

AGENDA

**FORT SMITH BOARD OF DIRECTORS
STUDY SESSION**

AUGUST 9, 2011 – 5:30 P.M.

**RIVER PARK EVENTS BUILDING
121 RIVERPARK DRIVE**

1. Review preliminary agenda for the August 16, 2011 regular meeting
2. Review scope of work for the Water and Sewer Efficiency Study



OFFICE OF THE CITY CLERK
Sherri Gard, CMC, City Clerk
Heather James, Assistant City Clerk

MEDIA RELEASE
August 5, 2011

The City of Fort Smith Board of Directors study session scheduled for Tuesday, August 9, 2011 has been changed **from 12:00 Noon to 5:30 p.m.** and will be held at the **River Park Events Building, 121 Riverpark Drive.**

The time change is to allow members of the Board to attend the Fort Smith Regional Alliance meeting at 11:30 a.m. in the Reynolds Room on the University of Arkansas Fort Smith campus at which they will introduce the 5-Year Strategic Regional Plan. Arkansas Governor Mike Beebe is also scheduled to be in attendance.

For agenda information, please contact the City Clerk's Office at 784-2208. Once finalized, the agenda will be posted on the city website, www.fortsmithar.gov.

A handwritten signature in cursive script that reads "Sherri Gard". The signature is written in black ink and is positioned above a horizontal line.

Sherri Gard, City Clerk

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 784-2208
FAX (479) 784-2256
E-mail: cityclerk@fortsmithar.gov

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MEMORANDUM

TO: Mayor and Board
FROM: Sherri Gard, City Clerk
DATE: August 5, 2011
RE: Preliminary Agenda - August 16, 2011 Regular Meeting

The preliminary agenda is updated daily; therefore, in order to ensure the most recent version is presented, such will be distributed at the study session.



MEMORANDUM

DATE: August 5, 2011

TO: Mayor Sanders, Board of Directors, Ray Gosack, Steve Parke, Alie Bahsoon

FROM: Mitzi Kimbrough, Internal Auditor *Mitzi*

SUBJECT: Water and Sewer Operations Efficiency Study Update

On February 22, 2011, the Board requested a Water and Sewer Operations Efficiency Study and passed a resolution on March 1, 2011 with certain parameters. Resolution number R-47-11 is attached. A nationwide search was performed to solicit Request for Statement of Qualifications from engineering firms that had not previously done work for the city of Fort Smith as per the resolution. Seven firms submitted their Statements of Qualification of which four were chosen to interview by Mitzi Kimbrough and Alie Bahsoon. Of the four interviewed, HDR Engineering, Inc. was ranked as the number one choice by the all of the interviewees including Ray Gosack, Steve Parke, Mitzi Kimbrough and Alie Bahsoon. HDR representatives will be present at the study session Tuesday, August 9, 2011 to review the scope of the study with the Board of Directors.

The cost of the efficiency study per the scope presented is currently \$114,180 which represents .55% of the current projected balance for the Water and Sewer Operating Fund at 12/31/11. The current estimated balance is 21.5% so appropriating funds for the study would reduce the reserve balance to 20.95%.

The draft copy of the contract, scope of services, hourly rate schedule, as well as the resolution are attached.

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FORT SMITH, ARKANSAS
And
HDR Engineering, Inc.
FORT SMITH, ARKANSAS

THIS AGREEMENT is made as of _____, 2011, by and between the City of Fort Smith, Arkansas (hereinafter called **Owner**) and HDR Engineering, Inc., a Nebraska Corporation specializing in consulting engineering services (hereinafter called **Engineer**).

Owner intends to employ Engineer to provide engineering services in connection with the Water and Sewer Operations Efficiency Study (hereinafter called **Project**) and the engineering services so provided shall be identified as Project Number Insert Project Number. The intent of this Water and Sewer Operations Efficiency Study is to establish an understanding of each utility's overall "efficiency" and to identify those areas where improvements may be made to improve efficiency and/or levels of service. This proposed scope of services will utilize a systematic and comprehensive review process for the City's utilities. The full scope, schedule, and fee for the project is attached as Appendix A.

Therefore, Owner and Engineer in consideration of their mutual covenants agree as follows:

Engineer shall serve as Owner's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to Owner during the performance of Engineer's services.

1. AUTHORIZATION OF SERVICES

1.1. Services on any assignment shall be undertaken only upon written Authorization of Owner and agreement of Engineer. Each individual Authorization executed under this Agreement shall contain the Scope of Services, Responsibilities of Owner, Time of Service, and Compensation for a particular assignment. The maximum contract price for this Agreement is the summation of the Compensations included in all Authorizations executed under this Agreement. Engineer shall not be entitled to receive adjustment, reimbursement, or payment, nor shall the Owner, its officers, agents, employees, or representatives, incur any liability for, any fee or cost, exceeding the maximum contract price except as otherwise provided for herein.

1.2. Invoices or Billing Statements will be in Engineer's standard format and are payable upon receipt. If a portion of Engineer's invoice or billing statement is disputed, Owner shall pay the undisputed portion by the due date. Owner shall advise Engineer, in writing, of the basis for any disputed portion of any invoice or billing statement. Monthly invoices or billing statements will be submitted for payment covering services performed, costs and expenses incurred, and appropriate fee or markup during the proceeding month.

1.3. Invoices or Billing Statements shall be based on the Owner paying the Engineer the sum of the following:

1.3.1. For time expended by personnel, payment at the hourly rates indicated in the Engineer's "Schedule of Hourly Professional Service Billing Rates," (hereinafter called **Schedule**) attached hereto as Appendix B. The Schedule is effective to January 1, 2011, and may be revised annually.

1.3.2. For outside expenses incurred by Engineer, such as authorized travel and subsistence, commercial services, courier deliveries, and incidental expenses, the cost to Engineer plus seven (7) percent.

1.3.3. For normal computer usage, telephone, fax, photocopy, and mail services, payment at the rates included in the Engineer's Schedule.

1.3.4. For reproduction, printing, and binding of documents (other than those documents issued during project bidding phase by Engineer for which charges to plan holders includes cost of reproduction), the cost to Engineer plus seven (7) percent.

1.3.5. For vehicle usage Engineer may charge IRS allowable rate.

1.3.6. For services rendered by individuals or entities having a contract with Engineer to furnish services with respect to the Project as Engineer's independent professional associate, consultant, subcontractor, or vender (hereinafter called **Consultant**), the cost to Engineer plus seven (7) percent. Consultant(s) do not include any employee of the parent or any subsidiary or affiliate of Engineer.

1.3.7. For time expended by individuals employed on a part time or as-needed basis by Engineer to supplement Engineer's regular staff (hereinafter called **Contract Personnel**), amounts as determined from the Engineer's Schedule for the equivalent classification level. Expenses incurred by Contract Personnel in service to the Owner shall be reimbursed in accordance with Subparagraph 1.3.2 above.

1.3.8. For expenses incurred by Engineer in providing resident field services such as vehicle lease or rental, telephone services, miscellaneous resident office expenses, commercial services, field personnel moving expenses to the field site location, per diem or mileage allowances for personnel assigned in the field, authorized travel and subsistence expenses of personnel temporarily assigned from Engineer's offices to the field, and other such items incidental to operating a field office, the cost to Engineer plus seven (7) percent.

1.3.9. Taxes, other than United States federal and state income taxes, and city of Fort Smith earnings tax, as may be imposed by the United States, state, and local authorities, shall be in addition to the amounts stated above.

2. **ACCESS TO PROPERTY**

The Engineer's services to the Owner may require entry upon private property. The Owner will present or mail to private landowners a letter of introduction and explanation, describing the work, said letter will be drafted by the Engineer. The Engineer will make reasonable attempts to notify resident landowners who are obvious and present when the Engineer is in the field. The Engineer is not expected to provide detailed contact with individual landowners. The Engineer is not expected to obtain entry by means other than the consent of the landowner. If the Engineer is denied entry to private property by the landowner, the Engineer will not enter the property. If denied entry to the property, the Engineer shall notify the Owner and advise the Owner of an alternate evaluation method if one is feasible. The Owner shall decide on the course of action to obtain access to the property.

3. SUBCONTRACTING

3.1. Unless expressly disclosed in individual Authorizations attached hereto, the Engineer may not subcontract any of the services to be provided herein. If subcontracting of services is approved by Owner, all services provided shall be performed pursuant to appropriate written agreements between the Engineer and the Consultant, which shall contain provisions that preserve and protect the rights of the Owner under this Agreement. All Consultants shall be subject to all contractual and legal restrictions concerning payment and determination of allowable costs, and subject to all disclosure and audit provisions contained herein and in any applicable federal or state law.

3.2. Unless the consent or approval specifically provides otherwise, neither consent by the Owner to any subcontract nor approval of the Engineer's purchasing system shall constitute a determination (1) of the acceptability of any subcontract terms or conditions, (2) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (3) to relieve the Engineer of any responsibility, obligation, or duty under this Agreement, or (4) shall not be construed as constituting an agreement between the Owner and said other person or firm. The Engineer acknowledges that Consultant(s) are entirely under his direction, control, supervision, retention and/or discharge.

3.3. Prompt Payment. The Engineer shall pay Consultant(s) for satisfactory performance of their subcontracts within 30 days of receipt of each payment by the Owner to the Engineer. Any retainage payments held by the Engineer must be returned to the Consultants within thirty (30) days after their work

is completed but only after Owner has released payment to Engineer for those portions of the work performed by Consultant(s). Failure to comply with this provision shall be considered a default by the Engineer, if the Engineer fails to comply with this provision, in addition to any other rights or remedies provided under this Agreement, the Owner, at its sole option and discretion, may:

3.3.1. Make payments directly to the Consultant(s) and offset such payments, along with any administrative costs incurred by the Owner, against reimbursements or payments otherwise due the Engineer; and/or,

3.3.2. Withhold any reimbursements or payments otherwise due to the Engineer until the Engineer ensures that the Consultant(s) have been and will be promptly, paid for work satisfactorily performed.

3.4 The Engineer shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

4. RESPONSIBILITY OF THE ENGINEER

4.1. Notwithstanding any review, approval, acceptance, inspection or payment by the Owner, the Engineer shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Engineer under this Agreement. Services will be provided under a standard of care equal to the care and skill ordinarily used by members of the Engineering Profession practicing under similar circumstances. The Engineer shall, without additional compensation, correct or revise any negligent errors or deficiencies in its designs, drawings, specifications, and other services,

4.2. The Engineer shall demonstrate to the Owner the presence and implementation of quality assurance in the performance of the Engineer's work. The Engineer shall identify individual(s) responsible, as well as methods used to determine the completeness and accuracy of drawings, specifications, and cost estimates subject to the provisions of Paragraph 4.1.

4.3. Subject to the standard of care set forth in Paragraph 4.1, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

4.4. Engineer and Owner shall comply with applicable laws and regulations and Owner-mandated standards that Owner has provided to Engineer in writing. This Agreement is based on these requirements as of its effective date. Changes to such laws, regulations or standards that occur after the effective date of this Agreement may, to the extent reasonably justified, serve as the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, and compensation.

4.5. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot, within the identified scope of work, ascertain.

4.6. The Owner shall have the right at any time and in its sole discretion to submit for review all or any portion of the Engineer's work to consulting Engineers engaged by the Owner for that purpose. The Engineer shall fully cooperate with any such review.

4.7. The Engineer and any Consultant retained by Engineer shall employ qualified and competent personnel to perform the work under this Agreement.

4.8. Neither the Owner's review, approval, or acceptance of, nor payment for, the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement, or of any cause of action arising out of the performance of this Agreement.

4.9. The rights and remedies of the Owner provided under this Agreement are in addition to any other rights and remedies provided by law.

4.10. Estimates, schedules, forecasts, and projections prepared by Engineer relating to financial analysis parameters, construction costs, construction schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are opinions based on Engineer's experience,

qualifications and judgment as a professional. Engineer does not guarantee that any such parameters, costs, schedules quantities, performance, results, etc., included in estimates and projections prepared by Engineer, except estimates of the Engineer's own fees and expenses, will not vary significantly from those actually experienced or realized by Owner.

4.11. Furnishing of project representatives and performing project site visits to investigate, observe or monitor the project, whether or not during any period when construction or equipment installation is underway, shall not make Engineer responsible for construction means, methods, techniques, sequences or procedures; for construction safety precautions or programs; or for any construction contractor(s)' failure to perform its work in accordance with any contract documents.

4.12. In no event, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise shall Engineer be liable for consequential, special or indirect damages or costs related, in any way, to loss of revenue or profit, lost production, or claims by customers of Owner.

5. TERMINATION

5.1. The Owner may terminate this Agreement in whole or in part for the Owner's convenience or because of the default of the Engineer.

5.2. The Owner shall terminate this Agreement by delivering to the Engineer written notice of the termination at least thirty (30) days prior to the effective date of the termination.

5.3. On or before the effective date of the termination, the Engineer shall:

5.3.1. Discontinue all services affected (unless the notice directs otherwise).

5.3.2. Deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this Agreement, whether completed or in process.

5.3.3. Terminate all subcontracts to the extent they relate to the work terminated.

5.3.4. Complete performance of any work not terminated.

5.3.5. Take any action that may be necessary, or that the Owner may direct, for the protection and preservation of the property related to this Agreement which is in the Possession of the Engineer and in which the Owner has or may acquire an interest.

5.4. If the termination is for the convenience of the Owner, the Owner shall make an adjustment in the contract price to compensate Engineer for all services performed up through the effective date of the termination, said adjustment will include an amount of 20 percent of anticipated profit on unperformed services, plus such termination costs necessary to close out project files including reimbursable expenses.

5.5. If the termination is for the Engineer's default, as a condition precedent to termination, the Owner shall provide an initial notice of default, which shall specify a commercially reasonable cure period. If the default remains uncured after the specified cure period has expired, the Owner shall have the right to terminate this Agreement for default. The Owner shall compensate Engineer for all services satisfactorily performed up through the effective date of the termination but shall allow no anticipated fee or profit on unperformed services. The Owner may complete any remaining or unfinished work by contract or otherwise and the Engineer shall be liable for any additional cost incurred by the Owner. Any claim of additional cost made by Owner will not exceed the maximum contract price, irrespective of payments previously paid to Engineer.

5.6. The rights and remedies of the Owner provided in this section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy.

6. STOP WORK ORDERS

6.1 The Owner may, at any time, by written order to the Engineer, require the Engineer to stop all, or any part, of the work called for by this Agreement for a period of up to ninety (90) days after the order is delivered to the Engineer, and for any further period to which the parties may agree. Upon receipt of the order, the Engineer shall immediately comply with its terms and take all reasonable steps to minimize the

incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Engineer, or within any extension of that period to which the parties shall have agreed, the Owner shall either:

6.1.1. Cancel the stop work order; or

6.1.2. Terminate the work pursuant to Section 5, Termination.

6.2. If a stop work order issued under this section is canceled or the period of the order or any extension thereof expires, the Engineer shall resume work, the Owner shall make an equitable adjustment in the delivery schedule or contract price, or both, and the Agreement shall be modified in writing accordingly, if:

6.2.1. The stop work order was not issued because of Engineer's sole default in its performance of its obligations under any part of this Agreement; and,

6.2.2. The stop work order results in an increase in the time required for, or in the Engineer's cost properly allocable to, the performance of any part of this Agreement.

7. OWNERSHIP AND USE OF DOCUMENTS & DATA

7.1 All reports, documents, plans, drawings, specifications or other written material (hereinafter called Written Products) as well as electronically prepared models of any part of the Owner's infrastructure (hereinafter called Models) prepared by Engineer under this Agreement will be considered works made for hire, and shall be considered joint property of the Owner and Engineer upon completion of the services or termination of the Agreement and payment in full of all monies due to Engineer. Engineer may retain copies of such Written Products and Models developed under this Agreement as desired, but no such Written Products and/or Models shall be the subject of copyright application by Engineer.

7.2 Electronic copies of Written Products shall be provided to Owner upon request in .pdf format, unaltered, or in .dwg format with title blocks and any stamp, seal, and signatures removed.

7.3 It is understood that Owner will have the right to re-use all Written Products, including electronic copies, and Models prepared by Engineer under this Agreement without restriction or limitation on their use, and by virtue of signing this Agreement, Engineer agrees to such re-use in accordance with this provision without the necessity of future approvals, compensation, fees or documents being required and without recourse for such re-use. The Engineer will not be liable for re-use by the Owner of Written Products or Models for any purpose other than that intended by the terms and conditions of this Agreement.

7.4 The Engineer shall retain all rights to its standard details, formulae, specifications, proprietary information, trademarks and all other property not developed or prepared specifically under this Agreement.

8. PATENT AND COPYRIGHT INFRINGEMENT

8.1. The Engineer shall report to the Owner, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Agreement of which the Engineer has knowledge.

8.2. The Engineer agrees to include, and require inclusion of, the provisions of this section in all subcontracts at any tier for supplies or services.

8.3. Owner represents that Owner either possesses or will obtain permission and necessary rights in copyright, patents or other proprietary rights for any documents, including but not limited to, all or portions of reports, plans or specifications prepared by others provided to the Engineer which Engineer has need to reuse, copy or adapt in the performance of the Services.

9. BANKRUPTCY

In the event the Engineer enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Engineer agrees to furnish, by certified mail, written notice of the bankruptcy to the Owner. This notice shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notice shall include the date on which the bankruptcy petition was filed, the identity of the

court in which the bankruptcy petition was filed, and a listing of all contracts with Owner against which final payment has not been made. This obligation remains in effect until final payment under this Agreement.

10. SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties and their successors and assigns, and except as expressly set forth herein, neither the Owner nor the Engineer may assign, delegate, or transfer any benefit or obligation under this Agreement without the express written consent of the other party. Nothing herein shall be construed as a waiver of any immunity or as creating any personal liability on the part of any officer or agent of the Owner or any other governmental entity either made a party to, or having any interest in, this Agreement.

11. RESPONSIBILITY FOR CLAIMS AND LIABILITY

11.1. Independent Contractor Relationship. The parties intend that the Engineer shall be an independent contractor of the Owner. No act or direction of the Owner shall be deemed to be an exercise of supervision or control of the Engineer's performance.

11.2. No Personal Liability. No director, officer, manager, employee, agent, assign, or representative of the Owner shall be liable to the Engineer in a personal or individual capacity under any term of this Agreement, because of any breach thereof.

12. INSURANCE

12.1. Professional Liability Insurance Coverage. The Engineer shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for negligent acts, errors and omissions arising out of the performance of this Agreement in an amount per claim of not less than five (5) times the original contract ceiling price or \$1,000,000, whichever is less. Such insurance shall extend to the Engineer and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall cover the negligent acts, errors and omissions of the Engineer's Consultants, agents,

and employees for whom Engineer is legally liable. Such insurance shall extend to any negligent acts, errors and omissions in the performance of services under this Agreement committed by the Engineer or alleged to have been committed by the Engineer or any person for whom the Engineer is legally responsible.

12.2. Deductible. The Engineer shall be responsible for all deductibles and self-insured retentions.

12.3. Worker's Compensation Insurance. The Engineer shall at all times during the term of this Agreement maintain worker's compensation and employers liability insurance as required under Arkansas law.

12.4. General Liability Insurance. The Engineer shall at all times during the term of this Agreement maintain comprehensive general liability insurance coverage for bodily injury and property damage in the combined single limit of \$1,000,000, and comprehensive automobile liability insurance coverage for bodily injury and property damage in the combined single Limit of \$1,000,000, which shall cover all owned, hired, and non-owned vehicles. The Engineer's insurance coverage shall also cover restoration of plans, drawings, field notes, and other documents in the event of their loss or destruction while in the custody of the Engineer.

12.5. Insurance Policies and Certificates. The Engineer shall provide the Owner upon request copies of any applicable portions of its insurance policies and evidence concerning the effectiveness and the specific terms of the insurance. Prior to the execution of this Agreement, the Engineer shall furnish to the Owner certificates of insurance reflecting policies in force, and it shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within thirty (30) days of the expiration thereof. The Engineer's failure to provide and continue in force and effect any insurance required under this article shall be deemed a default for which Owner, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit.

12.6. Additional Insurance Requirements. All insurance maintained by the Engineer pursuant to this section shall be written by insurance companies licensed to do business in Arkansas and shall provide that

the Insurance will not be subject to cancellation or termination, during its term except upon thirty (30) days prior written notice to the Owner.

12.7. **Duration of Insurance Obligations.** The Engineer shall maintain its professional insurance coverage required under this Agreement in force and effect for a period not less than five (5) years after the completion of the Engineer's services under this Agreement. Comprehensive general liability insurance coverage required under this Agreement shall be in full force and effect until the completion of the Engineer's services. All other insurance shall be maintained in full force and effect until completion of the Engineer's services.

12.8. **Additional Insured.** All liability insurance policies, except the professional liability policy, maintained by the Engineer pursuant to this Agreement shall be endorsed to include the Owner, its officers, directors, managers, and employees, individually and collectively, as additional insured, and all property damage insurance shall be endorsed with a waiver of subrogation by the insurer as to the Owner.

12.9. The parties release and waive all rights of subrogation against each other or their respective officers, directors, agents, or employees for damage covered by property insurance during and after the completion of Engineer's services.

12.10. A provision similar to this shall be incorporated into all construction contracts entered into by Owner that are related to the services, and all construction contractors shall be required to provide waivers of subrogation in favor of Engineer for damage covered by any construction contractor's property insurance.

13. **DISPUTES AND CLAIMS**

13.1. **Notice of Potential Claim.** Whenever an Engineer deems that any additional compensation is due, the Engineer shall notify the Owner in writing of its intention to make a claim for additional compensation (hereinafter called **Notice of Potential Claim**) before beginning the work that gives rise to the claim.

13.2. **Time & Manner for Submitting Claim.** All disputes and claims shall first be submitted in writing to the Owner within forty-five (45) calendar days after the completion or termination date. The Engineer hereby agrees that the failure to submit the dispute or claim to the Owner prior to forty-five (45) calendar days after the completion or termination date, shall constitute a waiver of the dispute or claim.

13.3. **Form.** All disputes and claims must be submitted in writing and in sufficient detail to permit the Owner to determine the basis for entitlement and the actual allowable costs incurred. Each claim must contain:

13.3.1. The date the actions resulting in the claim occurred or conditions resulting in the claim became evident;

13.3.2. A copy of the Notice of Potential Claim;

13.3.3. The name, title, and activity of each Owner's employee knowledgeable about facts that gave rise to such claim;

13.3.4. The name, title, and activity of each Engineer, Contractor, or employee knowledgeable about the facts that gave rise to the claim;

13.3.5. The specific provisions of the Agreement that support the claim and a statement why such provisions support the claim;

13.3.6. The identification and substance of any relevant documents, things, or oral communications related to the claim;

13.3.7. A statement whether the claim is based on provisions of the Agreement or an alleged breach of the Agreement;

13.3.8. If an extension of time is sought, the specific number of days sought and the basis for the extension;

13.3.9. The amount of additional compensation sought and a specific cost breakdown of the amount claimed; and,

13.3.10. Any other information or documents that are relevant to the claim.

13.4. **Decision and Appeal.** The decision of the Owner shall be the final administrative ruling subject to Engineer's legal remedies.

13.5. **Continued Performance.** Pending final resolution of a dispute or claim, unless the Owner has terminated this Agreement pursuant to Section 4 or issued a stop work order pursuant to Section 5 the Engineer shall proceed diligently with the performance of this Agreement in accordance with the Owner's decisions.

13.6. The rights and remedies of the Owner provided in this section are in addition to any other rights and remedies provided by law or under this Agreement, and shall not constitute a waiver of any other such right or remedy. If the Owner decides the facts justify the action, the Owner may, at its sole option and discretion, receive and act upon a proposal, dispute, or claim submitted at any time before final payment under this Agreement.

14. NONDISCRIMINATION CLAUSE

Neither the Engineer nor Consultants employed by Engineer shall discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Failure by the Engineer to comply with or perform these requirements is a material breach of this Agreement, which may result in the cancellation, termination, or suspension of this Agreement in whole or in part, or such other remedy that the Owner may determine appropriate. The Engineer shall insert a clause containing all the terms of this section in all subcontracts under this Agreement.

15. POLICY REGARDING WORKERS WHO ARE NOT CITIZENS OF THE UNITED STATES

15.1. The Engineer shall keep fully informed of all federal, state and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority, which in any manner affect those engaged or employed in the work required by the Agreement, specifically including without limitation, laws and regulations pertaining to the employment of persons who are not citizens of the United States. Further, the Engineer shall at all times observe and comply with all such laws, ordinances, regulations, quarantines, orders, and decrees and shall protect and indemnify the city of Fort Smith and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree. The Engineer shall cause a similar provision to be placed in each subcontract entered into by the Engineer.

15.2. The Engineer agrees that the Engineer shall be subject to an administrative penalty of up to five hundred dollars (\$500.00) to be imposed by the City for any violation of the foregoing provisions or the required certification in the form provided in the Agreement. The Engineer shall be entitled to a due process hearing before the City Administrator if requested in writing within five (5) working days of the City's notification of potential imposition of administrative penalty.

16. **MISCELLANEOUS**

16.1. General Compliance with Laws. The Engineer shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work, including but not limited to, the Americans with Disabilities Act and Occupational Safety and Health Act as amended.

16.2. Registered Professional Engineer's Endorsement. All plans, specifications, estimates, and Engineering data provided by the Engineer shall be endorsed and recommended by an authorized representative of the Engineer, who shall be a registered professional Engineer licensed in the state of Arkansas.

16.3. Choice of Law. This Agreement shall be governed by the laws of the state of Arkansas without consideration of its choice of law provisions.

16.4. Choice of Forum. The Engineer agrees that any cause of action stemming from or related to this Agreement, including but not limited to disputes or claims arising under this Agreement, for acts or omissions in the performance, suspension, or termination of this Agreement, whether sounding in contract or tort, equity or law, may only be brought in the appropriate forum within Sebastian County, state of Arkansas.

16.5. No Waiver of Immunity. The Owner expressly does not waive any defense of immunity that it may possess under either federal or state law, and no provision in this Agreement shall be construed to constitute such a waiver in whole or in part.

16.6. Severability. If any term or condition of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, all remaining terms of this Agreement shall remain valid and enforceable unless one or both of the parties would be materially prejudiced.

16.7. No-Waiver. The failure of the Owner to strictly enforce any term of this Agreement shall not be construed as a waiver of the Owner's right to require the Engineer's subsequent performance of the same or similar obligation or duty.

16.8. Modification and Merger. This written Agreement and any provisions incorporated by reference reflect the entire Agreement of the parties and may be modified only by the express written Agreement of both parties.

16.9. This Agreement and the certifications contained herein or attached hereto constitute the whole Agreement of the parties, and each party certifies that this Agreement and any attached certification have been executed by their duly authorized representatives.

16.10. Owner agrees that it will require all construction contractors to indemnify, defend, and hold harmless Owner and Engineer from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the contractors, or their employees, agents, subcontractors, and suppliers.

17. **NOTICE**

All notices, approvals, requests, consents, or other communications required or permitted under this Agreement shall be addressed to either the Owner's representative or the Engineer's representative, and mailed or hand-delivered to:

To the Owner's representative:

City of Fort Smith, Arkansas
Attn: Ms. Mitzi Kimbrough
623 Garrison, Room 522
Fort Smith, Arkansas 72901

To the Engineer's representative:

HDR Engineering, Inc.
Attn: Mr. Donald E. Lindeman
4435 Main St. Suite 1000
Kansas City, MO 64111

In witness whereof, the parties execute this Agreement, to be effective upon the date set out above.

HDR Engineering, Inc.

City of Fort Smith, Arkansas

BY:

BY:

Name _____

Title _____

Sandy Sanders
Mayor

CERTIFICATION

Engineer hereby certifies compliance with the requirements of paragraph 15, Policy Regarding Workers Who Are Not Citizens of the United States.

BY:



Appendix A – Scope of Services, Schedule, and Fees

Introduction

HDR Engineering, Inc. (HDR) proposes to provide an operations efficiency study for the City of Fort Smith's (City) utility department. The intent of this study is to establish an understanding of each utility's overall "efficiency" and to identify those areas where improvements may be made to improve efficiency and/or levels of service. This proposed scope of services will utilize a systematic and comprehensive review process for the City's utilities.

Defining Efficiency and the Limitations of this Study

"Efficiency" can be defined in a number of different ways. The most obvious definition of "efficiency" is the improvement of an operation that leads to direct cost savings. While that type of "efficiency" is certainly a main focus of this study, "efficiency" can also be defined as an improvement to a process that may lead to improved levels of service, but not necessarily significant cost savings (e.g. improved financial policies that leads to a more efficient and consistent decision making process). Both of these types of "efficiencies" will be considered within this study. At all times, the City should be focused on providing the highest level of service at the lowest reasonable cost. Both of these types of efficiencies capture the essence of level of service at the lowest reasonable cost.

In conducting this study, the main intent is to identify those areas where improvements can be made to create efficiency improvements. It is not the intent of this study to identify every single area where an improvement can be made. A simple analogy may help to relate the purpose of this study. This study will "sift" through the organization and identify the larger "boulders" where significant cost savings may be captured. Smaller stones or gravel will sift-through. That is not to say that potential efficiencies could not be captured from the smaller items or areas, but the City should begin with those areas that will capture the largest and most immediate savings or improvements. Over time, the City can work on identifying the smaller areas for efficiency improvements and savings. Hence, the term continuous improvement will be important long after this study is completed.

Detailed Description of Proposed Scope of Services

HDR has developed a detailed scope of services to conduct a study that meets the overall and specific goals and objectives of the City. Two basic premises are included in the proposed scope of services. First, it is assumed that the operations efficiency study will be conducted simultaneously between water and sewer. The second item to note is that the general approach or review to be undertaken for each utility is assumed to be identical, except where noted otherwise.

Task 1—Initial Project (Kick-Off) Meeting

Task Objective: *Bring the HDR project team, City management and staff together, at the start of the project, to assure that all parties have a mutual understanding of the goals, objectives, issues and concerns related to the study.*

The initial project (kick-off) meeting is important to the overall success of this engagement since it forms the foundation for the study process. The initial project meeting is used as a starting point in developing a strong working relationship between the HDR and the City. At the same time, this meeting allows both parties to discuss the overall goals and objectives for this study, while at the same time discussing any issues and concerns that either party may have. At the same time, this meeting can be used to communicate to key management and staff members the overall purpose or objective in conducting in the operations efficiency study. It is proposed that the initial project meeting be approximately one-half day in length.

At the same time, it will be important for the City to communicate to City and utility management and staff the purpose and objectives of this study. Gaining the full cooperation and participation of management and staff in conducting this study will only enhance the value of this study to the City.

Expected City Staff Support for Task 1: For this task, the City will be expected to:

- Have their key management/project team members attend a one-half day planning meeting.
- Communication to City and utility management and staff the purpose and objectives of the study.

Deliverables as a Result of Task 1—Initial Project (Kick-Off) Meeting. From the work accomplished above, the deliverables for this optional task will be as follows:

- Identification of objectives, issues and concerns by both parties.
- Face-to-face meeting to get the study off to a positive start.

Task 2—Data Collection and Review

Task Objective: *Review and assess the City's existing water and sewer data, and provide a written data request detailing the data required to complete the study.*

The initial written data request details the data and information required to conduct the study. This study has been segregated by task between operations, planning, financial/rate and organizational. A written data request will be provided to the City prior to the initial kick-off meeting so that it can be discussed at the meeting and any problem areas quickly resolved. The data and information requested for this study should be, for the most part, readily available information (e.g. operational, financial, statistical, customer, etc.). The key issue for data collection purposes may be the level of detail that is readily available and needed for the study. The written data request will be organized by key areas or functions. It will be the responsibility of the City to assign individuals or staff persons to collect/accumulate the data.

For those areas where the data is not readily available, or will require significant labor and expense on the City's part to provide, HDR and the City will determine the "sensitivity" or "importance" of the data required and if alternative data sources are available. As with any study, it is important that the City provide a timely response for the data requested.

Expected City Staff Support for Task 2: For this task, the City will be expected to:

- Gather the data requested in the written data request. (Note: typically requires 20 – 40 hours of total staff time to provide.)

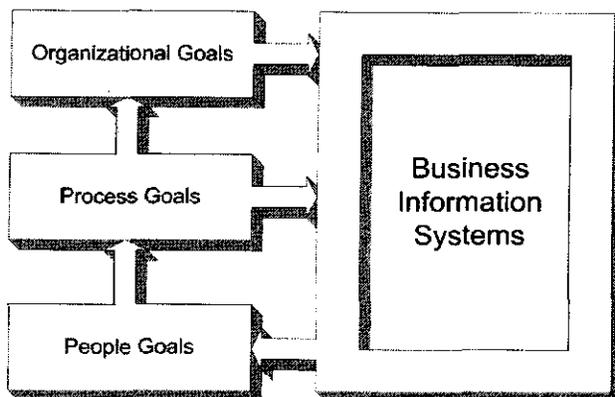
Deliverables as a Result of Task 2—Data Collection and Review. From the work accomplished above, the deliverables for this task will be as follows:

- An initial written data request to the City.
- Identification of any data constraints.

Task 3—Review of Organizational Structures/Issues

Task Objective: Review the organizational structure to better understand and define the levels of responsibility at three levels of the utility's performance; strategic, process, and people. We will look at how people see and value their roles in performing processes and meeting the strategic goals.

In identifying potential improvements for the organization, HDR will identify opportunities to improve performance at three levels—the strategic level of the organization, the business process level, and at the people level.



- **Strategic Level** - This includes strategic goals, organizational design of core services, and the process of managing organizational performance.
- **Business Process Level** - This includes process goals, the way in which these processes support the organizational goals, and the management of processes.
- **People Level** - Staff have a set of job-related goals, they have roles to play in a variety of processes, and they need measures of human performance to allow for feedback in meeting the organizational goals.

Technology is often a key part of the answer to organizational optimization and performance improvement, but accountability of the people is essential. It takes the desire of people to want to gain efficiencies, make improvements or changes and then follow processes to actually achieve improvements. Human behavior and motivation will be discussed throughout the evaluation process.

Subtask 3.1 Strategy Review – This subtask will be a component of the kick off meeting with City and utility management and staff to discuss the high level goals and the business processes relevant to the meeting the strategic goals of the organization.

The strategic review subtask will be used to set up the Business Process Review and finalize the approach and deliverables for performing individual key people interviews. One of the key

areas to be specifically reviewed within this study is the utility billing and collection function. This section will capture the following information:

- High level goals and opportunities for the organization.
- Major management and implementation obstacles and problems faced by Utilities staff and management.
- Listing of the key roles within Utilities that support utility billing and collections functions.
- Listing of the primary data sources and tools used to support utility billing and collection and service delivery.

Subtask 3.2 Business Process Review – The purpose of the operational review will be to evaluate operating procedures, the accomplishment of meeting past goals, and look at the current use of metrics (performance measures). It will be important to look at the business interactions, communication and coordination of staff to gain a full understanding of the utility's organization and how it functions.

For example, utilities manages the meters and meter reading functions. The billing and collection processes are the responsibility of the Finance Department with the billing processes outsourced to a third party. This subtask will look at the process from new service request through the billing and collection. The goal will be to study the efficiency of the customer service and billing and collection processes as well as meters and meter reading. Certainly, at the very least the issue of meter replacement cycles and automated meter reading to gain efficiencies will be explored as a part of this subtask.

HDR will conduct a "high level" inventory of the applications and systems used to meet the strategic business goals and how the supporting software and hardware are used by staff within the key business processes to meeting the goals.

Meetings and phone interviews will be scheduled to evaluate the key business processes, analyze the levels of risk within the utilities and diagram business interactions. These operational steps will also include a study of the key business information systems and how they align with the processes for meeting the defined goals. The goal will be to define the improvement opportunities and requirements of each utility to improve efficiency with changes to the organization and/or business processes.

- Define the necessary levels of communication with customers, with staff, and with the community
- Determine the required business interactions and remove all the causes of poor coordination.
- Determine the points of accountability and to remove any barriers or shortcomings.
- Make a list of all high risk processes where the utilities has taken past risk and is willing to take future risks

Performance indicators or benchmarking will be used to compare the levels of efficiency for certain core functions. These performance indicators will be developed for "comparable" local, regional or national utilities.

Subtask 3.3 Staff Interviews – Staff must have a good understanding of their job, how the processes they perform support the processes of others and how the organization as a whole operates. During this subtask we will interview representative staff to gather insights on improvement areas, seek to understand what does and does not motivate utility management and staff and gather information on ways to improve coordination and communication of the work force.

We look at the activities performed by people. Ultimately, people use business information systems (data, tools, and systems) within the operational business processes to meet the strategic goals of Utilities' Business Plan. Therefore, it is important to establish an alignment of the Business Plan with all three levels of performance, especially the people.

- Assess the organizational competencies and hiring process.
- Set goals and measures for maintaining performance control with a continually improving action planning process.
- Understand human motivation and how to improve staff's potential by focusing on what motivates, not on what dissatisfies.
- Update the staff education programs, as necessary to prepare staff in advance, in order to grow the staff and to support the business action plan and core Utilities' principles.

Expected City Staff Support for Task 3: For this task, the City will be expected to:

- Provide inventory of current software and business information systems.
- Assist with scheduling meetings and phone interviews.

Deliverables as a Result of Task 3 – Review of Organizational Structures/Issues. From the work accomplished above, the deliverables for this task will be as follows:

- Strategic goals and high level business processes.
- Study of the efficiency of the billing and collection processes/relationships.
- Diagram of key business interactions.
- Review of operational business procedures and list of opportunities for improvement.
- Summary of key staff interviews and ideas solicited from staff that may be used in making improvements.
- Review of the critical business information systems.
- Summary of best practices and what other water and wastewater utilities are doing with business information systems to improve performance.
- Review of key performance indicators (benchmarking) in relation to other "comparable local, regional or national utilities.
- Sections of the report dealing with the organizational efficiencies summarizing the observations and proposed improvements.

Task 4—Review of Water and Sewer Operations

Task Objective: Review the key operating costs of the two Water Treatment Facilities and the two Wastewater Treatment Facilities. The key cost components generally include staffing, power, and chemicals.

The treatment facilities have recently been expanded and upgraded, so input from the City regarding areas of focus will be necessary during the evaluation. Regulatory compliance (SDWA and NPDES permit), operator and laboratory certifications, and the wet weather

requirements will be reviewed. The efficiency of the plants will be compared to similar facilities in terms of staffing for operators and maintenance, and the laboratory. The power requirements and chemical consumption will be reviewed and evaluated for overall efficiency. A comparison to similar sized facilities will be completed, but a good understanding of the unique features and characteristics of the Fort Smith facilities is necessary.

The primary focus of the reviews will be the Lake Fort Smith WTP, the Lee Creek WTP and P Street WWTP and Massard WWTP. The staffing for the distribution system, booster pumping stations, collection system and lift stations will be reviewed but the power costs for the smaller system components would not likely result in significant savings, so that is not included in the evaluation.

Subtask 4.1 Review of staffing for facilities - The staffing for the treatment facilities will be reviewed in terms of operations/maintenance and laboratory staff with regard to the type of the facilities, process units and SCADA/automation available. The information will be summarized in terms of staff per MGD of capacity. Staffing for the laboratories will evaluate the type of testing required, amount of industrial testing and facilities size. The collection system, distribution system, lift stations, booster pump stations and storage facilities will be evaluated based on the number of staff per mile of distribution main, mile of collection line, pumping station, and storage facility.

Subtask 4.2 Review of power costs- The power costs for each facility will focus on the overall power used at each of the facilities and will be compared to similar size and type of WTP's and WWTP's. The key processes will be evaluated and the major electrical loads identified at each facility. Major electrical loads will be summarized and evaluated. Potential area of cost reduction will be identified.

Subtask 4.3 Review of chemical costs- Chemical costs for each of the facilities will reviewed. Chemical requirements are significantly impacted by water quality conditions and treatment requirements. An evaluation of chemical usage and potential savings will be completed.

Subtask 4.4 Review of residuals handling and disposal costs- Residuals handling will be summarized for each facility and the associated costs will be evaluated. The costs/ton for materials handling will be summarized and compared to other similar facilities.

Expected City Staff Support for Task 4: For this task, the City will be expected to:

- Provide background data to allow review and analysis of unit operating costs.
- Assist in the review of the treatment facilities and provide input on operations.
- Participate in interviews with supervisors of each facility.

Deliverables as a Result of Task 4 - Review of Water and Sewer Operations. From the work accomplished above, the deliverables for this task will be as follows:

- Sections of report dealing with operational efficiency of facilities.

Task 5—Review of Planning

Task Objective: Review and assess the City's past practices as it relates to water and wastewater master/comprehensive planning. The planning process influences and directly impacts the short and long-term efficiencies of the organization. This task will evaluate the planning process in relation to industry best practices, the timing of master plan updates and how that information is fed back into the capital improvement planning, financial/rate planning

and operational planning.

Water and sewer master and/or comprehensive¹ plans are a key component in a utility's overall efficiency. The purpose of the planning process is to logically and clearly demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with relevant local, state, and federal plans and regulations. At the same time, the master or comprehensive plan should demonstrate how the particular utility system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans. In the City's case, Section VII.H of the *Arkansas Rules and Regulations Pertaining to Public Water Systems*, the City is required to have a written Long Range Plan covering a planning period of at least ten years. The plan is to be updated at least every 5 years and contains specific elements to be addressed which address the technical, managerial and financial "capacity" of the City. While this clearly provides a framework for the City to develop a plan, a critical question to be undertaken within this review is the quality of the planning process. As an example, the forecast or projection of future demands drives the entire planning process. A demand forecast that is overly optimistic will potentially generate over-sized or unneeded facilities and capacity on the system. The City is at a critical cross-road in terms of continued growth and the need for expansion. By improving the planning process, a project may be delayed or deferred, thereby avoiding a potential significant investment and an impact to costs and rates. Given that perspective, this task will undertake to review key elements of the planning process for the water and sewer system.

Subtask 5.1 Review of Demand Forecasts – Both the water and sewer plans are initially driven by customer and demand forecasts. There are a number of different methods that may be used to project demands. These methods may range from a simple escalation of historical demands to as sophisticated as econometric demand forecasting. This subtask will review the current water and sewer planning documents and consider the forecasting method used, and whether the forecasting method could or should be improved. As noted above, an overly optimistic demand forecast can have significant implications upon the utility system. In particular, our review will consider whether the demand method does or does not take into consideration changing trends (e.g. reduced per capita demands) that appear to be occurring within the industry, and potentially within the City.

Subtask 5.2 Capital Planning Process – The planning documents take the demand forecasts and then translate them in capital needs or capital infrastructure. How those demands are translated into capital infrastructure can also vary, and again, have significant impacts upon needed capital improvements. For example, consideration may be given to planning from a hydraulic modeling perspective. At the same time, consideration may be given to the age and condition of the infrastructure. Next, items such as maintaining water quality or reducing inflow and infiltration may be a consideration in the capital planning process. Finally, regulatory requirements or the City's consent decree certainly have an impact upon the capital planning process. HDR will review the City's water and sewer plans and consider the technical process/considerations used to develop the list of needed capital infrastructure improvements. In addition to reviewing the technical process used by the City, the study will also review whether O&M solutions, where potentially viable, were considered (e.g. explore the potential trade-off between an O&M procedure and a capital project to improve or maintain water quality).

¹ Note: A master plan or comprehensive plan may have a very specific meaning, or these terms may be, and often are, used interchangeably.

Subtask 5.3 Financial Capability – The best planning process can not ignore the reality of the financial impacts of the capital plan. For a utility, this is an important sticking point. Failure to meet the simple test of financial capability at this point implies the need to go back into the planning process and develop a plan that is financially viable. It is not beneficial to the City to adopt a master or comprehensive plan that is not financially viable. Arkansas does require a review of “financial capacity” which contains a forecast of all future capital needs and operating expenses . . .” This subtask will review the level of detail involved in the financial capability test and how well that information is communicated within the planning document. While the financial capability test is not a formal “rate study” or “financial plan” it is an important screening test for each utility and the City to understand the potential future impacts of the capital infrastructure plan.

Expected City Staff Support for Task 5: For this task, the City will be expected to:

- Copies of existing Master/Comprehensive Plans, asset management information
- Participate in interviews with other City department staff.

Deliverables as a Result of Task 5 – Review of Planning. From the work accomplished above, the deliverables for this task will be as follows:

- Review of the demand projection/demand forecasting method and potential recommended changes or improvements.
- Review of the planning process for developing the capital improvement plans.
- Review of the financial capability test used within the City’s planning process.

Task 6—Review of Finance/Rates

Task Objective: *Provide a review of the role of finance and rates in the efficiency process. Identify areas of financial/rate deficiency and specific areas of potential improvement.*

Financial planning and rates are the foundation for the proper and adequate funding of the utilities. Failure to properly and adequately fund the utility has efficiency implications for both the capital infrastructure and operations. This task is not a comprehensive analysis of the City’s rates. Rather, it is a review of the financial planning and rate process from the perspective of “generally accepted” financial planning and rate setting processes, but more importantly, how these various aspects may integrate into the equation of efficiency (e.g. failure to adequately fund renewal and replacement of mains may lead to greater water losses and higher source of supply production costs). Provided below are the subtasks outlining specific areas to be reviewed under Task 6.

Subtask 6.1 Benchmarking of Financial/Performance Indicators – There are a number of different financial performance indicators that may be useful to the City to better judge the “financial health” of the City’s utilities. As a part of this study, the financial indicators will be determined based upon the availability of data, along with the benchmarking information that may be available from other comparative utilities. These comparative utilities will be both Arkansas utilities (e.g. Fayetteville, Bentonville, etc.) and other regional or national utilities. The objective of the benchmarking exercise is to determine the City’s financial strengths and weaknesses in relative to other utilities. It is important to note that benchmarking against other utilities is not a representative indicator unless there is an understanding of the other utilities and how well they are managed (i.e. comparing apples, oranges and rotting pears). With that in mind, the more important exercise is to create performance indicators which can be used by the City, over the long-term, to measure continuous performance improvement.

Subtask 6.2 Review of Current Financial Policies - Financial policies are the foundation for the financial planning and rate setting process. The adoption of a strong and complete set of financial policies will provide a strong foundation for the long-term financial sustainability of the utilities and will provide the outside financial community with a better understanding of the City's commitment to managing each of the utilities in a financially prudent manner. At the same time, it provides to the City's Board of Directors with a consistent decision-making framework for establishing the City's water and sewer rates. Finally, it provides the City's customers with an understanding that the utilities will be operated in "business-like" manner.

A review will be undertaken of the City's current financial policies as they specifically relate to the utilities. While there is no "generally accepted" set of financial policies for utilities, there certainly are best practices related to this area. The GFOA website (<http://www.gfoa.org/services/nacslb/index.htm>) details "The Best Practices in Public Budgeting" and also provides examples from municipalities. It is from that context that HDR will provide their review of the City's financial and rate setting policies. Some of the more important areas to be explored include:

- Development of policies specific to the utilities versus City-wide policies.
- Description of methodologies to be used for financial planning and rate setting (e.g. cash basis methodology, projection of five-year period, etc.).
- Debt issuance policies and target debt service coverage from a planning perspective.
- Reinvestment in the system (renewal and replacement of existing facilities) - minimum annual funding for system replacement.
- Types of reserves and specification of minimum reserve levels.
- Frequency of review of rates (e.g. rates shall be reviewed on an annual basis).
- Growth policy - "Growth pays for growth" and connection fee policy.

At the conclusion of this subtask review, HDR will provide an overview of our observations of the City's current policies and recommended improvements or modifications to help achieve efficiency in decision making and/or funding for improvements in operating efficiency.

Subtask 6.3 Review of the Financial Planning Process - The financial planning process is essentially a roadmap for financial decisions. The lack of a clear financial plan often leads to decisions which are more reactionary than proactive. This subtask will review the historical financial planning process that the City has used for the utilities. More specifically, the review will focus on the length of the planning horizon, the methodology utilized and the key inputs and outputs of the model (i.e. does it provide the appropriate information for the decision-makers within management and the Board). At the end of this subtask, the City will have an understanding of the strengths and weaknesses of their financial planning process for each utility in the context of best practices and generally accepted methodologies.

Subtask 6.4 Review of Infrastructure Replacement Funding - A major failure of the utility industrial (and government as a whole) is the failure to adequately fund infrastructure to maintain sustainable facilities through cash reserve. It is not unusual to have facilities with a useful life of 30 to 50 years and schedule for replacement funding of 100 years and beyond. Simply stated, the failure to properly and adequately maintain infrastructure leads to higher overall repair and replacement, and operation costs. For example, failure to properly maintain

water mains leads to more main breaks and higher water losses. This subtask will review the current funding levels for the infrastructure of each utility and compare those funding levels to the generally accepted guidelines. This subtask will provide the City with an understanding of the potential funding gap between current levels and more prudent and sustainable levels of funding. In addition, this funding gap will be placed in the context of potential rate impacts.

Subtask 6.5 Review of Debt/Rate Financing – The City is faced with very large infrastructure investments. How these projects are paid for and financed will have an impact upon the overall rates of the City. Over-reliance upon debt financing can drive rates up simply to meet debt service coverage requirements. This task will review the current approach used to finance these projects, including the use of a sales tax, and consider the long term viability of this approach. The harsh reality is that rates will need to be increased, but the more important question is whether there is a mix of funding that may help minimize rates over time, while still meeting the needed investments in infrastructure.

Subtask 6.6 Review of Rate Affordability – There are a number of different measures of affordability and an important consideration in rate setting is affordability. Affordability may trigger more favorable terms for the City. As an example, recent federal legislation has been introduced to amend the Federal Water Pollution Control Act to assist municipalities that cannot meet unfunded mandates to improve their wastewater infrastructure projects. If approved, the impact may be extended repayment periods on loans, extension of time periods for implementation, and potentially, the availability of grant funding. While not passed, it is important to understand the issue of affordability and how it may impact the City in the financing and funding of the legally mandated projects.

Expected City Staff Support for Task 6: For this task, the City will be expected to:

- Provide financial and rate data and information to review key issues.
- Review performance indicators for relevance

Deliverables as a Result of Task 6 – Review of Finance/Rates. From the work accomplished above, the deliverables for this task will be as follows:

- Financial benchmarks and performance indicators to gain an understanding of potential areas of financial/rate strengths and weaknesses in the utility.
- Develop a set of performance indicators for use by the City over the long term to measure continuous improvement.
- A review of the utility's current financial policies and suggested improvements.
- A review of the current financial planning process and financial models with a summary of observations and recommended improvements.
- A review of the City's infrastructure replacement approach or policies and recommendations to gain efficiencies.
- A review of the City's debt policies and reliance upon long-term debt as a funding mechanism.
- A review of the issue of rate affordability.

Task 7—Written Report

Task Objective: Provide a well written report to summarize the findings, conclusions, and recommendations of the operations efficiency study.

Upon completion of the efficiency study, HDR will develop a draft written report. The written report is intended to be comprehensive in nature and document all of the activities undertaken as a part of the project, along with our findings, conclusions and a clear set of recommendations.

The report will include an evaluation of the City with regard to (American Water Works Association (AWWA) performance indicators and benchmarks similar to what is used in AWWAs "Benchmarking Performance Indicators for Water and Wastewater Utilities: Survey Data and Analysis Report." These performance indicators and benchmarks include both water and wastewater utilities and benchmark performance for the organization, customer relations, operations and business operations. The selection of specific benchmarks and performance indicators for the City's study will be based upon the relevance of the measure to the City's system, along with the availability of data to provide comparable indicators.

It is important to note that this study will likely identify improvements in efficiency which may or may not require additional investment and may or may not lead to savings (e.g. improved service to the customer at no additional cost). In order to appropriately evaluate the recommended efficiency measures, along with any other future efficiency measures to be considered, the City requires a "framework" to determine that evaluation. The report will discuss and provide examples of the various evaluation measures that are typically used in this process. This will include, but not be limited to cost-benefit measures such as return on investment, payback periods, net present value analysis, along with cost and risk allocation. No single measure is universally used and the report will provide examples of the appropriate application (e.g. a change in equipment that leads to reduced power use (savings) may be a simple payback method. In contrast, an AMR system may require a detailed net present value analysis to compare the current manual method to different AMR solutions/alternatives). For each recommended improvement, HDR will provide a preliminary cost/benefit evaluation of the potential savings.²

Within all of our reports, HDR provides technical appendices of all the technical analyses undertaken. HDR will provide four (4) copies of the preliminary (draft) final report to the City for their review and comment. Any comments, suggestions or corrections from the City concerning the draft final report will be incorporated into the final report. Ten (10) copies of the final report will be provided to the City, along with a PDF electronic version of the study.

Expected City Staff Support for Task 7: For this task, the City will be expected to:

- Review and comment on the draft written report.

Deliverables as a Result of Task 7 - Written Report. From the work accomplished above, the

² HDR notes that for purposes of this study it will provide a "preliminary" cost/benefit analysis. This study is limited in scope and depth, and as a result, in some cases, a more detailed study or analysis may be required to better understand and refine the needed capital improvements, potential costs of investment and the potential savings. An example of this would a decision to move to an automated meter reading system. A far more detailed analysis should be undertaken before undertaking an investment of that magnitude, but this study should be able to "screen" the potential cost/benefit of AMR to ascertain whether a more detailed study would be justified (i.e. potentially worth further study).

deliverables for this task will be as follows:

- A draft and final written report.
- A PDF copy of the final operations efficiency study.

Task 8—Citizen's Advisory Committee

Task Objective: Provide an effective public involvement process by working closely with a Citizen's Advisory Committee to be formed by the City. Gain input and feedback from the Advisory Committee during the study process.

An effective means of gaining public input and feedback is to form a Citizen's Advisory Committee. The overall objective of forming a committee is to gain the perspective of the customer, particularly in relation to levels of service. Potential operational improvements (efficiencies) may negatively impact service levels and the advisability of changes in levels of service as a trade-off to cost savings is best judged by those receiving the service. At the same time, customers can provide a different perspective to the process that may not be seen by a utility manager or consultant. To that end, a citizen's advisory committee can be a valuable addition to the overall study.

The City has requested that this study utilize a citizen's advisory committee to gain input and feedback. Given that, the City will be responsible for the selection and formation of the committee. HDR will be responsible for the development of the handout materials for each meeting. HDR will lead and facilitate the advisory committee meetings to gain the committee's input, feedback and final recommendations.

HDR has assumed up to four (4) meetings with the Citizen's Advisory Committee. The objective of these four meetings would be as follows:

- Review the City's current operations (primarily presented by City management staff) and an overview of the purpose of this study (HDR).
- Review of the Preliminary Review of the Organizational Structure and Planning Process.
- Review of the Preliminary Review of the Operations and Financial/Rate Review.
- Review of the Draft Final Report and Study Recommendations/Gain Committee Recommendations.

While the above approach is preliminary in nature, it can be adjusted to meet the needs of the City and the Committee. Should additional meetings beyond the four scheduled meetings be required, they will be provided by HDR on a time and material basis.

Expected City Staff Support for Task 8: For this task, the City will be expected to:

- Form the Citizen's Advisory Committee (i.e. find and select members)
- Manage all communications with the committee (e.g. send notices of meetings, etc).

Deliverables as a Result of Task 8 – Citizen's Advisory Committee. From the work accomplished above, the deliverables for this task will be as follows:

- Up to four (4) citizen's advisory committee meetings.
- Prepare meeting summaries.

Task 9—Board (Public) Presentation

Task Objective: Provide an effective public presentation of the findings, results and

recommendations of the study.

Providing a clear, concise and easily understandable public presentation of the findings, conclusions and recommendations of this study is paramount. It is suggested that one study session meeting be held with the Board of Directors to discuss the findings, conclusions and recommendations of this study. The HDR Project Manager, Don Lindeman, will provide these presentations to the Board, and will likely be assisted by other key project team members.

Only one meeting is suggested for the Board, since the role of the Citizen's Advisory Committee is to review the progress of the study and provide input. HDR will also have met with the Board in a study session prior to the start of the study to gain any relevant input from the Board that may be important to the study. Should additional public meetings/presentations be required, they will be provided on a time and material basis.

Throughout this study, we will schedule, as appropriate, project meetings with the City staff to keep them abreast of the progress of the study and to review the key assumptions, progress and preliminary results of the study.

Expected City Staff Support for Task 9: For this task, the City will be expected to:

- Review and comment on any proposed handouts for public meetings

Deliverables as a Result of Task 9 – Board (Public) Presentation. From the work accomplished above, the deliverables for this task will be as follows:

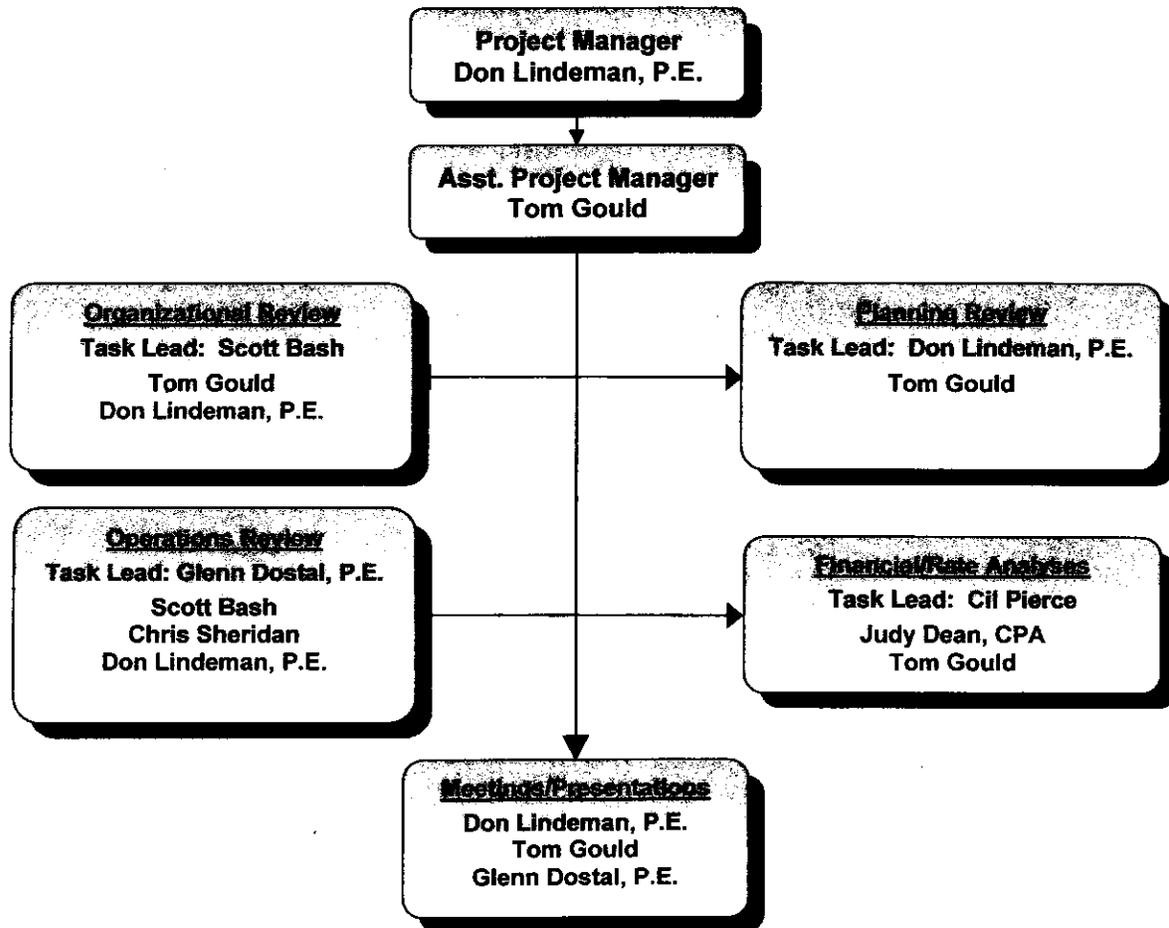
- One (1) public presentation to the Board of Directors to discuss the findings, conclusions and recommendations of the operations efficiency study.

This concludes the discussion of the proposed scope of work for the City. This scope of work has been developed based upon our limited understanding of the City's goals and objectives for this study. HDR is willing to modify our approach to meet the City's specific needs.

Key Project Team Members

Provided below is an overview of the key project team members for the City's study and their role for this study.

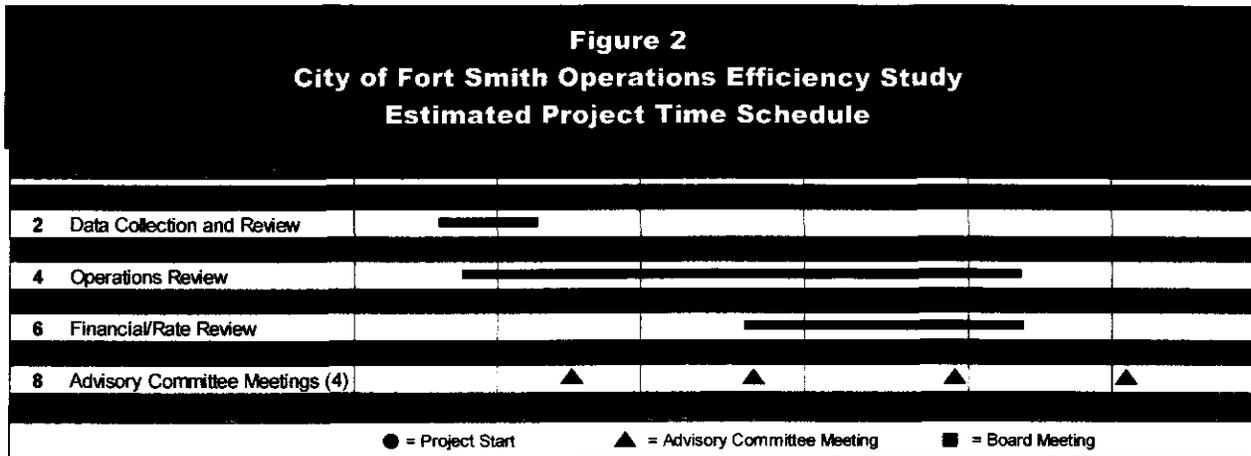
Figure 1
Overview of the HDR Project Team



The Project Manager for the City's study will be Don Lindeman. In this role, Don will be responsible for the overall project management. Tom Gould will be the Assistant Project Manager for this study and assist in the day-to-day management and quality control of the project. All HDR team members, including Don Lindeman and Tom Gould will be committed to the successful completion of the City's project.

Estimated Project Time Schedule

A operational efficiency study of this complexity generally requires 20 to 28 weeks to complete, depending upon a number of factors. These factors include the amount of time required by the City to collect the necessary data, the quality of the data provided, the ability to schedule meetings with City staff in a timely manner and, most importantly, receive direction from the City's management team on the study. Provided below in Figure 2 is our estimated proposed time schedule for the City's project.



This time schedule has been developed based upon our best estimate of the level of effort required and the scope of services previously presented. The intent of this schedule is to complete the study by year end. As noted above, HDR is willing to adjust the project time schedule to meet the City's needs.

Estimated Project Fee

Summary of the Estimated Fees for the City of Fort Smith Operations Efficiency Study

Task Description	Total
Labor:	
Task 1: Initial Project Meeting	\$10,475
Task 2: Data Collection/Review	2,420
Task 3: Organizational Review	8,200
Task 4: Operational Review	15,690
Task 5: Planning Review	15,070
Task 6: Financial/Rate Review	7,520
Task 7: Written Reports	24,630
Task 8: Citizen Advisory Committee Meetings (4)	15,010
Task 9: Board (Public) Presentation (1)	<u>4,520</u>
Grand Total Labor	\$103,540
Expenses:	
Total Expenses	<u>\$10,640</u>
Grand Total "Not to Exceed" Fees	<u>\$114,180</u>

HDR is willing to enter into a "not to exceed" contract of \$114,180. HDR would further propose that the payments be made on a lump sum basis. The last payment may be held by the City until the successful completion of the study. The City will not unreasonably withhold final payment.

APPENDIX B

HOURLY RATE SCHEDULE (JANUARY 1, 2011 THROUGH DECEMBER 31, 2011)

PROJECT		
<u>Individual</u>	<u>Project Role</u>	<u>\$/Hour Rate</u>
Don Lindeman, P.E.	Project Manager	\$215.00/hour
Tom Gould	Assist. Project Manager/QC	\$265.00/hour
Glenn Dostal, P.E.	Task Manager	\$265.00/hour
Scott Bash	Task Manager	\$276.00/hour
Cil Pierce	Task Manager	\$178.00/hour
Chris Sheridan	Operations Reviewer	\$162.00/hour
Judy Dean	Financial Reviewer	\$152.00/hour
Support Staff	Project Assistance	\$75.00/hour

The above noted individuals will provide the required efforts for this project. Should additional personnel be required for a specific issue, HDR has additional personnel that can address any operational, engineering, planning, financial or organizational issue that may arise.

ENGINEERING

Project Principal	\$225 - \$275
Senior Project Manager.....	\$175 - \$225
Project Manager	\$130 - \$175
Senior Project Engineer.....	\$175 - \$225
Project Engineer	\$90 - \$145
Senior Structural Engineer.....	\$145 - \$190
Structural Engineer	\$100 - \$145
Senior Electrical Engineer.....	\$145 - \$190
Electrical Engineer.....	\$100 - \$145
Senior Mechanical Engineer.....	\$145 - \$190
Mechanical Engineer	\$105 - \$145
GIS Personnel.....	\$70 - \$115
Senior Technician	\$105 - \$125
Technician/Senior Drafter	\$80-\$105
Drafter.....	\$40 - \$80
Survey Manager.....	\$105 - \$120
Survey Crew.....	\$115 - \$155
Senior Support Staff	\$75 - \$105
Administrative Personnel.....	\$40 - \$75
Resident Project Representative	\$75 - \$125

ADDITIONAL SERVICES

Technology charge \$3.70/hour

Printing and reproduction costs

- Black and white \$0.05/sheet
- Color \$0.11/sheet

Travel at Internal Revenue Service approved mileage rate

Metro

RESOLUTION NO. R-47-11

RESOLUTION REGARDING A
WATER AND SEWER OPERATIONS EFFICIENCY STUDY

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

The City of Fort Smith will undertake a Water and Sewer Operations Efficiency Study. The selection of an independent firm to perform the study shall be undertaken with the following provisions:

1. The Purchasing Department and Internal Auditor shall manage the process to select the independent firm who will perform the study.
2. The independent firm selected shall not have previously done business with the City of Fort Smith.
3. Selection of the independent firm and its contract shall be approved by the Board of Directors.
4. The firm shall be managed by and shall report to the Internal Auditor throughout the efficiency study.

This resolution adopted this 1st day of March, 2011.

APPROVED:


 Mayor

ATTEST:


 City Clerk

Approved - to file:

 NPR