City of Fayetteville Staff Review Form

2020-0577

Legistar File ID

7/21/2020

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Susan Norton	7/6/2020	CHIEF OF STAFF (070)
Submitted By	**Submitted Date**	**Division / Department**

Action Recommendation:

A Resolution to Approve the Real Estate Contract for Equal Exchange of Properties of the western slope of Markham Hill owned by the University of Arkansas with property owned by the City of Fayetteville on Razorback Road and Indian Trails and approval of a Budget Adjustment.

Budget Impact:

1010.090.6600-5805.00	1010 - General
Account Number	Fund
N/A	N/A
Project Number	Project Title

Budgeted Item?	Yes	Current Budget	$	22,000.00
		Funds Obligated	$	-
		Current Balance	**$**	**22,000.00**
Does item have a cost?	No	Item Cost	$	-
Budget Adjustment Attached?	Yes	Budget Adjustment	$	8,000.00
		Remaining Budget	**$**	**30,000.00**

V20180321

Purchase Order Number: _____ **Previous Ordinance or Resolution #** _____

Change Order Number: _____ **Approval Date:** _____

Original Contract Number: _____

Comments:

CITY OF FAYETTEVILLE ARKANSAS

CITY COUNCIL MEMO

MEETING OF JULY 21, 2020

TO: Mayor and City Council

FROM: Susan Norton, Chief of Staff

DATE: 07/06/2020

SUBJECT: A Resolution to Approve the Real Estate Contract for Equal Exchange of Properties of the western slope of Markham Hill owned by the University of Arkansas with property owned by the City of Fayetteville on Razorback Road and Indian Trails.

RECOMMENDATION:
Staff recommends the City Council approve the Real Estate Contract for Equal Exchange of Properties of the western slope of Markham Hill owned by the University of Arkansas with property owned by the City of Fayetteville on Razorback Road and Indian Trails.

BACKGROUND:
The City had the Markham Hill Property appraised in early April of 2020 for $3,087,000. The site consists of 62.40 acres and is a single platted parcel of land located on the east side of N. Futrall Drive. The roughly 10 acres of land on Razorback Road was appraised at $2,839,000 in February of 2019.

DISCUSSION:
Since the acquisition of Kessler Mountain and Centennial Park at Millsap Mountain, the Mayor has continued to negotiate with the University for the Markham Hill property as a way to preserve additional green space and tree canopy in the heart of the city and to connect the City's trail system.

The City of Fayetteville shall convey the City's Indian Trails Property to University of Arkansas; and in exchange, University of Arkansas shall convey the University's Markham Hill Property to the City of Fayetteville. The University and City shall share the closing agent's fee and pay recording fees for any release deeds and the recording fee for the general warranty deed on obtained property.

One concept for the connectivity of the trail system Is the Fayetteville Traverse Trail. This trail aims to create a unique trail experience for Fayetteville, highlighting and knitting together city amenities including parks, trails, residences, the University and downtown. The trail has the potential to become a destination itself, offering an experience hard to find anywhere else. The Traverse is intended to be developed as a multi-use trail system open to all human-powered users such as bikers, runners, hikers, dog walkers, bird watchers, and students accessing natural areas for research and education.

Upon completion of this project, approximately 21,000 residents will be within 1/2 mile of the Traverse Trail system, greatly expanding opportunity for access to trails and destinations to residents, visitors and students. A focused effort to increase the number of interconnected trails will provide a wider user base of residents and visitors access, thereby increasing the activity in and appreciation of our preserved natural areas.

The City has been working with Trailblazers to coordinate the alignment of the Fayetteville Traverse Trail through city properties, as shown in the attached conceptual plan. Trailblazers is also coordinating alignment with the University and other private property owners to complete the loop.

BUDGET/STAFF IMPACT:
Estimated closing costs are $8,000.

Attachments:

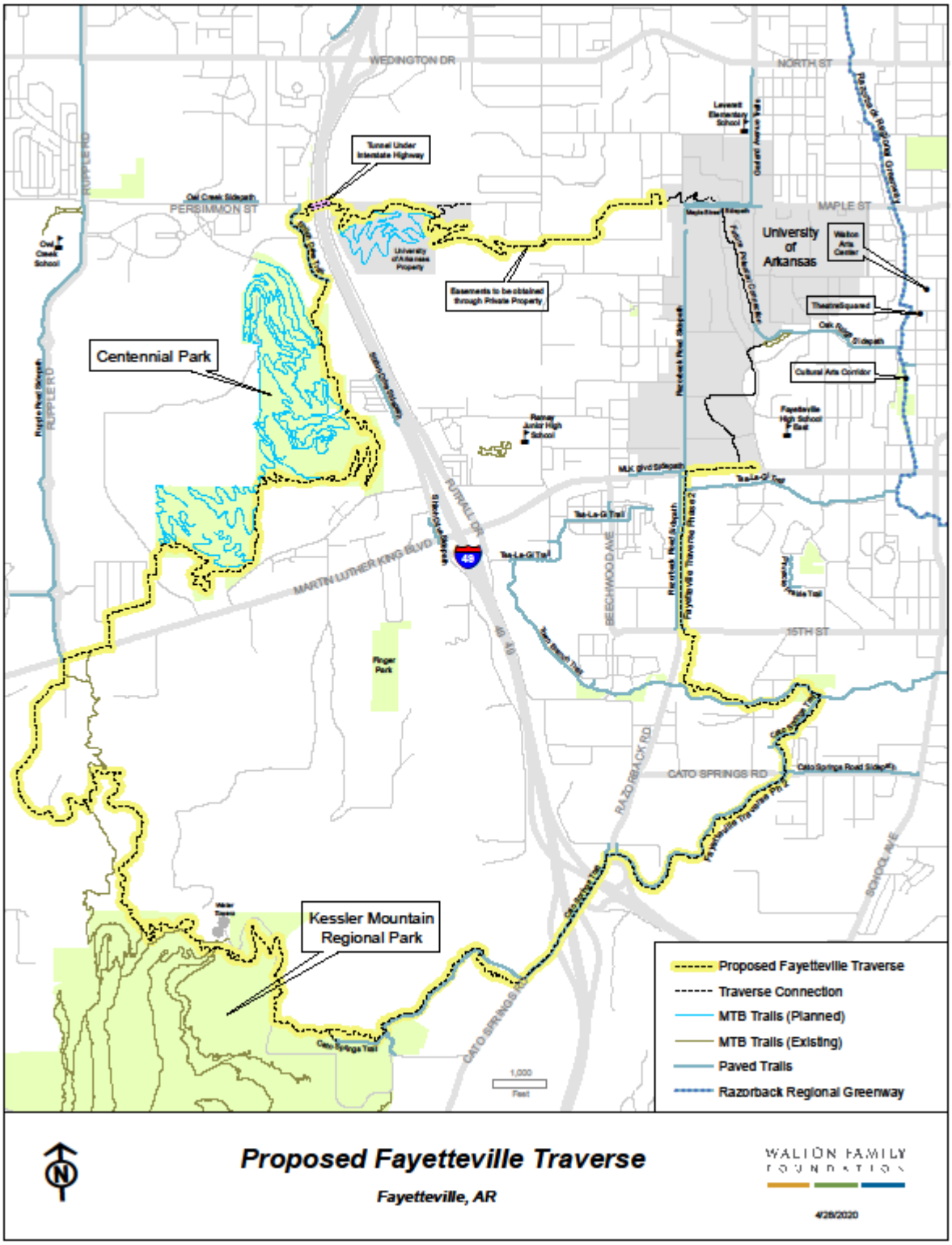
Budget Adjustment
Aerial Maps of property to be exchanged
Conceptual Map of Traverse Trail
Real Estate Contract

FM PLANNING AND DESIGN
JUNE 2020

MARKHAM HILL / UNIVERSITY OWNED

FM PLANNING AND DESIGN
JUNE 2020

INDIAN TRAIL / CITY OWNED



Proposed Fayetteville Traverse

Fayetteville, AR

WALTON FAMILY FOUNDATION

4/28/2020

UNIVERSITY OF ARKANSAS & CITY OF FAYETTEVILLE

REAL ESTATE CONTRACT

EQUAL EXCHANGE OF PROPERTIES

On this ____day of _____, 2020, the Board of Trustees of the University of Arkansas ("University of Arkansas" or "University"), acting for the University of Arkansas, Fayetteville, and the City Council of the City of Fayetteville, Arkansas ("City of Fayetteville" or "City") mutually assert, agree, covenant, and promise:

1. The University of Arkansas owns property containing about 62.4 acres situated in Fayetteville, Washington County, Arkansas (commonly known as part of the western slope of Markham Hill) and more particularly described as follows:

Legal Description of "University's Property":

See attached Exhibit "A."

2. The City of Fayetteville owns property containing about 10 acres on Razorback Road and Indian Trails situated in Fayetteville, Washington County, Arkansas (commonly known as the Indian Trails property) and more particularly described as follows:

Legal Description of City's Property:

See attached Exhibit "B."

3. The City of Fayetteville shall convey the City's Indian Trails Property to University of Arkansas; and in exchange, University of Arkansas shall convey the University's Markham Hill Property to the City of Fayetteville.

4. The University and City shall share equally the closing agent's fee. Both will pay recording fees for any release deeds, and both will pay the recording fee for the general warranty deed on obtained property. Closing agent will prepare the general warranty deeds and any other closing documents required by both parties at closing. Each party

hereby authorizes the closing agent to have prepared any release deeds, affidavits or other documents required to be executed by parties at closing.

5. Conveyance shall be made to each party by general warranty deed, subject to recorded restrictions and easements, if any, which, in each party's sole discretion, do not materially affect the merchantability of the property or either party's intended use of the obtained property. Both parties shall also execute at closing an affidavit stating in substance that the property each is exchanging is not subject to adverse possession claims and that no work or materials have been performed on the property within one hundred and thirty (130) days of closing for which a lien might be asserted.

6. From the date of this real estate equal exchange contract through the date of closing, the conveying party shall not dedicate, gift, transfer, mortgage, or convey any interest in any of the subject properties without written consent from the receiving party, which may be withheld for any reason.

7. Each party shall furnish the receiving party at conveying party's cost an owner's policy of title insurance in the following amounts: University's approximate 62.40 acres - $3,000,000; City's approximate 10 acres - $3,000,000; reflecting merchantable title satisfactory to each party's attorney and issued by a title insurance company qualified to do business in the State of Arkansas and acceptable to each party. If objections are made to conveying party's title as reflected by requirements or exceptions to the commitment to furnish title insurance, conveying party shall have a reasonable time, not to exceed sixty (60) days from the date of receiving party's notification of such objections, to cure such defects to receiving party's satisfaction.

8. General property taxes and special assessments, if any, due on or before the closing date shall be paid by each party of property being conveyed. General taxes and special assessments, if any, for 2020 shall be prorated as of the closing date based upon the previous year's tax statement unless a reassessment or millage increase or decrease

has occurred for the year in which closing occurs, in which case prorations shall be based upon the reassessed value including any increase or decrease in millage.

9. Each conveying party represents to each receiving party that the conveying party has full power and authority to execute this real estate equal exchange contract and that there are no options, rights of first refusal or contracts, written or oral, for the sale of the property or which otherwise would affect conveying party's obligations hereunder.

10. Closing shall be at a time and place established by both parties and is projected to occur no later than August 15, 2020. Either party may extend the closing date beyond such time if necessary to complete title requirements, inspections or review and approval of agencies of the State of Arkansas. Possession of conveyed property shall be delivered to each party at closing. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to closing, as may be reasonably requested by the other party to consummate more effectively the purposes of this real estate equal exchange contract.

11. Either party may inspect the property being obtained prior to closing and shall not rely upon any warranties, representations or statements of conveying party, if any, as to the age or condition of the improvements other than those specified hereon. The subject properties shall all be conveyed "as-is," except for any warranties or representations provided in this real estate contract and the warranties in the general warranty deeds. TO THE BEST OF EITHER PARTY'S KNOWLEDGE AND BELIEF, THE PROPERTY IS FREE FROM ENVIRONMENTAL HAZARDS, SUBSTANCES OR CONDITIONS. Prior to the Closing date, each party may obtain at its cost a Phase I environmental report performed by its own professionals or firm selected. If the report discloses environmental hazards of any nature whatsoever requiring remediation, the receiving party will have the right to terminate this contract unless conveying party elects to pay the cost of remediation or to reduce the purchase price by the cost of remediation. If conveying party fails or refuses to remediate

conditions noted by receiving party's inspection, receiving party may terminate this contract or, in the alternative, receiving party may accept the property in its condition at closing.

12. The risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the conveying party.

13. Parties covenant that if a broker, agent, or finder has been involved in this real estate contract, parties hiring such broker, agent, or finder will pay any commission owed.

14. This real estate contract contains the entire agreement of the parties and may not be changed, modified or amended except by instrument in writing signed by both parties. There are no agreements or representations, written or oral, with respect to the subject matter of this contract which are not contained herein.

15. The rights, obligations, and representations, and warranties under this real estate equal exchange contract shall survive closing and shall not merge with the warranty deeds.

16. This real estate equal exchange contract is subject to the final approval of the Board of Trustees of the University of Arkansas, as evidenced by a resolution of the Board providing such approval and the approval of the City Council of the City of Fayetteville, Arkansas, as evidenced by its Resolution.

CITY OF FAYETTEVILLE ARKANSAS

By:_____
Lioneld Jordan, Mayor

ATTEST:

_____
Kara Paxton, City Clerk

BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS

By:_____
Donald R. Bobbitt, President

EXHIBIT "A"

Vacant Land (62.40 acres more or less) situated east of I-49 at the end of W. Maple Street, Fayetteville, AR, better known as part of Markham Hill.

Legal:
The North Half (N ½) of the NE ¼ of Section 18 in Township 16 North of Range 30 West, except 7.5 acres, more or less, described as beginning at the SE corner of said 80 acre tract, and running thence North 30 rods; thence West 40 rods, thence South 30 rods; thence East 40 rods to the place of beginning, leaving herein 72.5 acres, more or less; LESS AND EXCEPT the following described tract, to-wit: Beginning at a point on the East right of way line of Highway 71 Bypass which is South 88 degrees 57 minutes West 897.7 feet from the NE corner of the SW ¼ of the NE ¼ of said Section, Township and Range, and running along said right of way line North 24 degrees 13 minutes West 498 feet; thence North 22 degrees 05 minutes West 381.6 feet; thence North 09 degrees 19 minutes West 516.4 feet; thence departing said right of way line and running South 0 degrees 25 minutes East 1325.1 feet; thence North 88 degrees 57 minutes East 422.3 feet to the point of beginning, containing 5.091 acres, more or less, and leaving herein 67.409 acres, more or less; ALSO LESS AND EXCEPT the following described tract, to-wit: Beginning at a point which is 30 rods North of the Southeast corner of the North ½ of the NE ¼ of the said Section 18, and running thence North 330 feet; thence West 660 feet; thence South 330 feet; thence East 660 feet to the point of beginning, being five acres more or less; ALSO LESS AND EXCEPT the following described tract, to-wit: Starting at the Northwest corner of the Northwest Quarter of the Northeast Quarter of Section 18 said point also being on the Easterly existing right of way line of U.S. Highway #71; thence South 09° 13' East along said existing right of way line a distance of 326.1 feet to a point on the Easterly proposed right of way line of U.S. Highway #71 for the point of beginning; thence South 20° 32' East along said proposed right of way line a distance of 286.3 feet to a point; thence South 25° 56' East along said proposed right of way line a distance of 377.6 feet to a point; thence South 32° 47' East along said proposed right of way line a distance of 188.0 feet to a point; thence South 38° 16' East along said proposed right of way line a distance of 135.9 feet to a point; thence South 12° 49' East along said proposed right of way line a distance of 122.7 feet to a point on the South line of the Northwest Quarter of the Northeast Quarter of the Northeast Quarter of Section 18; thence South 88° 58' West along said South line a distance of 100.1 feet to a point on the Easterly existing right of way line of U.S. Highway #71; thence North 24° 11' West along said existing right of way line a distance of 482.2 feet to a point; thence North 22° 08' West along said existing right of way line a distance of 402.5 feet to a point; thence North 09° 13' West along said existing right of way line a distance of 183.6 feet to the point of beginning and containing 1.40 acres, more or less; and including oil and gas interests that do not interfere with the surface use for highway purposes and including further the rights of access and use of frontage roads save for the assigns of the defendant in the judgment of June 20, 1969 in Arkansas State Highway Commission v. Evangeline Pratt Waterman (Archer) being case number 6025, Circuit Court of Washington County, Arkansas, as said judgment is recorded at page 254, Volume 43, records of the Circuit Court in and for said county and state; and subject to all easements, roads, lanes, streets, utilities, as now located, whether recorded or unrecorded.

EXHIBIT "B"

Vacant Land W. Indian Trail & S. Razorback Road.

Legal:
A tract of land situated in the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West of the 5th Principal Meridian, being more particularly described as follows, to-wit: Beginning at a point which is 1318.36 feet West and 266.5 feet South 0 degrees 07 minutes West of the Northeast corner of the above described quarter quarter, thence East over the centerline of an existing well 823.36 feet, thence South 0 degrees 07 minutes West 264.52 feet, thence West 823.36 feet, thence North 0 degrees 07 minutes East 264.52 feet to the point of beginning and containing 5.0 acres, more or less.

AND

A tract of land situated in the Northeast Quarter (NE ¼) of the Northeast Quarter (NE ¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West of the 5th Principal Meridian, being more particularly described as follows, to-wit: Beginning at a point which is 12.11 feet South of the Northwest corner of said forty, said point is also 10.0 feet North of the centerline of the St. Louis-San Francisco Railroad, thence N 83°0'E, paralleling said railroad centerline 10.0 feet to the North, 99.40 feet to the North line of said Northeast Quarter of the Northeast Quarter, thence East, along said forty line, 725.0 feet, thence South 266.5 feet, thence West 823.66 feet to the West line of said Northeast Quarter of the Northeast Quarter, thence North, along said forth line, 254.38 feet, to the point of beginning. Containing 5.02 acres, more or less. Less and except that portion contained in the railroad right of way in the Northwest corner of herein described tract.