

CITY OF SPRINGDALE
Committee Agendas
Monday, August 30th, 2021
Tiered Training Room (2nd Floor)
201 Spring Street- New Criminal Justice Building
Meetings begin at 5:30 P.M.

Finance Committee by Chairman Jeff Watson

1. **A Resolution** authorizing the City Attorney to settle a Condemnation Lawsuit wherein the Thomas G. & Marilyn Kilpatrick Trust is defendant (Project NO. 18BPS12, Tract 24). Presented by Ernest Cate, City Attorney. Pgs. 1-7
2. **A Resolution** authorizing the City Attorney to settle a Condemnation Lawsuit wherein the David W. Watson and Donna K. Watson are defendants (Project NO. 18BPS1, Tract 53 & 54). Presented by Ernest Cate, City Attorney. Pgs. 8-14
3. **A Discussion** on the Bulky Waste Program and the Sanitation Fund. Presented by Brad Baldwin, Director of Engineering. Pg. 15

Parks and Recreation Committee by Chairman Mike Lawson

4. **A Resolution** waiving competitive bidding and authorizing improvements to the Recreation Center. Presented by Chad Wolf, Director of Parks and Recreation. Pgs.16-18

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE CITY ATTORNEY
TO SETTLE A CONDEMNATION LAWSUIT WHEREIN
THE THOMAS G. & MARILYN J. KILPATRICK TRUST
IS DEFENDANT (PROJECT NO. 18BPS12, TRACT 24).**

WHEREAS, the City of Springdale has filed a lawsuit against the Thomas G. & Marilyn J. Kilpatrick Trust to condemn property owned by the Trust for the Har-Ber Avenue Extension Project (48th St. to Gutensohn St.)(Project No. 18BPS12, Tract 24);

WHEREAS, the City of Springdale deposited the sum of \$450,000.00 into the Registry of the Court as estimated just compensation for the full taking of the property;

WHEREAS, the property owner has extended a counter-offer that the City pay the total sum of \$590,000.00 to acquire the lands needed for the project, said amount being based on an appraisal conducted on behalf of the Trust;

WHEREAS, it is the recommendation of the City Attorney and the Mayor's Office that the City Council approve the additional sum of \$140,000.00 to acquire the property needed from the Trust, as this amount is reasonable, is justified, and will avoid the cost, expense, and risk of a trial;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the City Attorney is hereby authorized to settle the Kilpatrick Trust condemnation lawsuit for the total sum of \$590,000.00, with the additional \$140,000.00 to be paid from the 2018 Street Bond Fund.

PASSED AND APPROVED this _____ day of _____, 2021.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, CITY CLERK

APPROVED AS TO FORM:

Ernest B. Cate, CITY ATTORNEY

Appraisal Report

**City of Springdale v Thomas G. & Marilyn J. Kilpatrick Trust
Washington County Circuit Court: Case #72-CV- 20-2269
4579 Rusty Ln., Springdale, AR 72762
December 18, 2020**

Presented To:

**Steve Lisle
Lisle Rutledge P.A.
1458 Plaza Place
Springdale, AR 72764**

Presented By:

**The Real Estate Consultants
118 N. East Avenue
Fayetteville, AR 72701**

Prepared By:

**Mark E. Risk, GAA
AR State Certified General Appraiser #CG0202**

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File # 20-0107

Transmittal Letter



Date: January 27, 2021

To: Mr. Steve Lisle
1458 Plaza Place
Springdale, AR 72764

Re: *City of Springdale, Arkansas vs. Thomas G. & Marilyn Kilpatrick Trust*
Washington County Circuit No. 72CV-20-2269

Dear Mr. Lisle:

Per your request, I hereby certify I conducted a survey of matters pertinent to developing an opinion of the **Market Value and Just Compensation** resulting from the proposed acquisition of the subject property takings by the City of Springdale. You are the client and intended user. This report is prepared for your exclusive benefit and may not be relied upon by any other party. Any other party relying on information contained in this document, without express permission, does so at their own risk.

I also certify this appraisal report conforms to Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation. The following pages contain data gathered during my investigation, showing the appraisal process in detail with conclusions rendered. Please note this report is subject to stated Assumptions & Limiting Conditions, including any applied Extraordinary Assumptions &/or Hypothetical Conditions.

My primary emphasis was to determine the following:

- Estimate the market value of the subject property as of the effective date of the appraisal.

In the following sections, I analyze relevant facts and apply appropriate appraisal processes to the subject property. After a thorough analysis an opinion of value can be made. Therefore, it is my considered opinion that the Just Compensation due to the property owner as a result of the property taking by the City of Springdale, – **as of the Effective Date of December 18, 2020** and subject to referenced assumptions and conditions – is as follows:

Six Hundred Thousand Dollars
\$600,000

Respectfully submitted,

Mark E. Risk, GAA
AR State Certified General Appraiser #CG0202
The Real Estate Consultants, Inc.

Springdale v. Thomas and Marilyn Kilpatrick (Washington Co. 72CV-20-2269)

Property Address: 4579 Rusty Ln., Springdale

Project: #18BPS12

SETTLEMENT OFFER

The following information is provided for settlement purposes only.

Background:

Tom and Marilyn Kilpatrick bought their 3.36 wooded acres in 1976 and finished building their 4,362-sf home on the property in 1979. Their homesite also included a 1,800-sf utility building. They lived there for 42 years until the property was taken by the city for this road project. Tom is 77 years old, and Marilyn is 74. Like most people of their age, they are retired, living on a fixed income, and managing health-related issues. They were displaced from their home at a time of unprecedented rapid appreciation in the local real estate market.

At the time of the taking, there were very few residences listed for sale. This remains the state of the local market at the present time. The homes that were for sale would sell within days or hours of listing and often sold at above the seller's asking price and more than appraised value. The Kilpatricks were not able to find a similar-sized replacement house with property that they could afford for the \$445,000.00 tendered as just compensation by the city. In addition to losing their home and acreage, the Kilpatricks lost the 1,800-sf utility building that they used for many years. They spent many hours culling through their belongings and packing and moving the things that they could keep. They were forced to sell and give away much of their property because they did not have room to store it at the replacement house that they ultimately bought in a residential neighborhood. They have been paying nearly \$100.00 per month to store some of the property

that they kept in an off-site storage unit. One of Tom's hobbies was working on antique cars. He had to sell those cars because they could not find a property with sufficient area for him to keep them.

Unlike most eminent domain projects that result in the taking of a primary residence, this project does not qualify for any relocation assistance. Due to the hardship imposed on homeowners like the Kilpatricks in cases like this, all federal, and many state, projects require the condemning authority to provide the homeowner with relocation assistance. This requirement recognizes that a homeowner suffers financial damages from moving costs and the forced purchase of a replacement home within a short period of time. Displaced homeowners have no choice but to purchase a home that happens to be currently on the market, and they have little time to negotiate. The Kilpatricks did not have the opportunity to take advantage of the rising market by offering their home for sale. If not for the forced taking of their home, they would have been able to sell their property at above appraised value. Instead, they were paid a lower than market price and forced to enter the market as buyers when replacement homes were selling at rapidly increasing prices above appraised values.

Appraisals:

The Reed & Associates appraisers determined that the property was well-suited for future commercial development. They appraised the property at \$450,000.00. It is important to note that their appraisal was completed on May 21, 2020, before the taking and before the unprecedented appreciation in local real estate values had reached its highest levels. The exposure times of the comparable sales used, which occurred years prior to taking, were much longer than those seen in the current market.

Mark Risk was retained to prepare an appraisal report. Mr. Risk is a Certified General Appraiser and Licensed Principal Real Estate Broker. He is a principal at The Real Estate

Consultants, Inc. Mr. Risk has worked as an appraiser in Northwest Arkansas since 1979 and continues to instruct classes in appraisal courses at the University of Arkansas where he has taught since 1981. He has also served on the Arkansas Appraisers' Licensing and Certification Board. He has performed appraisal services for dozens of banks, mortgage companies, developers, and relocation services. He has also provided appraisal services for many municipalities and governmental agencies, including the City of Springdale.

Mr. Risk used both a cost approach and a market value approach to determine the value of the property. His reconciled valuation determined the just compensation to be **\$600,000.00**.

Homeowners' Testimony:

The Kilpatricks looked at many similar properties in their efforts to relocate. Their experience in the real estate market provides them with ample support to value their property. They could not find a home with acreage that was similar in size to theirs at any price close to the \$450,000.00 in compensation paid by the city. They will testify, based on genuine market conditions and their personal experiences, that their property was worth approximately **\$675,000.00** at the time of taking.

Potential Trial Outcome:

This is an unusual case in which a jury is likely to give substantial weight to the testimony of the landowners. Both appraisals were backward-looking, meaning they were based on historical data of prior sales. Those sales did not reflect the actual market conditions that faced the Kilpatricks. It is foreseeable that the jury will award the Kilpatricks **\$675,000.00**. In recent cases we have seen that juries are willing to consider an award higher than that offered by the landowners' appraiser, and this case will give the jury strong support for doing so. A judgment in that amount would result in an additional payment of \$225,000.00 plus pre-judgment interest and "the costs occasioned by the assessment" (under Ark. Code Ann. §18-15-303(c)) which would be

at least \$3,000.00 but could be more as determined by the court. The total judgment would be more than \$230,000.00.

If the jury is not persuaded by the Kilpatrick's testimony, it is more likely to award damages at the valuation provided by Mr. Risk than that offered to date by the city. A judgment of the full assessed damages provided by Mr. Risk of \$600,000.00 would result in an additional payment of \$150,000.00 plus pre-judgment interest and the cost of the appraisal. The total additional compensation owed would be around **\$160,000.00**.

For settlement purposes only, my clients have authorized me to accept settlement of their damages, including severance damages, pre-judgment interest, and the costs of assessment at \$590,000.00. The city has previously tendered \$450,000.00 of the \$590,000.00. The total additional compensation for settlement would be **\$140,000.00**.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE CITY ATTORNEY
TO SETTLE A CONDEMNATION LAWSUIT WHEREIN
DAVID W. WATSON AND DONNA K. WATSON ARE
DEFENDANTS (PROJECT NO. 18BPS1, TRACTS 53 & 54).**

WHEREAS, the City of Springdale has filed a lawsuit against David W. Watson and Donna K. Watson to condemn property owned by the Watsons for the Gene George Boulevard Project (Bleaux Ave. to Elm Springs Rd.)(Project No. 18BPS1, Tracts 53 & 54);

WHEREAS, the City of Springdale deposited the sum of \$57,900.00 into the Registry of the Court as estimated just compensation for the taking of the property needed for the Project;

WHEREAS, the property owner has extended a counter-offer that the City pay the total sum of \$170,000.00 to acquire the lands needed for the project, said amount being based on an appraisal conducted on behalf of the property owners;

WHEREAS, it is the recommendation of the City Attorney and the Mayor's Office that the City Council approve the additional sum of \$112,100.00 to acquire the property needed from the property owners, as this amount is reasonable, is justified, and will avoid the cost, expense, and risk of a trial;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the City Attorney is hereby authorized to settle the Watson condemnation lawsuit for the total sum of \$170,000.00, with the additional \$112,100.00 to be paid from the 2018 Street Bond Fund.

PASSED AND APPROVED this ____ day of _____, 2021.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, CITY CLERK

APPROVED AS TO FORM:

Ernest B. Cate, CITY ATTORNEY

Appraisal Report

**City of Springdale v. David W. & Donna K. Watson
Washington County Circuit Court: Case # 72CV-18-2775
5564 Elm Springs Rd, Springdale, AR
As of October 17, 2018**

Presented To:

**Steve Lisle
1458 Plaza Place
Springdale, AR 72764**

Presented By:

**The Real Estate Consultants
118 N. East Avenue
Fayetteville, AR 72701**

Prepared By:

**Mark E. Risk, GAA
AR State Certified General Appraiser #CG0202**

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File # 18-0126

Transmittal Letter



Date: May 14, 2019

To: Mr. Steve Lisle
1458 Plaza Place
Springdale, AR 72764

Re: *City of Springdale, Arkansas vs. David W. & Donna K. Watson*
Washington County Circuit No. 72CV-18-2775 Tract 53 & 54

Dear Mr. Lisle:

Per your request, I hereby certify I conducted a survey of matters pertinent to developing an opinion of the **Market Value and Just Compensation** resulting from the acquisition of the subject's partial property takings by the City of Springdale. You are the client and intended user. This report is prepared for your exclusive benefit and may not be relied upon by any other party. Any other party relying on information contained in this document, without express permission, does so at their own risk.

I also certify this appraisal report conforms to Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation. The following pages contain data gathered during my investigation, showing the appraisal process in detail with conclusions rendered. Please note this report is subject to stated Assumptions & Limiting Conditions, including any applied Extraordinary Assumptions &/or Hypothetical Conditions.

My primary emphasis was to determine the following:

- Estimate the market value of the subject property before and after the taking
- Ascertain whether severance damages to the remaining property exist due to the taking
- If so, estimate market value loss to subject's remainder property

In the following sections, I analyze relevant facts and apply appropriate appraisal processes to the subject property. After a thorough analysis an opinion of value can be made. Therefore, it is my considered opinion that the **Just Compensation** due to the property owner as a result of the property taking by the City of Springdale, – **as of the Effective Date of October 17, 2018** and subject to referenced assumptions and conditions – is as follows:

Two Hundred Seven Thousand Dollars

\$207,000

Respectfully submitted,

Mark E. Risk, GAA

AR State Certified General Appraiser #CG0202

The Real Estate Consultants, Inc.

Springdale v. David W. Watson and Donna K. Watson (Washington Co. 72CV 18-2775)

Property Address: 5564 Elm Springs Rd., Springdale

Project: Gene George Boulevard Widening Bleaux Avenue to Elm Springs Road;
Project No. 18BPS1; Tracts 53 and 54

SETTLEMENT OFFER

The following information is provided for settlement purposes only.

Description of the Property:

Prior to the taking, the property was a 10.2-acre parcel. The property is on Elm Springs Road in close proximity to Highway 49, Har-Ber High School, and Har-Ber Meadows Development. All the appraisers agree that it is in a very desirable location and is well suited to mixed-use commercial and residential development. The City's appraisers have described the location as: "located on the north side of Elm Springs Road in Springdale. The location is convenient to major transportation linkages, and the Har-Ber Meadows / western Springdale area which has very good market appeal." The Watsons purposefully situated their existing home on the site well off Elm Springs Road to allow for future commercial development of the area of land with frontage and unrestricted access to Elm Springs Road.

The City took about .8 acres of the land for right-of-way, plus 8,139 s/f for a utility easement, and 1,242 sf for a temporary construction easement. The City also removed trees, fencing, and a gravel driveway.

The City's construction of a roundabout and median significantly reduced the access to the site. Access is now only available from the northbound lane of Gene George Boulevard. The prior unrestricted access to Elm Springs Road was completely eliminated. The frontage is

now adjacent to the curve radius of the roundabout. This change dramatically reduced the desirability of the land for commercial development.

One element of damage that was not considered by either appraiser is the effect of the new setbacks on Gene George Boulevard. The additional setbacks will further reduce the amount of developable land on the remaining tract for any purpose. It seems likely that the combination of reduced access, the limitation of travel from the roundabout construction, and the additional setbacks, will make it impossible, or much less likely, to develop the commercial frontage on Elm Springs Road for any use. This issue will need to be further evaluated by both appraisers prior to trial if settlement is not achieved.

Appraisals:

The Reed & Associates appraisers determined that the property was well-suited for mixed-use residential and commercial development. They appraised the Property at \$1.25 per square foot, averaged over the entire property. Based on their calculations, the City estimated damages to the property value at \$57,900.

The damages calculated by Reed & Associates includes damages to trees and improvements on the property, but they did not assess any severance damages the overall market value of the remaining property resulting from the loss of Elm Springs Road frontage and entire loss of access to that frontage.

Mark Risk was retained to prepare an appraisal report. Mr. Risk is a Certified General Appraiser and Licensed Principal Real Estate Broker. He is a principal at The Real Estate Consultants, Inc. Mr. Risk has worked as an appraiser in Northwest Arkansas since 1979 and continues to instruct classes in appraisal courses at the University of Arkansas where he has taught since 1981. He has also served on the Arkansas Appraisers' Licensing and Certification

Board. He has performed appraisal services for dozens of banks, mortgage companies, developers, and relocation services. He has also provided appraisal services for many municipalities and governmental agencies, including the City of Springdale.

Mr. Risk appraised the portion of the property that was taken as commercial property. This is supported by the fact that both appraisers determined that the property was well suited to mixed commercial and residential development. Mr. Risk was consistent in his evaluation because he did not include any severance damages to the home. The home was intended to be adjacent to a future commercial development on the frontage. In keeping with a commercial valuation, Mr. Risk appraised the property that was taken at \$4.00 per square foot.

Mr. Risk's determined that the property suffered severance damages for several reasons. First, it lost all access to Elm Springs Road. Second, due to the loss of access, and reduction in buildable area of the property, the remaining land will no longer be well-suited for commercial purposes. As discussed above, his evaluation of severance damages did not include the additional setbacks that will be applied. This factor will also be considered should the case proceed to trial. Based on the taking of almost an acre of commercial land, the damages to improvements, and the severance damages, Mr. Risk evaluated the just compensation to be \$200,000.

Potential Trial Outcome:

A jury is more likely to award damages at or near the valuation provided by Mr. Risk than that offered to date by the City. A judgment of the full assessed damages of \$200,000 would result in pre-judgment interest of approximately \$17,000 (as of this date), plus "the costs occasioned by the assessment" (under Ark. Code Ann. §18-15-303(c)) which would be at least \$3,000, but could be more as determined by the court. The total judgment would be \$220,000.

Of that amount, the City has previously tendered \$57,900. The total additional compensation owed would be at least **\$162,100**.

If the jury were to split the difference between the two appraisals, not considering the setback issue, the judgment, plus interest and costs would approximate \$150,000. We feel a jury is more likely to award damages at, or near, the landowners appraised amount. For settlement purposes only, my clients have authorized me to accept settlement of their damages, including severance damages, pre-judgment interest, and the costs of assessment at \$170,000. The City has previously tendered \$57,900 of the requested \$170,000. The total additional compensation for settlement would be rounded to **\$112,000**. This amount represents a reduction of \$51,200 from the exposure and only \$20,000 above a “splitting the difference” valuation.

Estimated Cost for 2 Bulky Waste Truck Program w/ Truck Replacement Every 8 Years

2020 Costs

2020 Bulky Waste Fees Collected

405-0209-341.00-00	\$ 166,538.50
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2020 Vehicle Maintenance

405-0209-440.51-11	\$ 1,250.97
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2020 Fuel

405-0209-440.60-30	\$ 11,035.40
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Employee Cost for 2 Truck Drivers (includes Benefits & Tax)

#1	\$ 40,541.00
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#2	\$ 37,046.00
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\$ 77,587.00

Replacement Cost of a truck

HINO Waste Truck	\$ 190,000.00
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Annual Truck Operating Expense (2 Trucks)

Annual insurance	\$ 2,015.00
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Annual Service & Maintenance	\$ 4,550.00
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Gallons of Fuel 175/month @\$2.88	\$ 12,096.00
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\$ 18,661.00

Estimated Cost to Own and Operate 2 Trucks Over 8 Years

2 Trucks (replacement cost)	\$ 380,000.00
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Insurance	\$ 16,120.00
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Maintenance	\$ 36,400.00
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Fuel	\$ 96,768.00
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Employee	\$ 620,696.00
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\$ 1,149,984.00

Annual Cost to Operate 2 Trucks for 8 Year Truck Life

\$ 96,248.00

Number of Customers	21,800.00
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Current Operating Cost per Customer/Month	\$ 0.37
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Cost per Customer/ Month to Replace 2 Trucks Every 8 Years	\$ 0.18
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Cost of the Bulky Waste Program per Customer/Month	\$ 0.55 (\$6.60 per year)
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Estimated Cost for 3 Bulky Waste Truck Program w/ Truck Replacement Every 8 Years

Additional Cost to Add a 3rd Bulky Waste Truck per Customer/Month	\$ 0.27
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Cost of Bulky Waste 3 Truck Program per Customer/Month	\$ 0.82 (9.84 per year)
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RESOLUTION NO. _____

**A RESOLUTION WAIVING COMPETITIVE BIDDING
AND AUTHORIZING IMPROVEMENTS TO THE
RECREATION CENTER**

WHEREAS, the Parks & Recreation Director has obtained quotes for the installation of an elevator and improvements to the entry of the recreation center, and

WHEREAS, the low quote of \$366,017 was received from Milestone Construction Company, LLC, and

WHEREAS, A.C.A. § 14-58-303 (b)(2)(B) states "The governing body by resolution may waive the requirements of competitive bidding in exceptional situations where this procedure is deemed not feasible or practical".

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that competitive bidding is hereby waived for the remodeling of the youth center front entrance including the installation of an elevator and the Mayor is hereby authorized to execute a contract with Milestone Construction Company to perform the work for \$366,017

PASSED AND APPROVED this 14th day of September, 2021.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney



Build Vibrant Communities.

Chad Wolf
Springdale Parks Director
1906 Cambridge Street
Springdale AR 72764

June 17, 2021

RE: Parks Department Office – Elevator and Lobby Addition

Mr. Wolf,

Thank you for the opportunity to work with you on the Elevator & Lobby addition at the Parks office. We have reviewed the plans developed by Hight Jackson Associates, Project No. #1945. The documents available include Plans with issue date 01/31/2020, Project Manual vol.1 and vol.2 and Addendum 1 and 2 for alterations to Springdale Parks & Rec. office.

The scope of work for this anticipated project includes only the Elevator and Lobby additions, both of which are exterior additions on the South side of the existing building.

The projected budget is \$820,000 including demolition, elevator shaft, lobby addition, interior finishes, doors, fire sprinkler and electrical. We suggest the City of Springdale hold 10% contingency for market adjustments, unforeseen conditions and bid day contingency.

The project schedule moving forward is anticipated as follows:

City confirmation / notice to proceed	June 2021
Bid process	July 2021
City Council approval	August 2021
Elevator procurement	Aug – November 2021
Construction	September – February 2022

We would like to schedule time with you next week to discuss scope of work and additional direction or concerns. Thank you again for the opportunity, feel free to contact me at any time.

Regards,

John English
Sr. Estimator
Flintco, LLC

cc: Brent Farmer
Chad Crouch



Springdale Rec Center Elevator and Vestibule

GMP Cost Breakdown 7.28.2021

Scope of Work	Cost
Demolition	\$ 5,110
Concrete	\$ 26,818
Masonry	\$ 21,150
Steel	\$ 6,875
Metal Wall Panels	\$ 54,023
Membrane Roofing & Downspout	\$ 4,000
Fluid Applied Vapor Barrier & Waterproofing	\$ 7,125
Aluminum Windows & Storefront	\$ 34,650
Drywall/Insulation/Ceilings	\$ 13,527
Painting	\$ 6,335
Walk-off Carpet & Rubber Base	\$ 4,133
Fire Sprinkler Modifications	\$ 2,500
Plumbing	\$ 17,500
HVAC	\$ 5,500
Electrical	\$ 29,900
Fire Alarm Modifications	\$ 3,750
Construction Contingency	\$ 30,000
Building Permit	\$ 1,650
Supervision	\$ 10,614
Insurance	\$ 2,412
General Conditions	\$ 52,868
Subtotal	\$340,441
Fee	\$ 22,534
Payment & Performance Bonds	\$ 3,042
Total	\$366,017