

City of Fayetteville Staff Review Form

2020-0414

Legistar File ID

6/2/2020

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

Chris Brown

5/14/2020

ENGINEERING (621)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a Railroad Crossing and Maintenance Agreement and an Easement Agreement with the Arkansas and Missouri Railroad for a new railroad crossing at Futrall Drive and Gregg Avenue, Approval of a Budget Adjustment for Costs Related to the New Crossing, and Approval of a Project Contingency of \$ 28,344.86, for a Total Budget of \$750,000.

Budget Impact:

4602.860.7220-5809.00

Streets Project 2019 Bonds/Street Improvements

Account Number

Fund

46020.7220

Futrall/Gregg and Shiloh/Gregg RR Xngs

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 20,000.00

Funds Obligated \$ 1,734.96

Current Balance \$ 18,265.04

Does item have a cost? Yes

Item Cost \$ 750,000.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 750,000.00

Remaining Budget \$ 18,265.04

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF JUNE 2, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Garner Stoll, Development Services Director

FROM: Chris Brown, City Engineer

DATE: May 13, 2020

SUBJECT: **Approval of a Railroad Crossing and Maintenance Agreement and an Easement Agreement with the Arkansas and Missouri Railroad for a new railroad crossing at Futrall Drive and Gregg Avenue, Approval of a Budget Adjustment for Costs Related to the New Crossing, and Approval of a Project Contingency of \$ 28,344.86, for a Total Budget of \$750,000.**

RECOMMENDATION:

Staff recommends approval of a New Railroad Crossing Cost and Maintenance Agreement and an Easement Agreement with the Arkansas and Missouri Railroad (AMRR) for a new railroad crossing near Shiloh Drive and Gregg Avenue. Staff also recommends approval of the budget adjustment to fund the cost of the railroad crossing agreement and associated costs of roadway and traffic signal modifications to complete the railroad crossing, including a contingency of \$28,344.86. Total project cost including contingency is \$750,000.

BACKGROUND:

The extension of Futrall Drive has long been on the City's Master Street Plan, to provide an additional access to approximately 150 acres of undeveloped property west of the railroad tracks, east of Garland Avenue, and north of Drake Street. This project was identified as a priority project in the 2019 bond program, as opportunities to partner with developers of the property arose. The connection will provide a more direct access from the property to the Fulbright Expressway, and will include pedestrian facilities to allow for safe crossings at the railroad and Gregg Avenue.

DISCUSSION:

AMRR has presented two agreements to the City. The first, a New Railroad Crossing and Maintenance Agreement, addresses terms of the construction and maintenance of the crossing, including:

- The City will reimburse the AMRR for the full cost of labor and materials for installation of the crossing signal, panels, and appurtenances necessary for a fully operational crossing. The estimated cost of the crossing installation is \$519,179.14.
- The City agrees to close the existing unimproved crossing at Garrett Dr. and Gregg Avenue.
- The City will pay a yearly maintenance fee of \$7,500, increasing by 2% per annum, for basic maintenance and wear and tear.

- The City and the AMRR agree to equally share the cost of repairs or major maintenance.

The second, an Easement Agreement, establishes the terms of the City's perpetual use of the AMRR property for the crossing. The most significant item in this contract is a requirement to maintain insurance in the amount of \$15 million.

In addition to these agreements, construction of the roadway connection from the railroad to Gregg Avenue and modification of the traffic signal to accommodate the 4th leg of the intersection and connect to the railroad signal are the responsibility of the City. The estimated cost of these improvements is \$202,476. Finally, a contingency of \$28,344.86 is recommended for unforeseen costs of the railroad crossing and/or the roadway/signal work.

BUDGET/STAFF IMPACT:

As noted above, the total project estimate is:

Agreement with AMRR:	\$519,179.14
Roadway/signal work:	\$202,476
Contingency:	<u>\$28,344.86</u>
Total:	\$750,000

Funding for this work will come from the 2019 Transportation Bond Program. The original allocation in Phase 1 was \$1 million for two proposed signal crossings; the total for the two is now estimated at \$1.5 million; the additional \$1.5 million will come from contingency funds set aside in Phase 1 of the Bond Program.

Attachments:

New Railroad Crossing Cost and Maintenance Agreement
Easement Agreement
Estimate for Roadway and Signal Improvements
Project Vicinity Map
Vicinity Map of Crossing to be Closed

NEW RAILROAD CROSSING COST

AND MAINTENANCE AGREEMENT

This Agreement, made and entered into this ____ day of _____, 2020, by and between the **City of Fayetteville, Arkansas** (hereinafter "City") and **The Arkansas & Missouri Railroad Company**, (hereinafter "AMRR"),

WITNESSETH:

WHEREAS, City is in the process of planning a new crossing at Futrall Drive within the City limits at railroad milepost 349.45. The City proposes, for the benefit of the public, to add this crossing, pursuant to the Site Layout attached as Exhibit 1, and remove in its entirety, existing crossing at Garrett Drive; and

WHEREAS, it is understood that the contemplated crossing will be financed solely from funds appropriated by City and expended under its regulations.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this agreement, subject to the provisions of the recitals above, it is agreed by and between the parties hereto as follows:

1. AMRR has provided an estimate for the cost of the crossing upgrade which is attached as Exhibit 2. This estimate does not include any track or railroad work required during utility installation- which is not subject to estimation at this time. The parties understand that the estimate is \$519,179.14 and the parties acknowledge that the ultimate cost of the crossing could be under or over this estimate. Both parties further acknowledge that any materials or crossing equipment supplied by the City shall be considered a part of the consideration of this agreement. Upon final completion of the project, all said materials and crossing equipment shall become the property of AMRR.

2. AMRR shall be reimbursed 100% of the actual approved cost (labor and material) for installing the new equipment and its invoices will be paid promptly. Material will be billed as it is ordered by AMRR. The City acknowledges that any work within 25 feet of the tracks requires a Flagging Services Agreement for railroad track protection, including, but not limited to, railroad flagging which is charged at the rate of \$95 per hour. A Flagging Services Agreement will be executed simultaneously with the execution of this Agreement.

3. Insurance. During upgrade construction, City shall ensure that any contractors they employ to perform work on the project in question will maintain a general liability insurance policy, the limits of which will be not less than Three Million Dollars (\$3,000,000) per person, Five Million Dollars (\$5,000,000) per accident and Three Million Dollars (\$3,000,000) for property damage. The policy shall name AMRR, its successor or assigns and City as insureds. Such policy shall contain a clause that the insurer will not cancel or change the insurance without giving AMRR, City, or their successors or assigns ten (10) days prior written notice, and a certificate of such insurance shall be delivered to AMRR prior to the inception of the construction of the crossing.

4. Maintenance and Repairs. The parties acknowledge that the crossing and equipment will require maintenance and repairs due to normal wear and tear and possibly damage from accidents, negligence or acts of nature. The City will not be liable for any damages caused solely by the negligence of AMRR. If damages are caused to the crossing and/or equipment by the acts of 3rd parties, AMRR and the City will coordinate to pursue any cause of action against said 3rd parties to recover the costs of repairs and any amount recovered will be applied accordingly. City will pay an annual crossing maintenance fee of \$7,500 effective upon execution of this Agreement and on each anniversary date thereafter for so long as the crossing remains open. On each anniversary date, the annual maintenance fee will increase by 2%. The annual maintenance fee will cover regulatory testing, basic maintenance and general wear and tear. Otherwise, City and AMRR will each be responsible for 50% of any capital expenditures for the equipment and the crossing surface. Except for emergency repairs, AMRR will give the City one hundred eighty (180) day written notice of any needed repairs or maintenance and the amount thereof. The crossing shall be maintained as specified above until such time as the parties mutually agree otherwise or upon a date certain that the crossing should be closed.

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and may not be modified or amended orally.

6. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Arkansas.

7. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors and assigns.

8. Both parties acknowledge that the signatories below have the appropriate authority to sign on behalf of the party they represent.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of _____, 2020.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

CITY OF FAYETTEVILLE, ARKANSAS

Signature

Signature

Print Name

Print Name

Title

Title

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §§
COUNTY OF _____)

On this _____ day of _____, 2020, before me, the undersigned, a Notary Public, duly commissioned, qualified, and acting, within and for said County and State, appeared in person, _____ Lioneld Jordan and Kara Paxton, to me personally well-known who stated that they are the Mayor and City Clerk for the **CITY OF FAYETTEVILLE, ARKANSAS**, and are duly authorized in their capacity to execute the foregoing instrument and for and in the name and behalf of the City of Fayetteville, Arkansas, and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year stated above.

My Commission Expires:

Notary Public

ARKANSAS & MISSOURI RAILROAD COMPANY

Approved by: 
Signature

CAREN L. KRASKA
Print Name

President
Title

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §§
COUNTY OF Washington)

On this 15th day of May, 2020, before me, the undersigned, a Notary Public, duly commissioned, qualified, and acting, within and for said County and State, appeared in person, **CAREN L. KRASKA**, to me personally well-known who stated that she is the President of **ARKANSAS & MISSOURI RAILROAD COMPANY** and is duly authorized in her capacity to execute the foregoing instrument and for and in the name and behalf of Arkansas & Missouri Railroad Company, and further stated and acknowledged that she had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year stated above.


Notary Public

My Commission Expires:

MARCH 17, 2028





Arkansas & Missouri Railroad
306 E. Emma Ave
Springdale, AR 72764

Date: September 18, 2019

To: City of Fayetteville
Attn: Chris Brown

Job: Futrall Dr Fayetteville AR.

Item #	Qty	Description	Unit	Unit Price	Line Total
Material					
1	50	115lb Concrete Panel Material	Ft	\$200.81	\$10,040.50
2	40	10' Crosstie	Each	\$90.50	\$3,620.00
3	160	115# Relay Rail	Linear Foot	\$1,100.00	\$176,000.00
4	80	5.5" Base Pandrol Tie Plate	Each	\$24.00	\$1,920.00
5	160	Pandrol Clips	Each	\$2.95	\$472.00
6	3	Railroad Spikes	Keg	\$75.00	\$225.00
7	160	5.5" Anchors	Each	\$2.95	\$472.00
8	4	115 New / 1/4 worn Trans Rails	Each	\$970.00	\$3,880.00
9	8	115# Thermite Welds	Each	\$198.10	\$1,584.80
10	100	Ballast Truck Load	Truckload	\$17.00	\$1,700.00
					\$199,914.30
				Freight	\$1,250.00
				10% O/H	\$19,991.43
				Tax @ 9.75%	\$19,491.64
Subtotal (material)					\$240,647.37
Labor					
1	1	CWS - CTC Quote (Material & Labor)	Lump Sum	\$239,731.77	\$239,731.77
2	1	Contractor Labor (Track Contractor)	Lump Sum	\$15,500.00	\$15,500.00
3	1	Project Management/Administrative	Lump Sum	\$5,000.00	\$5,000.00
4	100	MOW EIC of Track Protection	Hour	\$95.00	\$9,500.00
5	20	Surfacing Crew	Hour	\$200.00	\$4,000.00
6	16	1-10-Ton Truck	Hour	\$150.00	\$2,400.00
7	16	1- Dump Truck w/Driver	Hour	\$150.00	\$2,400.00
Subtotal (labor)					\$278,531.77
Total					\$519,179.14

Prepared by: Jeromy Houchin

EXHIBIT 2

RAILROAD CROSSING EASEMENT AGREEMENT

This Agreement, made and entered into this ____ day of _____, 2020, by and between the **City of Fayetteville, Arkansas** (hereinafter "City") and **The Arkansas and Missouri Railroad Company**, (hereinafter "AMRR"),

WITNESSETH:

WHEREAS, City is in the process of planning the construction of an extension of Futrall Drive within the City limits that would cross AMRR's tracks. The City proposes, for the benefit of the public, to install a new crossing at said location, pursuant to particular plans and specifications to be agreed upon by the parties; and

WHEREAS, the Easement is defined on **Exhibit 1** and incorporated herein by reference; and

WHEREAS, it is understood that the contemplated crossing will be financed from funds appropriated by City and expended under its regulations as established under the terms of a Crossing Agreement executed separately by the parties.

NOW, THEREFORE, in consideration of the covenants and agreements contained and subject to the provisions of the recitals above, it is agreed by and between the parties hereto as follows:

1. The City and AMRR have caused to be prepared plans and specifications for the project. Attached as **Exhibit 1** is the proposed plan. The parties acknowledge that this schematic drawing contains certain requirements and restrictions with regard to the construction in, near and around the Railroad and the City agrees to be bound by all of these requirements and restrictions contained in the plans, specifications, coordination notes and the separate Crossing Cost Agreement.

2. AMRR has provided an estimate for the cost of the crossing. The parties understand that the estimate is \$519,179.14 and the parties acknowledge that the ultimate cost of the crossing could be under or over this estimate.

3. The cost (labor and material) for installing the new crossing will be born by the City pursuant to the Crossing Cost Agreement.

4. After completion of the project, the Parties shall bear the expense of the maintenance, inspection, capital costs and operation of the crossing per the terms of the separate Crossing Agreement or any amendment thereto, so long as it is to be maintained as a crossing over the railroad or until it is mutually agreed between the parties that the project is no longer needed at the crossing or until the crossing is abandoned by AMRR or City, or other legal requirements making it necessary to cease operations and maintenance of the project. At that time, materials purchased and installed for the project may be moved to other locations on AMRR's lines within the States of Arkansas or Missouri or otherwise disposed of or sold by AMRR.

5. Limitation on Grant. This Easement does not grant to City the subsurface of any easement area, all such rights and privileges being reserved to AMRR.

6. Indemnification. The CITY OF FAYETTEVILLE shall cause any contractor employed by it or engaged by it to construct the improvements contemplated by this agreement to assume any and all liability for injury to or death of persons, all loss or damage to property, in any manner arising from or during the construction of the improvements contemplated by this agreement, however, such injury, death, loss, damage or destruction as aforesaid may occur or be caused. The CITY OF FAYETTEVILLE shall further cause any contractor engaged by it to construct the improvements contemplated by this agreement to indemnify and save and hold harmless the ARKANSAS & MISSOURI RAILROAD COMPANY from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs and expenses arising or growing out of or in connection with such injury, death, loss, damage or destruction as aforesaid, which expense shall include the cost ARKANSAS & MISSOURI RAILROAD COMPANY incurs defending itself, including attorney fees and expenses.

7. Insurance. In further consideration for the grant of this Easement, City shall acquire a policy of liability insurance which shall insure AMRR in the amount of fifteen million dollars (\$15,000,000) from liability for injury or death to persons or damage to property arising from any persons using the crossing described on Exhibit 1, whether injuries are caused by the operation of the trains by AMRR or otherwise. At the option of AMRR such policy shall either name AMRR as a named insured or an additional insured of such policy. Said policy will be kept in full force and effect during the existence of this Easement and shall continue to insure AMRR for incidents arising during the existence of this Easement and until the crossing is terminated or abandoned per the terms of paragraph 5 above, regardless of when the claim is made. Such policy shall be subject to approval of AMRR and shall provide for notice to AMRR not less than 30 days of cancellation of such policy.

8. If any portion of this Easement or any provision in this Easement shall be found to be invalid or unenforceable, the remaining provisions shall continue to be fully effective and enforceable, and both parties consent to the modifications of this Easement in any manner as a court may deem necessary to preserve the grant of easement contained herein.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and may not be modified or amended orally.

10. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Arkansas.

11. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors and assigns.

12. Both parties acknowledge that the signatories below have the appropriate authority to sign on behalf of the party they represent.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of _____, 2020.

CITY OF FAYETTEVILLE, ARKANSAS

Signature

Signature

Print Name

Print Name

• • • • •

• • • • •

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) §§
COUNTY OF WASHINGTON)

On this _____ day of _____, 2020, before me, the undersigned, a Notary Public, duly commissioned, qualified, and acting, within and for said County and State, appeared in person, **Lioneld Jordan and Kara Paxton**, to me personally well-known who stated that they are the **Mayor and City Clerk** for the **CITY OF FAYETTEVILLE, ARKANSAS**, and are duly authorized in their capacity to execute the foregoing instrument and for and in the name and behalf of the City of Fayetteville, Arkansas, and further stated and acknowledged that they had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year stated above.

Notary Public

My Commission Expires: _____

ARKANSAS & MISSOURI RAILROAD

Approved by: _____

Signature

Caren L. Kraska
Print Name

President
Title

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)
COUNTY OF Washington) §§

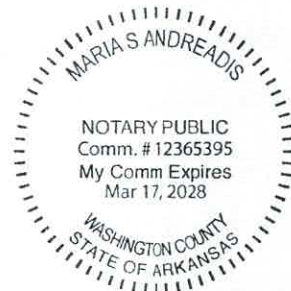
On this 15th day of May, 2020, before me, the undersigned, a Notary Public, duly commissioned, qualified, and acting, within and for said County and State, appeared in person, **CAREN L. KRASKA**, to me personally well-known who stated that she is the President of **ARKANSAS & MISSOURI RAILROAD COMPANY** and is duly authorized in her capacity to execute the foregoing instrument and for and in the name and behalf of Arkansas & Missouri Railroad Company, and further stated and acknowledged that she had so signed, executed, and delivered said foregoing instrument for the consideration, uses, and purposes therein mentioned and set forth.

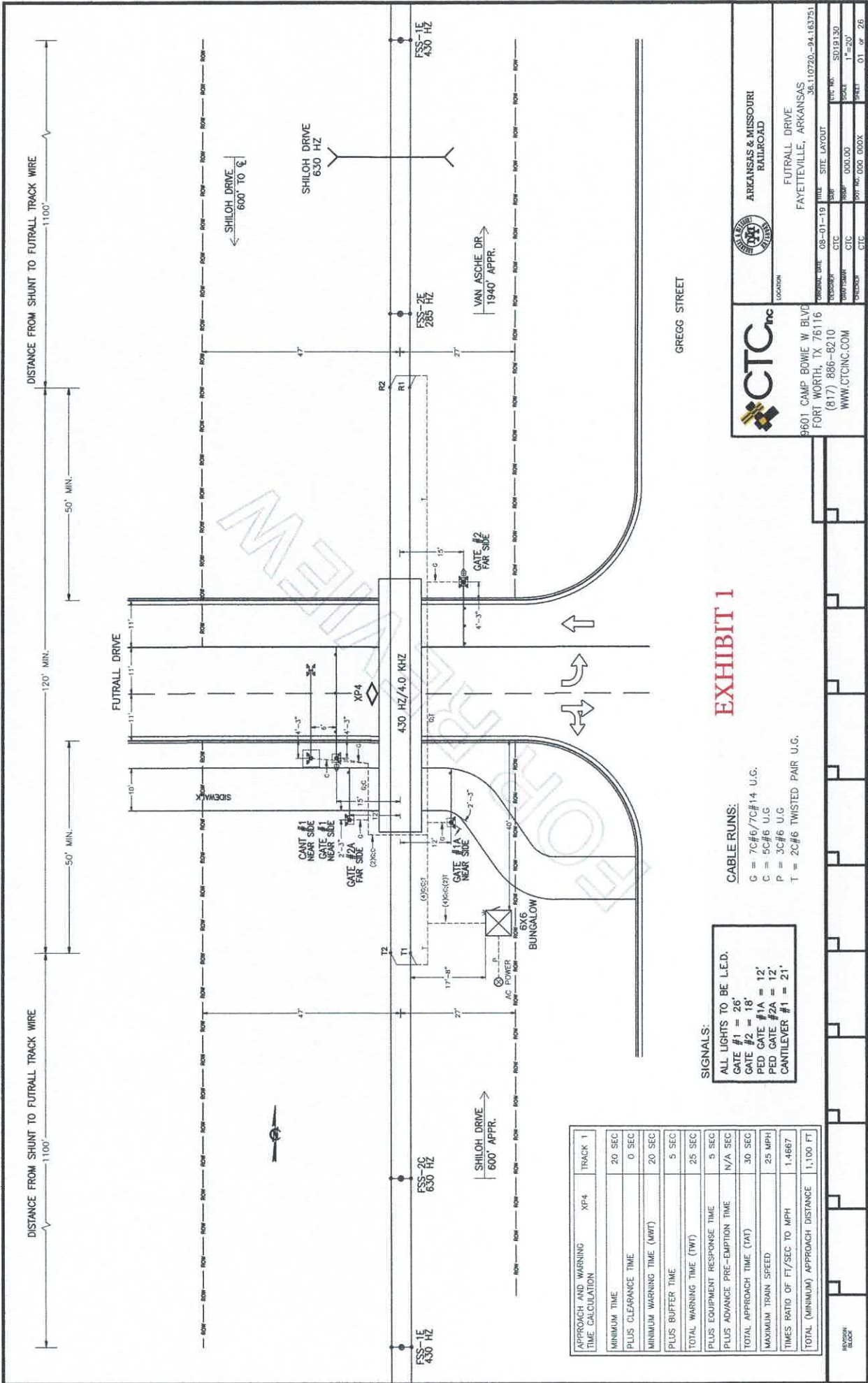
IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the day and year stated above.

Maria S Andreadis
Notary Public

My Commission Expires:

March 17, 2028





GREGG STREET

EXHIBIT 1

SIGNALS:

ALL LIGHTS TO BE L.E.D.
 GATE #1 = 26'
 GATE #2 = 18'
 PED GATE #1A = 12'
 PED GATE #2A = 12'
 CANTILEVER #1 = 21'

CABLE RUNS:

G = 7C#6/7C#14 U.G.
 C = 5C#6 U.G.
 P = 3C#6 U.G.
 T = 2C#6 TWISTED PAIR U.G.

APPROACH AND WARNING TIME CALCULATION	XP4	TRACK 1
MINIMUM TIME	20 SEC	
PLUS CLEARANCE TIME	0 SEC	
MINIMUM WARNING TIME (MWT)	20 SEC	
PLUS BUFFER TIME	5 SEC	
TOTAL WARNING TIME (TWT)	25 SEC	
PLUS EQUIPMENT RESPONSE TIME	5 SEC	
PLUS ADVANCE PRE-EMPTION TIME	N/A SEC	
TOTAL APPROACH TIME (TAT)	30 SEC	
MAXIMUM TRAIN SPEED	25 MPH	
TIMES RATIO OF FT/SEC TO MPH	1.4667	
TOTAL (MINIMUM) APPROACH DISTANCE	1,100 FT	

CTC
 3601 CAMP BOWIE W BLVD
 FORT WORTH, TX 76116
 (817) 886-8210
 WWW.CTCINC.COM

ARKANSAS & MISSOURI
 RAILROAD
 FAYETTEVILLE, ARKANSAS
 FAYETTEVILLE, ARKANSAS
 36.10720, -94.163751

PROJECT NO.	08-01-19	TITLE	SITE LAYOUT
DESIGNER	CTC	DATE	08-01-19
CHECKED BY	CTC	SCALE	1"=20'
APPROVED BY	CTC	DATE	08-01-19
PROJECT	01 OF 26		

REVISION BLOCK



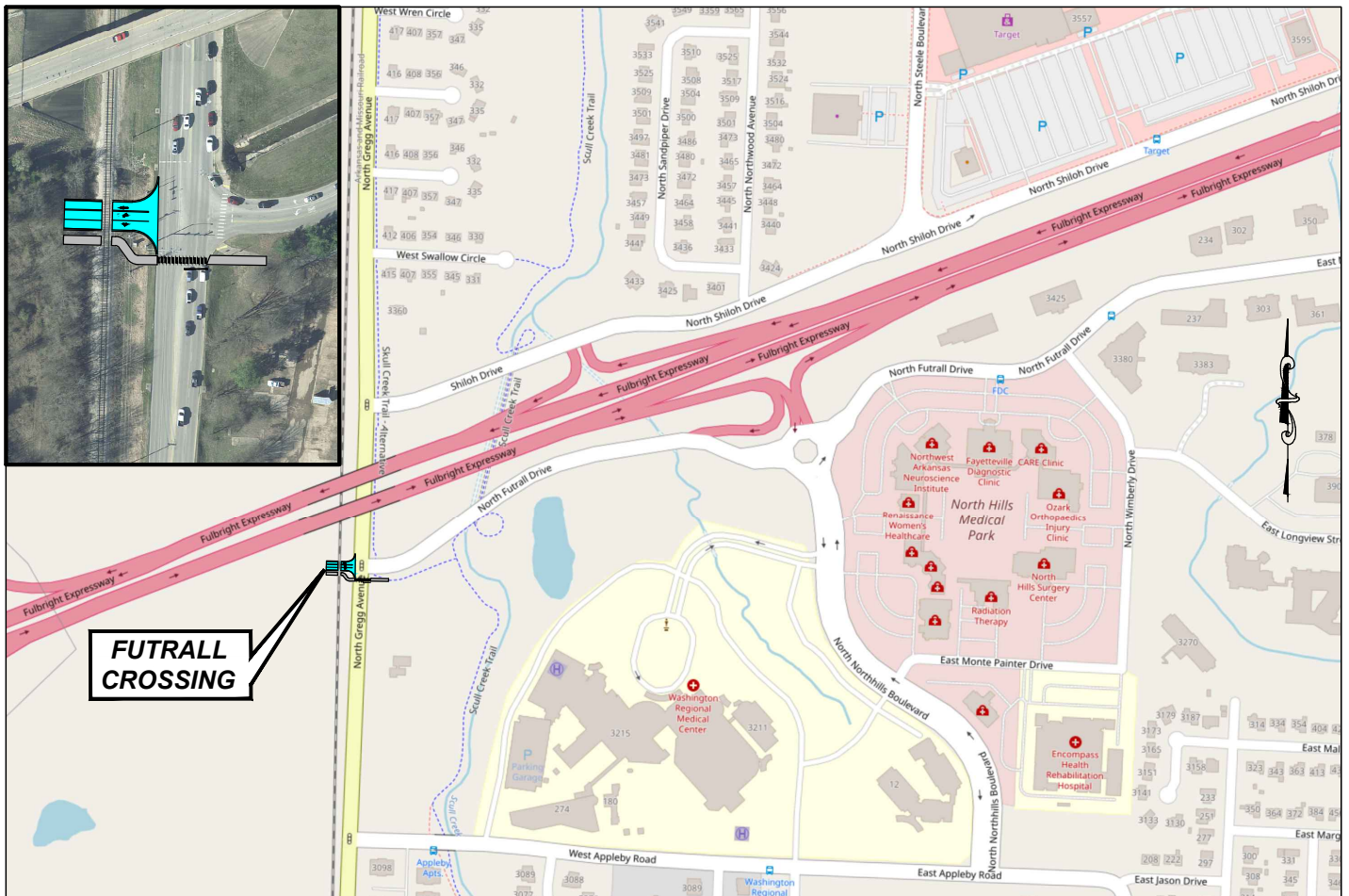
City of Fayetteville
Futrell Drive Railroad Crossing
 Preliminary Cost Estimate
 10/10/2019

ITEM	DESCRIPTION	QTY.	UNIT	UNIT COST			EXTENDED COST
1	Mobilization	1	LS	x	\$	7,000.00	= \$ 7,000.00
2	Insurance and Bonding	1	LS	x	\$	10,000.00	= \$ 10,000.00
3	Construction Control (Staking)	1	LS	x	\$	3,000.00	= \$ 3,000.00
4	Traffic Control & Maintenance	1	LS	x	\$	5,000.00	= \$ 5,000.00
5	Erosion Control	1	LS	x	\$	4,500.00	= \$ 4,500.00
6	Clearing, Grubbing, & Demolition	1	LS	x	\$	6,000.00	= \$ 6,000.00
7	R&D Existing Curb and Gutter	125	LF	x	\$	10.00	= \$ 1,250.00
8	Unclassified Excavation	200	CY	x	\$	18.00	= \$ 3,600.00
9	Select Embankment	175	CY	x	\$	25.00	= \$ 4,375.00
10	Embankment	50	CY	x	\$	20.00	= \$ 1,000.00
11	Subgrade Preparation	260	SY	x	\$	5.00	= \$ 1,300.00
12	4" Topsoil Placement	280	SY	x	\$	6.00	= \$ 1,680.00
13	Solid Sod	305	SY	x	\$	5.00	= \$ 1,525.00
14	Class 7 Aggregate Base Course	120	TON	x	\$	40.00	= \$ 4,800.00
15	HMAC Surface Course (PG70-22)	40	TON	x	\$	100.00	= \$ 4,000.00
16	HMAC Binder Course (PG70-22)	40	TON	x	\$	100.00	= \$ 4,000.00
17	18" Concrete Curb & Gutter	160	LF	x	\$	20.00	= \$ 3,200.00
18	6" Concrete Trail w/Class 7 Base	140	SY	x	\$	65.00	= \$ 9,100.00
19	Striping	1	LS	x	\$	10,000.00	= \$ 10,000.00
20	Traffic Signs	1	LS	x	\$	2,500.00	= \$ 2,500.00
21	Traffic Signal Modifications	1	LS	x	\$	75,000.00	= \$ 75,000.00
22	24" Flared End Section	2	EA	x	\$	1,000.00	= \$ 2,000.00
23	24" RCP	60	LF	x	\$	65.00	= \$ 3,900.00
Total Estimated Construction Costs							\$ 168,730.00
Contingency (20%)							\$ 33,746.00
Sub-Total							\$ 202,476.00
Railroad Costs							\$ 519,179.14
Total Estimated Project Cost							\$ 721,655.14

PROPOSED FUTRALL DRIVE RAILROAD CROSSING

for the
City of Fayetteville

MAY 2020



VICINITY MAP



CITY OF
FAYETTEVILLE
ARKANSAS

www.fayetteville-ar.gov

ENGINEERING DIVISION

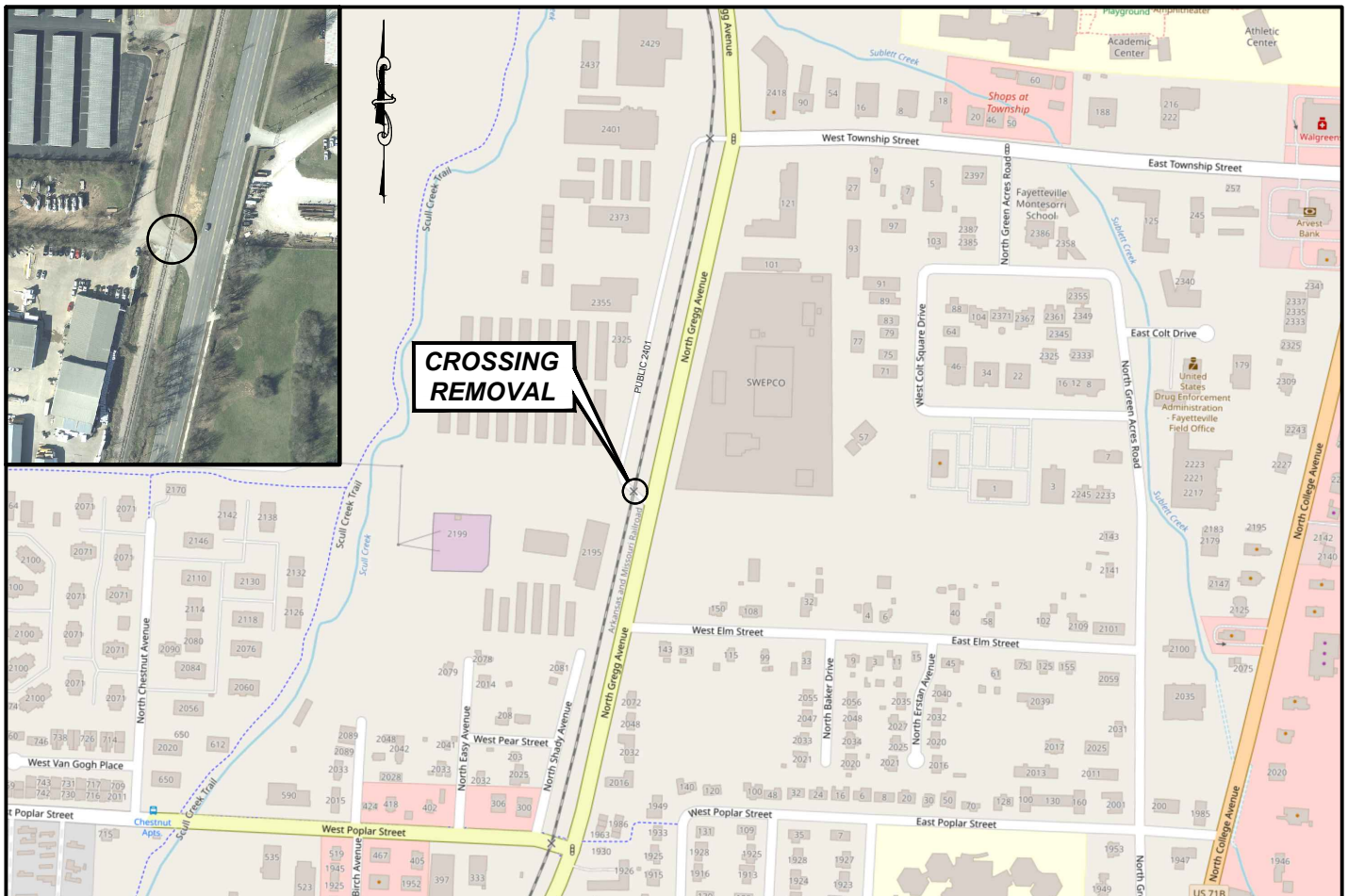
PHONE: (479) 575-8206
113 W. MOUNTAIN STREET

FAX NO: (479) 575-8202
PROJECT: ENGR. No. 8126

RAILROAD CROSSING REMOVAL GARRETT DRIVE

for the
City of Fayetteville

MAY 2020



VICINITY MAP



CITY OF
FAYETTEVILLE
ARKANSAS

www.fayetteville-ar.gov

ENGINEERING DIVISION

PHONE: (479) 575-8206
113 W. MOUNTAIN STREET

FAX NO: (479) 575-8202
PROJECT: ENGR. No. 8126