



City of Fayetteville, Arkansas

113 West Mountain Street
Fayetteville, AR 72701
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Text File

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AN ORDINANCE TO WAIVE THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVE A COST-SHARE AGREEMENT WITH THE WALTON ARTS CENTER FOR THE CONSTRUCTION OF THE NEW WALTON ARTS CENTER ADMINISTRATIVE HEADQUARTERS BUILDING

WHEREAS, the construction of the Spring Street Parking Deck requires the removal of the existing Walton Arts Center Administrative Headquarters Building;

WHEREAS, it is more practical and cost-effective to work cooperatively with the Walton Arts Center to facilitate the joint construction and expansion of a new Administrative Headquarters Building;

WHEREAS, the Walton Arts Center has agreed to reimburse the City of Fayetteville for all costs and expenses of construction and finishing out that exceed the amount the City agrees to contribute to the project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines an exceptional situation exists in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves the attached Cost Share Agreement with the Walton Arts Center for the Walton Arts Center Administrative Headquarters Building which obligates the City of Fayetteville to pay for construction of the basement shell structure and to contribute \$1,400,000.00 toward construction and finishing out of the basement, ground floor and second floor offices.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes the City of Fayetteville to pay all construction costs for the project and to receive reimbursement from the Walton Arts Center for any costs and expenses exceeding the amounts the City of Fayetteville has committed.

City of Fayetteville Staff Review Form

2014-0420

Legistar File ID

10/7/2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

Jeremy Pate

9/23/2014

Development Services /
Development Services Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a cost share agreement with the Walton Arts Center for reimbursement of construction costs for the Walton Arts Center Administrative Headquarters in association with the Spring Street Municipal Parking Deck.

Budget Impact:

Account Number		Fund	
Project Number		Project Title	
Budgeted Item?	NA	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
Does item have a cost?	No	Item Cost	
Budget Adjustment Attached?	No	Budget Adjustment	
		Remaining Budget	\$ -

V20140710


Previous Ordinance or Resolution # 238-12

Original Contract Number: _____

Approval Date: _____

Comments: Any budget impact is being recognized within the Baldwin & Shell Contract Amendment No. 2 agenda item and therefore should not be duplicated with this item.

MEETING OF OCTOBER 07, 2014

TO: Mayor and City Council
THRU: Don Marr, Chief of Staff
FROM: Jeremy Pate, Development Services Director 
DATE: September 23, 2014
SUBJECT: Spring Street Parking Deck-Cost Share Agreement with Walton Arts Center

RECOMMENDATION:

Staff recommends approval of a cost share agreement with the Walton Arts Center, to facilitate the reimbursement of expenses that are the responsibility of the Walton Arts Center with the construction of the replacement and expanded Administrative Headquarters office building.

BACKGROUND:

In December of 2012, after considerable discussion and investigation related to locating a new municipal parking deck in the Dickson Street entertainment area, the City Council selected the block which contains the Walton Arts Center as the preferred location. Siting the new deck in this location, at the northwest corner of Spring and School behind the Walton Arts Center theater building, required the removal of the Administrative Headquarters office building that housed most of the Walton Arts Center staff. The City agreed to work cooperatively with the Walton Arts Center to facilitate the joint construction projects – a major Walton Arts Center expansion and the Municipal Parking Deck – in an effort to minimize disruption and provide needed cultural arts and entertainment infrastructure in the Dickson Street area. To that end, the City also agreed to excavate and construct a basement level backstage expansion area for the WAC's back-of-house functions, and to construct an integrated north liner building with the parking deck project to replace the office building. During this process, the Walton Arts Center decided to take the opportunity to expand their facility, at their cost, to meet present and future needs.

DISCUSSION:

The City already has a contract for excavation and demolition of the existing office building. The construction contract that is being considered separately with Baldwin & Shell under a Guaranteed Maximum Price includes both the parking deck and the replacement/expansion of the WAC Administrative Headquarters office building. This cost share agreement is intended to document and formalize the process by which the City will pay for all construction costs, and subsequently be reimbursed by the Walton Arts Center for any costs exceeding what the City has already committed. Change Orders that impact the cost of the north liner building will be to

the detriment or benefit of the Walton Arts Center; the City has committed a fixed \$1,400,000 to the replacement of the office building space.

BUDGET/STAFF IMPACT:

Funding for this item is being recognized and appropriated within Contract Amendment No. 2 with Baldwin & Shell, which is a separate agenda item. The City is committing a fixed \$1,400,000 to the cost of the structure and finish out of the basement, ground floor and second floor offices of the new Walton Arts Center Administrative Headquarters Building. Any and all costs or expenses in excess of the \$1,400,000 to be paid by the City to construct, enlarge, enhance and finish its new Administrative Headquarters Building, not including the basement shell structure, is the sole responsibility of the Walton Arts Center.

Attachments:

Cost Share Agreement

COST SHARE AGREEMENT

On this 24th day of September, 2014, the City of Fayetteville and the Walton Arts Center Council, Inc. (hereinafter "Walton Arts Center") for their Cost Share Agreement for their joint costs and expenditures to replace and enlarge the Walton Arts Center Administrative Headquarters Building, agree to the following facts, proposals and commitments:

1. In order to construct the City Parking Deck on the same block as the Walton Arts Center's main building, the existing Walton Arts Center Administrative Headquarters Building had to be demolished.
2. The City of Fayetteville therefore agreed to construct a replacement Administrative Headquarters Building as the north liner building of the Parking Deck above the back stage enlargement area.
3. The Walton Arts Center desires to enlarge and enhance its new Administrative Headquarters Building and pay for this additional expense if the City of Fayetteville enters into this Cost Share Agreement for the construction of this building.

NOW THEREFORE, the City of Fayetteville and the Walton Arts Center, Inc. agree as follows:

1. The City of Fayetteville agrees to instruct and pay the contractor to build the new Walton Arts Center Administrative Headquarters Building as the north liner building of the Parking Deck as currently shown on the approved plans.
2. The City of Fayetteville agrees to pay for the basement shell and also agrees to contribute One Million Four Hundred Thousand Dollars (\$1,400,000.00) toward the cost of the finish out of the basement, ground floor and second floor offices of the new Walton Arts Center Administrative Headquarters Building.
3. The Walton Arts Center Council, Inc. agrees that any and all costs or expenses to construct, enlarge, enhance and finish its new Administrative Headquarters Building, not including the basement shell which shall be paid for by the City of Fayetteville, in excess of the \$1,400,000.00 to be paid by the City of Fayetteville shall be and are the sole responsibility of the Walton Arts Center which further agrees to promptly pay these

costs to the City of Fayetteville upon proper invoice being furnished to the Walton Arts Center. 4. Change orders affecting the construction or interior finish out of the Administrative Headquarters Building, must be approved by both the City and the Walton Arts Center to be effective.

5. Savings made possible by change orders for this Administrative Headquarters Building construction and finish out shall inure to the benefit of the Walton Arts Center and reduce the amount of its cost share.

6. Any additional expenses caused by such change orders shall be the responsibility of the Walton Arts Center and may increase its cost share if such change order has been approved and signed off by the Walton Arts Center, its Agent Peter Lane, its Agent Tim Vogt, or a designated successor.

7. Properly invoiced costs that are the Walton Arts Center Council, Inc.'s responsibility pursuant to this Agreement shall be paid to the City of Fayetteville within thirty (30) days of submission by the City to the Walton Arts Center.

8. The Walton Arts Center by this Agreement designates Peter Lane and Tim Vogt as its Agents to approve or disapprove, agree or reject all proposed change orders related to this Agreement unless and until this agency is revoked in writing by the Walton Arts Center Council, Inc.

9. The City of Fayetteville by this Agreement designates Mayor Jordan or his designee to approve all change orders for the City.

**CITY OF FAYETTEVILLE,
ARKANSAS**

By: _____
LIONELD JORDAN, Mayor

Date: _____

ATTEST:

By: _____
Sondra E. Smith, City Clerk

**THE WALTON ARTS CENTER
COUNCIL, INC.**

By: _____
**PETER B. LANE, President
and CEO**

Date: 9/24/14

WITNESS: _____



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE




Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Patti Mulford
Paralegal

TO: **Mayor Jordan**
City Council

THRU: **Kit Williams, City Attorney**

FROM: **Blake Pennington, Assistant City Attorney** 

DATE: **October 1, 2014**

RE: **Walton Arts Center Cost Share**

I originally prepared this item as a resolution for a cost-share with the Walton Arts Center. City Attorney Kit Williams reminded me that the City Council must not only approve the cost-share agreement but also must approve a bid waiver since we are not bidding out the cost-share. Because the project is specifically for the Walton Arts Center, whose building we are removing for the Spring Street Parking Deck, and we are agreeing to share in the cost with the future user of the building, it is neither practical nor feasible to bid out the cost-share portion of this project. Therefore, I am resubmitting this as an ordinance to approve a bid waiver and to approve the cost share agreement with the Walton Arts Center. Please note that the construction, materials and other costs have been bid out – this addresses only the agreement to share the cost with the Walton Arts Center.