanitation expenses in the amount of \$38,000.
2. Advertising and Promotion in the amount of \$14,000.
3. Community Development Block Grant in the amount of \$36,000.
4. Jonesboro Economical Transportation System in the amount of \$80,000.
5. Library in the amount of \$101,000.

SECTION 2: This ordinance being necessary for the financial continuity of the City of Jonesboro is hereby declared to be an emergency and shall take effect from and after its passage.



Legislation Details (With Text)

File #:	ORD-11:038	Version:	1	Name:	
Type:	Ordinance	Status:		First Reading	
File created:	4/26/2011	In control:		City Council	
On agenda:		Final action:			
Title:	AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES FROM R-1 TO I-1 LUO LOCATED AT 300 NORTH KATHLEEN AS REQUESTED BY DEREK BALTZ				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Plat MAPC Report				

Date	Ver.	Action By	Action	Result
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title
AN ORDINANCE TO AMEND CHAPTER 117, KNOWN AS THE ZONING ORDINANCE PROVIDING FOR CHANGES IN ZONING BOUNDARIES
body
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:

SECTION 1: Chapter 117, known as the Zoning Ordinance, of the City of Jonesboro, Arkansas, be amended as recommended by the Metropolitan Area Planning Commission by the changes in zoning classification as follows:

From Residential, R-1, to I-1 LUO, Mini-storage/warehouse, the following described property:

LEGAL DESCRIPTION:

All that part of the Northeast Quarter of the Northeast Quarter of Section 14, Township 14 North, Range 4 East, lying east of the right-of-way of the Missouri Pacific Railroad, containing 4.58 acres more or less. Subject to an easement for Kathleen Street and any other easements that may affect said lands.

SECTION 2. The rezoning of this property shall adhere to the following stipulations:

1. The owner agrees to dedicate the right-of-way of forty feet from the centerline of Kathleen.
2. The owner agrees to construct a six foot fence bordering any residential property.
3. The owner agrees to a limited use of property for storage/warehouse only.
4. A future site development plan be submitted and reviewed by the MAPC prior to any development.



City of Jonesboro City Council
Staff Report – RZ 11-09: Baltz-Sloan
 Huntington Building - 900 W. Monroe
For Consideration by the Council on May 3, 2011

REQUEST: To consider a rezoning of a parcel of property containing approximately 4.58 acres more or less from R-1 Single Family to I-1 and make recommendation to City Council.

PURPOSE: A request to consider approval by the Metropolitan Area Planning Commission and recommend to City Council for final action as I-1 Limited Industrial District, L.U.O. Mini-storage/Warehousing.

APPLICANT/ OWNER: Lance Sloan 3516 E. Highland Dr., Jonesboro AR
 Derek Baltz P.O Box 16726 Jonesboro AR 72403

LOCATION: 300 North Kathleen St.

SITE DESCRIPTION: Tract Size: Approx. 4.58 +/- acres, Sq. ft. +/-
 Frontage: Approx. 946.2” ft. along North Kathleen St.
 Topography: Flat
 Existing Devlpmt: Vacant

SURROUNDING CONDITIONS:	<u>ZONE</u>	<u>LAND USE</u>
North:	R-1	Residential
South:	R-1	Residential
East:	R-1	Residential
West:	I-2	Industrial (Airport)

HISTORY: None.

ZONING ANALYSIS: City Planning Staff has reviewed the proposed Zone Change and offers the following findings.

Approval Criteria- Section 14.44.05, (5a-g) - Amendments:

The criteria for approval of a rezoning are set out below. Not all of the criteria must be given equal consideration by the planning commission or city council in reaching a decision. The criteria to be considered shall include but not be limited to the following:

- (a) Consistency of the proposal with the Comprehensive Plan
- (b) Consistency of the proposal with the purpose of the zoning ordinance.
- (c) Compatibility of the proposal with the zoning, uses and character of the surrounding area;

- (d) Suitability of the subject property for the uses to which it has been restricted without the proposed zoning map amendment;
- (e) Extent to which approval of the proposed rezoning will detrimentally affect nearby property including, but not limited to, any impact on property value, traffic, drainage, visual, odor, noise, light, vibration, hours of use/operation and any restriction to the normal and customary use of the affected property;
- (f) Length of time the subject property has remained vacant as zoned, as well as its zoning at the time of purchase by the applicant; and
- (g) Impact of the proposed development on community facilities and services, including those related to utilities, streets, drainage, parks, open space, fire, police, and emergency medical services.

RECORD OF PROCEEDINGS-
METROPOLITAN AREA PLANNING COMMISSION – APRIL 12, 2011

Applicant: Lance Sloan, applicant representing the owner and himself to rezone from R-1 to I-1. Has an outstanding contract to purchase the property contingent upon the rezoning. The use is for storage and warehouse.

Staff: Mr. Spriggs: We have forwarded the analysis in the staff report. It is surrounded primarily by residential with the exception to being adjacent to the railroad and airport to the west. The applicant has requested I-1 Limited Industrial, however staff is suggesting a modification to the I-1 Limited Use Overlay District; so that there can be some level of control on the build out of this lot. We realize that there are some challenges in terms of right of way and access management; which has been an issue for other rezonings in this area. Mr. Spriggs suggested that the MAPC consider L.U.O. as an alternative.

Mr. Spriggs added: In the applicant it was revealed that the applicant proposes 20 buildings at 1,000 sq. ft. each. If approved as I-1, any uses permitted on the use-tables would be allowed with a limited amount of constraints. In instances where the property abuts residentially zoned property, we would require some form of privacy fence screening. The Master Street Plan recommendations were listed- Kathleen Street is listed a collector road recommended as an 80 ft. right of way; 60 ft. was denoted on the plans.

Commission: Mr. Joe Tomlinson asked the applicant would he be acceptable to the MSP collector right of way; Mr. Sloan noted that would be acceptable. Mr. Roberts asked if the limited use overlay would be acceptable to the applicant; Mr. Sloan replied yes it would be acceptable.

Mr. Spriggs read recommended **stipulations:** 1. That a 6ft.- privacy fence be installed along the perimeter of the property where it abuts single family residential. That a final landscaping and lighting plan be submitted as a part of the site plan review process before the MAPC prior to any construction; 3. That the property be rezoned to an I-1, LUO, Mini-storage/warehousing. 4. That the applicant agrees to dedicate the required right of way to satisfy the 80 ft. collector road recommendation along Kathleen St.

Action: Motion was made by Mr. Kelton to recommend approval of the rezoning to City Council, with the above stipulations; 2nd by Mr. Scurlock.

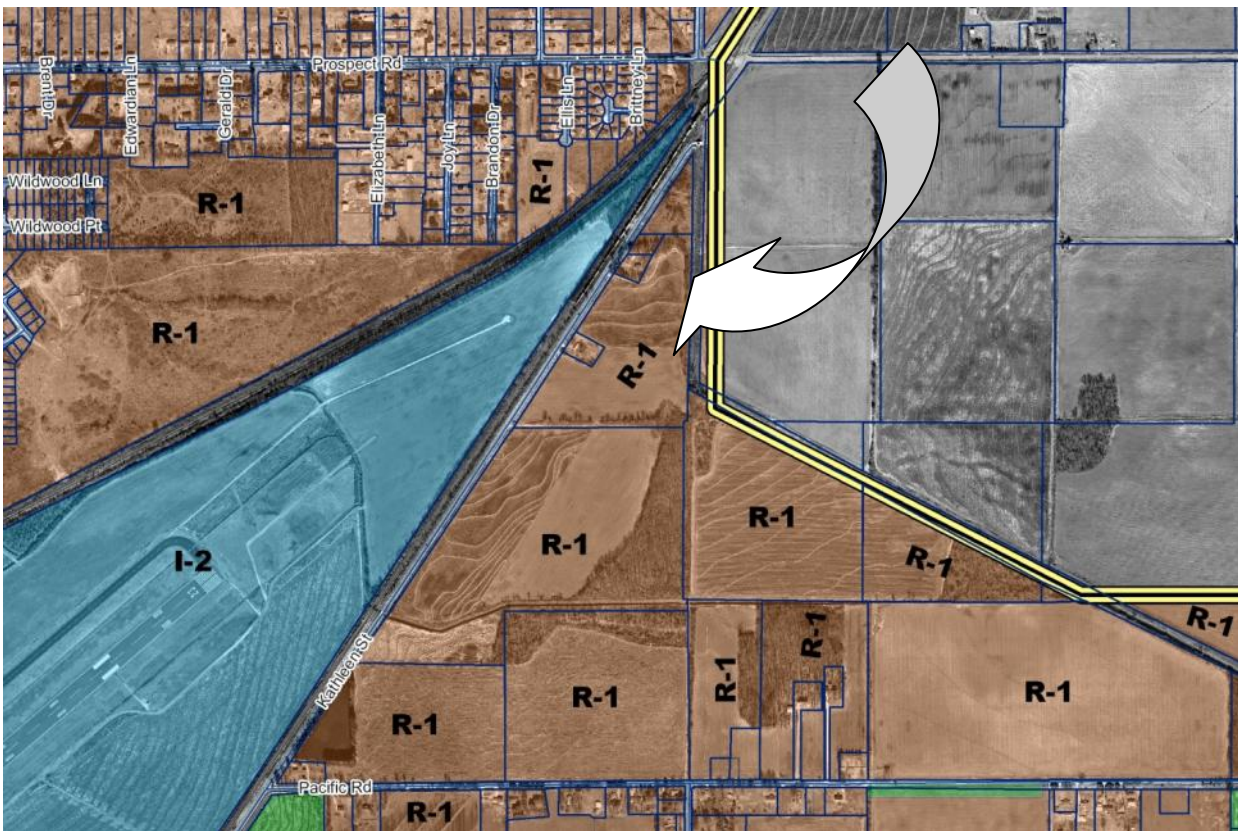
Roll Call: Mr. White- Aye; Mr. Tomlinson- Aye; Mr. Kelton- Aye; Ms. Norris- Aye; Mr. Hoelscher- Aye; Mr. Roberts- Aye; Mr. Scurlock- Aye; Mr. Dover- Aye. **(8 to 0 Approval).**

COMPREHENSIVE PLAN FUTURE LAND USE MAP

The Future Land Use Map adopted on January 5, 2010 shows this area to be within the Northeast Sector and to be recommended as a Planned Mixed Use Area.

Master Street Plan/Transportation:

North Kathleen Street is a (Proposed Collector- 80 ft. min.) and Commerce/Old Bridger is a (Proposed Arterial Road). It is currently two lanes in width, but is capable of accommodating this limited amount of traffic generated by this development. The City has N. Kathleen St. /Commerce Road on the list for improvement to a wider street, capable of accommodating more traffic than at present, though a firm date for the improvements has yet to be decided and announced. Accessibility to the site should be evaluated once final plans are submitted for review.



Zoning/Vicinity Map

Findings:

The proposed rezoning will result in existing R-1 Residential zoned property to be zoned to I-1 Limited Industrial District.

The applicant expressed in the application a desire to construct mini-storages in the future, and wants to phase the project beginning with several buildings then potentially increasing to a max total of twenty if

all standards are met. Staff recommends a limited use overlay consideration or a Planned District submission on the subject site, so that some restraints can be placed to protect single family properties remaining. Furthermore, an orderly growth is necessary for this area which currently lacks necessary road improvements.

The limited Industrial I-1 District has a broad list of possible uses that could be developed on the current site. The applicant has also stated the possibility that (20) - 1,000 s.f. buildings could be built on the site. This area is a planned mixed use proposed area on the Future Land Use Map; therefore, some level of detail is necessary to make an informative decision on this commercial request, to weigh the impact on the surrounding area.

Landscaping/Buffering:

The applicant has not submitted a site plan which would demonstrate any greenspace or undisturbed buffer on South or East. The zoning ordinance calls for a 6' privacy fence around the entire development. The applicant should retain the existing tree line/brush to the south. A final landscape and lighting plan is required as part of the Development Plan review process if this petition is approved and adopted by ordinance.

Conclusion:

The MAPC and the Planning Department Staff find that the requested Zone Change submitted by Baltz-Sloan should be evaluated based on the above observations and criteria for Case RZ 11-09, a request to rezone property from R-1 & to **I-1**. All issues cited above will be addressed by the applicant when further details are provided to the Planning Commission during the site plan review process. The Metropolitan unanimously recommends approval of this rezoning to I-1 L.U.O. Mini-storage/Warehousing to City Council with the above stipulations.

Respectfully Submitted for Council Consideration,



Otis T. Spriggs, AICP
Planning & Zoning Director

SITE PHOTOGRAPHS



View looking Northeast along Kathleen St.



View looking West along Kathleen St.



View looking north of Jonesboro Airport property.



View looking northeast along Kathleen St. (subject property frontage).



View looking northeast along Kathleen St. (subject property frontage).



View looking East in direction of Commerce intersection.



View Looking North at subject property from rear property.



View looking South of residence/agricultural land abutting subject property.



View looking west along Kathleen St. (subject property frontage).



Legislation Details (With Text)

File #: ORD-11:039 **Version:** 1 **Name:**
Type: Ordinance **Status:** First Reading
File created: 4/26/2011 **In control:** Finance & Administration Council Committee
On agenda: **Final action:**
Title: AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE ELAVON TO PERFORM PROFESSIONAL SERVICES FOR COLLECTION OF ALL PAYMENTS MADE TO THE CITY OF JONESBORO BY CREDIT CARDS
Sponsors: Finance
Indexes:
Code sections:
Attachments:

Date	Ver.	Action By	Action	Result
4/26/2011	1	Finance & Administration Council Committee		

Title

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE ELAVON TO PERFORM PROFESSIONAL SERVICES FOR COLLECTION OF ALL PAYMENTS MADE TO THE CITY OF JONESBORO BY CREDIT CARDS

Body

BE IT ORDAINED by the City Council for the City of Jonesboro, Arkansas that:

SECTION ONE: That the Finance Department of the City of Jonesboro, Arkansas needs to acquire a complete credit card collection service for patrons who make payments to the City of Jonesboro.

SECTION TWO: Due to the complexity and uncertain nature of the cost of the service bidding such services would be prohibitive.

SECTION THREE: That after review of simplicity and lower fluctuating charges, said services may be obtained from Elavon.

SECTION FOUR: That the City Council in accord with the terms of A.C.A. § 14-58-302 hereby waives the requirement of competitive bidding and directs the Finance Director to purchase the above described service as set forth above.

SECTION FIVE: That Ordinance No. ORD-07:3136 is hereby repealed.

SECTION SIX: It is further found that due to an immediate need to acquire this service an emergency is declared to exist due to complexity and varying charges and this Ordinance being necessary for the preservation of the public peace, health and safety, it shall take effect from and after its passage and approval.



Legislation Details (With Text)

File #: ORD-11:040 **Version:** 1 **Name:**

Type: Ordinance **Status:** First Reading

File created: 4/26/2011 **In control:** Finance & Administration Council Committee

On agenda: **Final action:**

Title: AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF RADIO UPGRADES FOR PUBLIC SAFETY, PUBLIC WORKS AND PARKS INFRASTRUCTURE.

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
4/26/2011	1	Finance & Administration Council Committee		

Title
AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE PURCHASE OF RADIO UPGRADES FOR PUBLIC SAFETY, PUBLIC WORKS AND PARKS INFRASTRUCTURE.

Body
WHEREAS, federal legislation promulgated by the Federal Communications Commission will require changes to radio frequencies used by emergency personnel, public safety, public works and parks departments of local governments; and,

WHEREAS, it has been determined that communications equipment currently used by City is inadequate to comply with the changes in said legislation, and changes in equipment are necessary to provide for the safety of the citizens of City and for the proper functioning of City’s public safety, public works and parks departments; and,

WHEREAS, the City of Jonesboro is currently using a Motorola designed and installed system, and the State AWINS system also uses Motorola proprietary technology, and use of Motorola equipment will ensure interoperable communications between all agencies in the event of an emergency; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS THAT:

SECTION 1: The City Council, in accordance with A.C.A. §14-58-302, hereby waives the requirement of competitive bidding and directs the Purchasing Agent to purchase the required equipment of approximately 29 portable radios, 4 digital base stations totaling \$43,660.75.

SECTION 2: It being necessary that the finances of the City of Jonesboro, Arkansas be efficiently administered and accounted for, and whereas this ordinance is necessary for the proper execution of contractual obligations, an emergency is declared to exist and this ordinance shall be in full force and effect from and after its passage and approval.