



AGENDA

FORT SMITH BOARD OF DIRECTORS
REGULAR MEETING

December 6, 2011 ~ 6:00 P.M.

FORT SMITH PUBLIC SCHOOLS
SERVICE CENTER
3205 JENNY LIND ROAD

THIS MEETING IS BEING TELECAST LIVE ON THE CITY CABLE ACCESS CHANNEL 6

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING

(Section 2-37 of Ordinance No. 24-10)

APPROVE MINUTES OF THE NOVEMBER 15, 2011 REGULAR MEETING AND NOVEMBER 29, 2011 SPECIAL MEETING

ITEMS OF BUSINESS:

1. Presentation
 - ♦ Good Neighbor Award
2. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map *(Master Land Use Plan from Commercial Neighborhood to Residential Attached and rezone from Industrial Light (I-1) to Residential Multi-Family High Density (RM-4) by extension located at 1801-1813 North "N" Street)*
3. Ordinance adopting an amendment to the Land Use Matrix in the Unified Development Code *(Allow sewing machine shops sales and service as permitted use in Commercial-2)*
4. Ordinance amending Section 6-29(a) of the Fort Smith Municipal Code *(Amend licensing requirements for residential building contractors)*

5. Ordinance amending the 2011 Budget
6. Public hearing and ordinance to adopt the fiscal year 2012 Operating Budget and to provide other matters relating thereto
7. Ordinance establishing salaries and benefits and related procedures for City employees
8. Ordinance dividing the city of Fort Smith into four wards and repealing Ordinance No. 57-91 and other ordinances in conflict therewith
9. Ordinance adopting an amendment to the Fort Smith Flood Damage Prevention Ordinance
10. Ordinance amending Section 2-48 of the Fort Smith Code of Ordinances regarding appointment and removal of members of appointed boards, commissions or committees
11. Ordinance extending the non-exclusive franchise issued to TCA Cable Partners D/B/A Cox Communications
12. Ordinance authorizing extension of an agreement with AT&T of Arkansas for use of the city rights-of-way to provide IP-enabled video services, and similar IP-enabled services, within the corporate limits of the city of Fort Smith, Arkansas; and for other purposes
13. Consent Agenda
 - A. Resolution approving a contract with Daily & Woods, P.L.L.C. for general legal services for 2012
 - B. Resolution approving claim service, specific excess insurance and aggregate excess insurance for City's workers' compensation coverage
 - C. Resolution authorizing claim service, specific excess insurance and aggregate excess insurance for the City's employee health coverage
 - D. Resolution authorizing employee group life and long-term disability insurance for all full-time City employees
 - E. Resolution adopting the 2012 Audit Plan
 - F. Resolution authorizing the Mayor to enter into a lease agreement with Floating Rock, LLC and Noah Steffy for operation of a boat rental stand at Carol Ann Cross Park

14. Discussion regarding Van Buren water true-up ~ *Requested at the November 29, 2011 special meeting ~*

**OFFICIALS FORUM ~ presentation of information requiring no official action
(Section 2-36 of Ordinance No. 24-10)**

- A. Mayor
- B. Directors
- C. City Administrator

CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. **Presentations are limited to 2 minutes for each citizen
(Section 2-44(b) of Ordinance No. 24-10)**

ADJOURN

2,

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE MASTER LAND USE PLAN MAP AND REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP

WHEREAS, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on November 8, 2011, that said change be made; and,

WHEREAS, the Planning Commission determined the change to the Master Land Use Plan Map does conform to the goals and objectives of the Comprehensive Plan.

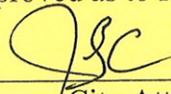
WHEREAS, the City Planning Commission has heretofore held a public hearing to consider request No. 34-11-11 to rezone certain properties hereinafter described, and, having considered said request, recommended on November 8, 2011, that said change be made;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 1: The hereinafter described property is hereby reclassified on the Master Land Use Plan Map from Commercial Neighborhood to Residential Attached and the Master Land Use Plan Map is hereby amended to reflect said amendment, to-wit:

Carnall Addition, Lot 21A
more commonly known as 1801-1813 North "N" Street.

SECTION 2: The hereinafter described property is hereby rezoned from Industrial Light (I-1) to Residential Multi-Family High Density (RM-4) by Extension:

Approved as to Form:


City Attorney
Publish 1 time

Carnall Addition, Lot 21A

more commonly known as 1801-1813 North "N" Street.

The zoning map of the City of Fort Smith is hereby amended to reflect said rezoning.

PASSED AND APPROVED THIS _____ DAY OF _____, 2011.

ATTEST:

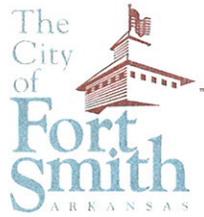
APPROVED:

City Clerk

Mayor

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November 28, 2011

Honorable Mayor and Board of Directors
City of Fort Smith, Arkansas

Re: Master Land Use Plan Amendment from Commercial Neighborhood to Residential Attached and Rezoning #34-11-11; A request by Pat Mickle, agent, for a zone change from Industrial Light (I-1) to Residential Multi-Family High Density (RM-4) by Extension located at 1801-1813 North "N" Street.

On November 8, 2011, the City Planning Commission held a public hearing to consider the above requests.

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for the development of four (4) duplexes on four (4) lots. Ms. Rice stated that a neighborhood meeting was held on October 27th at 5:30 p.m. at Blaylock Heating and Air with eight (8) surrounding property owners attending the meeting. Questions were addressed relative to traffic, drainage and property values. Ms. Rice noted that the proposed project is consistent with established zoning to the south of the proposed zoning site and the proposed duplex development is a suitable land use for this location and will act as a transition between the commercial development to the north and the single family residences to the south and east.

Mr. Pat Mickle was present to speak on behalf of these requests.

No one was present to speak in opposition to the requests.

Following a discussion by the Commission, Chairman Griffin called for the vote on these requests.

Chairman Griffin called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 1 abstention (Howard).

Chairman Griffin called for the vote on the rezoning request. The vote was 8 in favor and 1 abstention (Howard).

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

623 Garrison Avenue
P.O. Box 1908
FORT SMITH, ARKANSAS 72902
(479) 784-2216
FAX (479) 784-2462

The Planning Commission hereby certifies this zoning map amendment to the Board of Directors in accordance with A.C.A. 14-56-422.

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File
City Administrator

Memo

To: City Planning Commission
From: Planning Staff
Date: October 25, 2011
Subject: Proposed Master Land Use Plan Amendment at 1801-1813 North "N" Street from Commercial Neighborhood to Residential Attached (companion item to items #7)

The Planning Department is in receipt of an application from Pat Mickle, agent, for Blaylock Family Trust, to amend the *Master Land Use Plan* from Commercial Neighborhood to Residential Attached to facilitate the construction of four (4) duplexes at 1801-1813 North "N" Street. The subject property is located on at the northeast intersection of North "N" Street and North 18th Street. The tract contains 27,265 s.f. (.63) acres with approximately 205 feet of frontage on North "N" Street and 133 feet on North 18th Street.

The existing zoning of the site is Industrial Light (I-1). A companion application (item #7) proposes a change in the zoning classification to Residential Multifamily High Density (RM-4) by extension. The *Master Land Use Plan* is a guide to zoning and development and must be considered with the companion applications.

ADJACENT LAND USE CLASSIFICATIONS AND USES

Land use classification and uses contiguous to the subject lot are as follows:

The area to the north is classified as Commercial Neighborhood and developed as a heating and air business.

The area to the south is classified as Residential Detached and developed as single-family residential.

The area to the east is classified as Commercial Neighborhood and developed as single-family residential.

The area to the east is classified as open space and is undeveloped.

The proposed land use classification of Residential Attached is described as follows:

Purpose: To provide for diverse populations and households, by supporting variety and options in living environments and housing while protecting and improving property values.

6A

Characteristics and Use: Duplex, triplex, fourplex, townhouses, multiple-story apartments and condominiums.

<u>Criteria for Designation:</u>	<u>Compliance Noted</u>
Land adjacent to/or within regional centers	NO
Land within walking distance to commercial, office, low impact industry, regional institutions or parks	YES
Located on a high-volume roadway	NO
Planned as part of a mixed-use development	NO

MASTER STREET PLAN CLASSIFICATIONS

The Fort Smith Master Street Plan classifies North "N" and North 18th Streets as local streets.

STAFF COMMENTS

A neighborhood meeting was held on October 27, 5:30 p.m., at Blaylock Heating and Air located at 1900 North "O" Street. Eight surrounding property owners attended the meeting. Property owner Mike Blaylock and engineer Randy Coleman with Mickle-Wagner-Coleman presented the proposed plan for the duplex development. Mr. Blaylock and Mr. Coleman answered questions about setbacks for the RM-4 zone, traffic, drainage, and property values. Attached is an attendance record and meeting summary. Planning advised the police department about the residents' concerns about speeding vehicles on North "N" Street. Regarding the drainage concerns, the applicant's property is outside of the May Branch floodplain. However, the street department has commented that this property may experience drainage issues during heavy rains.

While the proposed Residential Attached Master Land Use Classification is a departure from the single-family character of the neighborhood, the location of the proposed development will act as a transition between the Commercial Neighborhood classification to the north and east and the Residential Detached classification to the south.

Staff recommends approval of the proposed Master Land Use Plan amendment contingent upon approval of the companion rezoning application.

6B

October 28, 2011

Ms. Brenda Andrews
City of Fort Smith
Planning Department
P.O. Box 1908
Fort Smith, Arkansas 72902

Re: Public Meeting
Carnall Addition Lots 21B-24B
Rezoning/Land Use Plan
Amendment

Dear Ms. Andrews:

Please let this letter serve as the minutes of the Public Meeting October 27, 2011 at Blaylock Heating & Air Condition, 1900 North "O" Street, Fort Smith. Attached is a copy of the list of Attendees for your records.

The meeting began with introduction of Mr. Mike Blaylock (developer) and a discussion of the reasons for the meeting- rezoning and modification of the land use for the subject property. Prints of the proposed site plan and building elevations of the planned duplexes were displayed for the attendees review. Some of the discussion items are identified in the following paragraphs for your files.

We initially explained the zoning and land use are to be changed to allow construction of 4 duplexes (8 units). The existing zoning (I2) is to be changed to RM-4. The proposed zoning would allow for more residential type development whereas the industrial zone would allow harsher development (warehouses, etc) relative to the existing residences.

We demonstrated with the drawings the location of the units, the proximity to each other and location of parking driveways. One family (Harris) asked about fencing and we indicated that there was none planned for the development. No privacy fencing is required with the residential development. They also asked if this construction would adversely affect the property values. We indicated that in our opinion (not marketing experts) that we felt like the nice new residential units would be a good addition to the area. We did not believe they would have a negative impact on their home values.

One question concerning potential increased traffic was raised by a neighbor (King). He stated that cars frequently travel down 18th at excessive speeds and this is a concern of the neighborhood. We indicated that this concern would be relayed to the City. However, the construction of these four buildings would not significantly impact the traffic in the neighborhood.

Ms. Brenda Andrews
October 28, 2011
Page 2 of 2

Concerns with existing drainage conditions were voiced from the attendees. Basically these concerns were from the historic conditions along 18th and North "O" area. The recent heavy rains caused local flooding of the intersection. The area for the construction of the duplexes is not a reason for the flooding. These conditions preexist and should be improved with May Branch channel construction in the future.

Mr. Blaylock showed the attendees photographs of past construction similar to what is proposed for the development. The duplexes will be red brick with siding as indicated on the drawings. Mr. Blaylock indicated he was planning to have landscaping around the units. He voiced that he was a long time resident of Fort Smith, living and working on the north side of town. He plans for these units to be an attractive addition to the community. His business is a direct neighbor to the site and he plans to keep them nice. People appeared to be satisfied with the proposed appearance of the units.

Let me know if you have any additional thoughts on the meeting.

Sincerely,



Randell Coleman, P.E.

f:\doc\misc\Carnall Add 21B 24B pub mtg minutes 102811.doc

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ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

List the names, addresses & telephone numbers of all residents/property owners who attended the meeting.

Meeting Location Blaylock Heating & Air Conditioning, 1900 North "O" Street

Meeting Time & Date Thursday, October 27, 2011 @ 5:30 p.m.

Meeting Purpose To discuss rezoning from Industrial Light to RM-4 to permit construction of four duplexes.

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	Randy Coleman	Po Box 1507	6498484
2.	Sammy Griffith	1600 N 18	782 21181
3.	Alsie - ^{Harris} Daniel	1817 N. N	(479) 494-7240
4.	Joey King		552-5633
5.	William King	1	622-5866
6.	Chris Simon	1102 N. 12	782-8417
7.	Stacy Simon	"	"
8.	Linda Newham	1809 N. O St	7820724
9.	Brenda Lewis	Int Smith Plann	784-2219
10.	Phonhadal Chang		719 4280
11.	Mike Blaylock		782-8940

For a Minor, Standard or Major Master Land Use Plan Amendment, please attach the following information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

1. A legal description of the subject property that is to be amended (reclassified).

Carnall Addition, Lot 21A

2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location.

See attached.

3. The area dimensions of the property in square feet or acres.

27,148 square feet or 0.623 acres

4. Describe existing road conditions and new roads to be included in the development and the effect of the proposed development on existing roads and traffic conditions:

North "N" Street on the south and North 18th Street on the west are asphalt paved, curb & gutter streets. Traffic on North N Street is local and light. North 18th is a thru street from North "O" Street to Grand Avenue and has more traffic.

5. Describe the existing public utility services and infrastructure (such as water, sewer, fire/police) which are available to the property and the source/method of providing additional utilities and infrastructure to the property if necessary:

Water lines – 6" along North 18th; 3" along North "N". Fire hydrant at NE corner of North 18th and North "N". Sewer line – 8" in alley at rear of lots. Police & fire - Fort Smith.

6. Provide a statement of the proposed build-out density and maximum potential build-out density (units per acre) permitted by the proposed land use classification:

Maximum density per RM-4 regulations = 30 DU/acre

This project = 12.8 DU/acre

66

7. Identify any known or anticipated environmental concerns:

None

For a Standard or Major Master Land Use Plan Amendment only, please attach the following additional information and answer the questions below. You may provide answers on a separate sheet and attach it to this application:

8. An analysis of the impact of the amendment on surrounding properties and plans in terms of:

a. Describe potential changes to development patterns in terms of local and regional impacts:

b. Describe the consistency in zoning between existing and planned uses:

c. Provide explanation of the need for and demand in the proposed uses:

6H

9. Provide an analysis of the long term development plan for the area (10-20 years) which incorporates a review of the land use, transportation, and infrastructure impact to both the City of Fort Smith and the property owner:

For a Comprehensive Plan-Text Amendment only, please attach the following information. Provide answers on a separate sheet and attach it to this application:

1. A typewritten copy of the proposed changes to the text in underline/strikeout (also known as “track changes”) format.
2. A description of the reasons supporting the amendment and the special circumstances requiring the change:

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Certification

Once an application has been deemed complete, the applicant shall not modify it unless requested or agreed upon by the Planning Department. Should the applicant request a modification to the application after it has been advertised for public hearing, it shall be at the discretion of the Planning Commission to review or continue the application. A re-advertising fee may be required.

I, the undersigned applicant, hereby certify that the information contained in this application is true and correct to the best of my knowledge and belief. I grant the appropriate City personnel permission to enter the subject property during reasonable hours so that they may investigate and review this application.

Pat Meece
Signature (Agent/~~Owner~~)

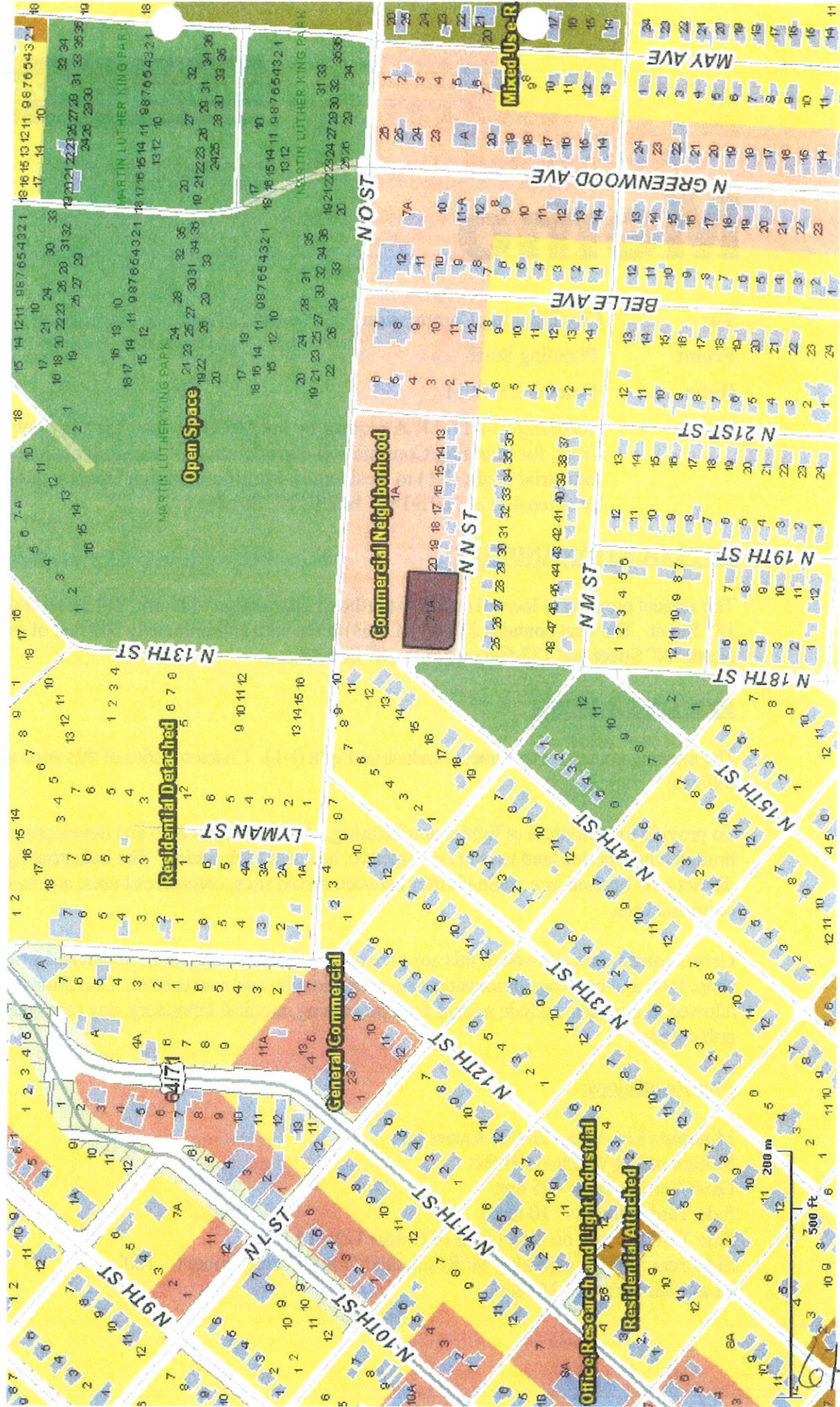
Oct 13, 2011
Date

The City of Fort Smith requires complete applications. If your application does not include all of the information required for submission, it will not be processed.

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Master Land Use Amendment: From Commercial Neighborhood to Residential Attached

1801-1813 North "N" Street



Memo

To: City Planning Commission
From: Planning Staff
Date: October 25, 2011
Re: Rezoning #34-11-11; A request by Pat Mickle, agent, for Blaylock Family Trust, for Planning Commission consideration of a zoning change from Industrial Light (I-1) to Residential Multifamily High Density (RM-4) by extension at 1801-1813 North "N" Street

LOT LOCATION AND SIZE

The subject property is located on at the northeast intersection of North "N" Street and North 18th Street. The tract contains 27,265 s.f. (.63) acres with approximately 205 feet of frontage on North "N" Street and 133 feet on North 18th Street.

EXISTING ZONING

The existing zoning on this tract is Industrial Light (I-1). Characteristics of this zone are as follows:

To provide for a mixture of light manufacturing, office park, research and development, and limited retail/service land uses in an attractive, business park setting. The industrial light district may be used as a zoning buffer between mixed uses, commercial uses, and heavier industrial uses.

Uses: General uses allowed in this zone are auto body shop and paint, cabinet and woodwork shop, food and beverage processing, and extermination and pest control. Conditional uses allowed in this zone include animal food processing, medical laboratory, day care center, and golf course.

Area Regulations:

Minimum Lot Area – 20,000 square feet
Minimum Lot Width – 100 feet
Front Yard Setback - 25 feet
Side Yard Setback - 10 feet
Side Yard Setback on Street Side of Corner Lot - 15 feet
Side/Rear Setback adjoining SF Residential District/Development – 100'
Rear Yard Setback - 10 feet

7A

REQUESTED ZONING

The requested zoning on this tract is Residential Multifamily High Density (RM-4). Characteristics of this zone are as follows: To provide high density attached homes, including multistory residential buildings in those areas where such building types already exist or where such buildings would be consistent with an area’s established development pattern and character.

Permitted Uses: Single-family, duplex, multi-family development, family group homes, neighborhood group homes, and community residential facilities.

Conditional uses allowed in RM-4 zone include churches, schools, and rooming and boarding houses.

Area Regulations:

Density Regulations:

- Minimum Lot Size – 5,000 square feet
- Minimum Lot Width – 50 feet
- Minimum Street Frontage – 20 feet
- Front Setback – 20 feet
- Side Setback – 5 feet
- Street Side Setback – 15 feet
- Rear Setback – 5 feet
- Side/Rear Setbacks for multifamily adjacent to RS District/Development – 40 feet

- Maximum Lot Coverage - 70%
- 30 dwelling units per acre

SURROUNDING ZONING AND LAND USE

The area to the north is zoned Industrial Light (I-1) and developed as a heating and air business.

The area to the south is zoned Residential Multifamily High Density (RM-4) and developed as single-family residential.

The area to the east is zoned Commercial Heavy (C-5) and developed as single-family residential.

The area to the east is zoned Residential single family high density (RS-4) and is undeveloped.

PROPOSED REZONING

The proposed zoning change from Industrial Light (I-1) to Residential Multifamily High Density (RM-4) by extension will allow the development of four duplexes on four lots.

LAND USE COMPLIANCE

The Master Land Use Plan classifies this development as Commercial Neighborhood. This classification provides locations for convenience goods and services in a residentially

7B

compatible design for surrounding neighborhoods, and to provide appropriate uses for sites on arterials and collectors unsuitable for residential development due to lot configuration, safety and noise. A companion application has been submitted by the applicant requesting a Master Land Use Plan map amendment for this site from Commercial Neighborhood to Residential Attached.

STAFF COMMENTS AND RECOMMENDATIONS

The proposed rezoning to RM-4 by extension is consistent with established zoning to the south of the proposed zoning site. In staff's opinion, the proposed duplex development is a suitable land use for this location and will act as a transition between the commercial development to the north and the single-family residences to the south and east. Staff recommends approval of the proposed zone change.

7C

P E T I T I O N F O R C H A N G E I N Z O N I N G M A P

Before the Planning Commission of the City of Fort Smith, Arkansas

The undersigned, as owner(s) or agent for the owner(s) of the herein described property, makes application for a change in the zoning map of the City of Fort Smith, Arkansas, pursuant to Ordinance No. 3391 and Arkansas Statutes (1974) 19-2830, representing to the Planning Commission as follows:

1. The applicant is the owner or the agent for the owner(s) of real estate situated in the City of Fort Smith, Sebastian County, Arkansas, described as follows: (Insert legal description)

Carnall Addition, Lot 21A

2. Address of property: 1801 thru 1813 North N Street

3. The above described property is now zoned: Industrial Light

4. Application is hereby made to change the zoning classification of the above described property to RM-4 by Extension.
(Extension or classification)

5. Why is the zoning change requested?

To allow construction of duplexes

6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

Mickle Wagner Coleman, Inc.

~~Owner~~ or Agent Name
(please print)

_____ Owner

P.O. Box 1507, Fort Smith, AR 72902

~~Owner~~ or Agent Mailing Address

or

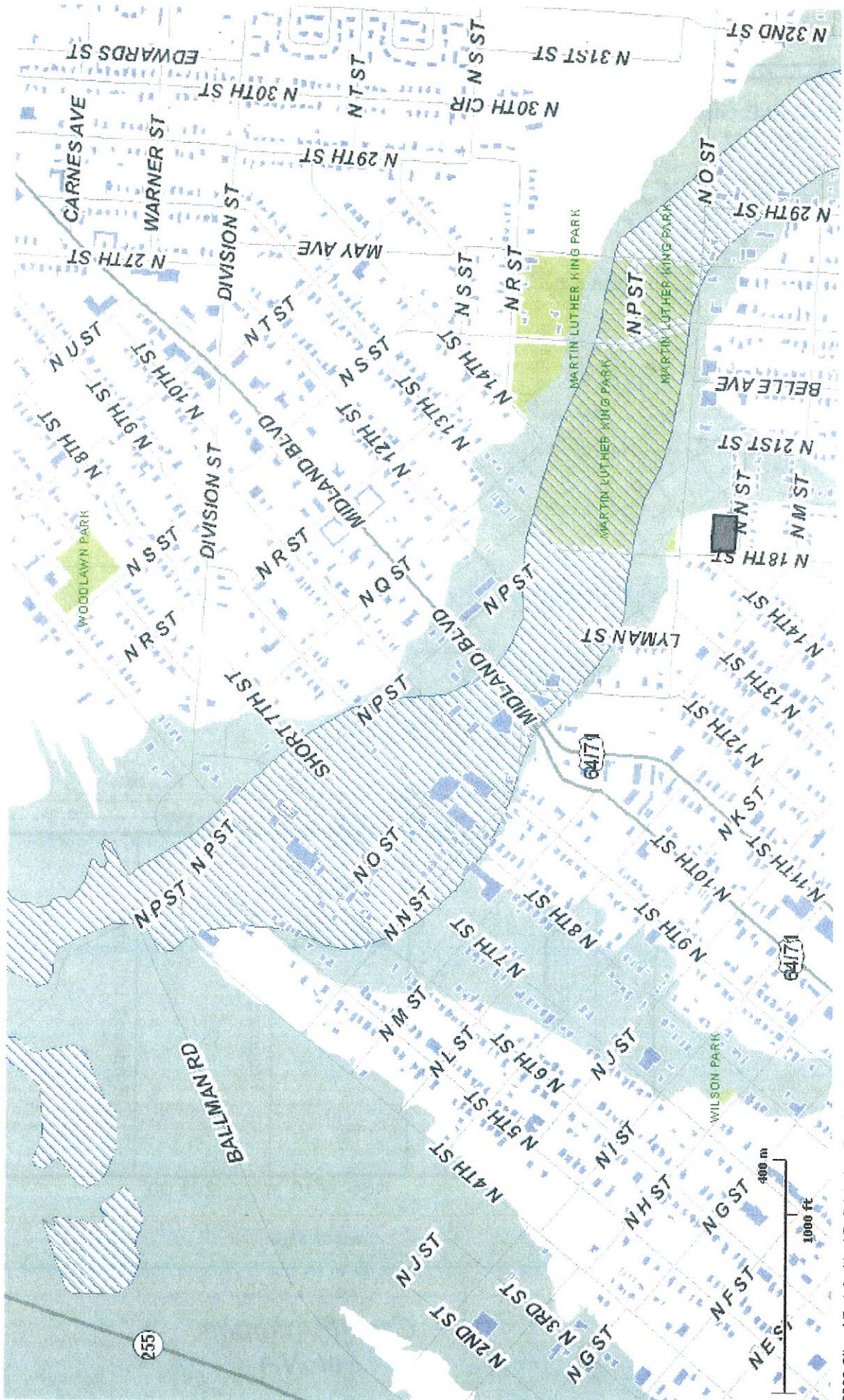
Pat Mearns
Agent

479-649-8484

~~Owner~~ or Agent Phone Number

Flood Hazard Map

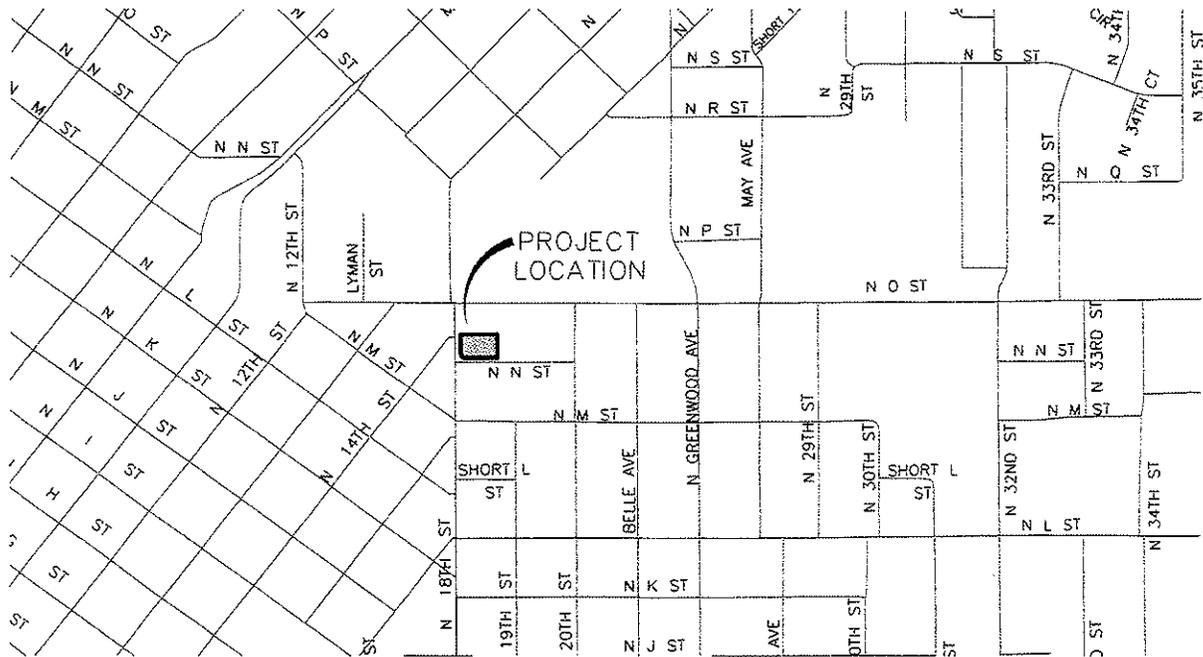
1801-1813 North "N" Street



2009 City of Fort Smith, AR. Printed on Tue Nov 1 2011 12:58:32 PM.

MICKLE-WAGNER-COLEMAN, INC.
 Engineers Consultants Surveyors

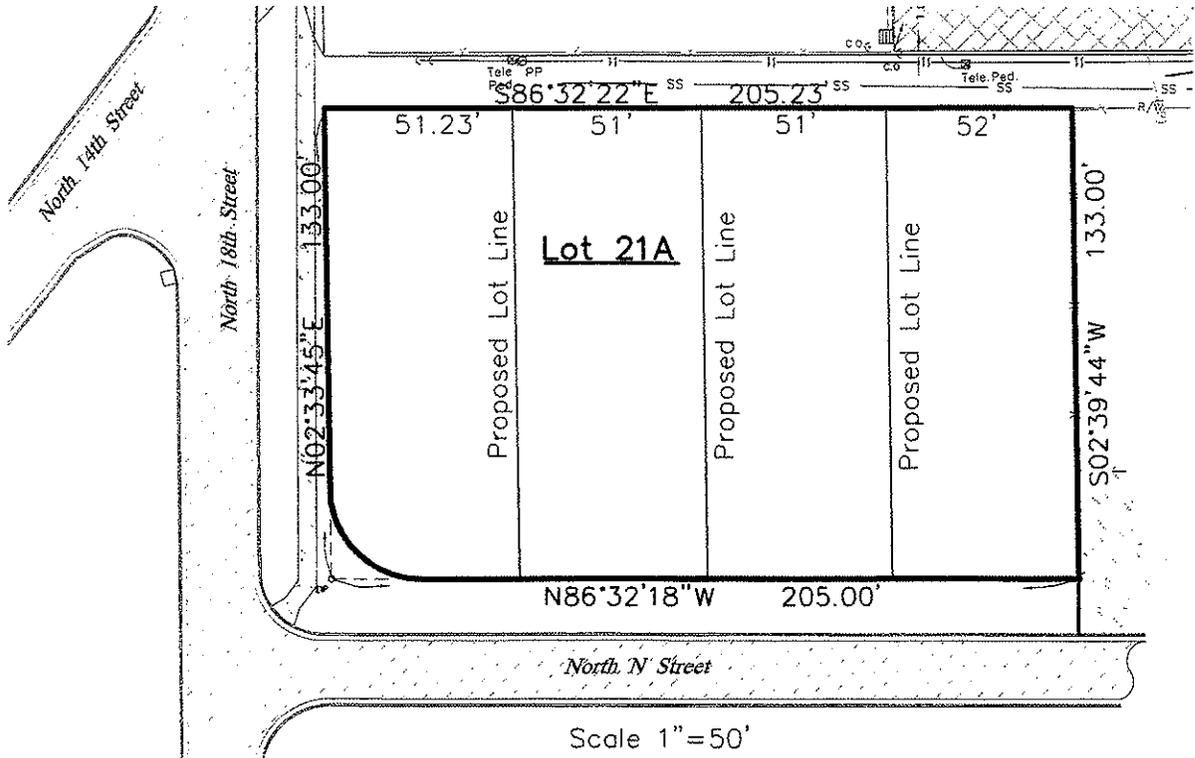
3434 Country Club Avenue
 P.O. Box 1507
 Fort Smith, Arkansas 72902



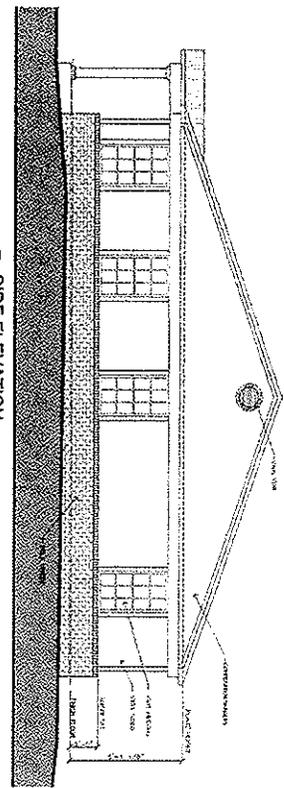
LEGAL DESCRIPTION

Lot 21A of the Corrective Plat, Carnall Addition Replat, Lots 1A & 21A, being filed for record July 27, 1987 as plat 795.

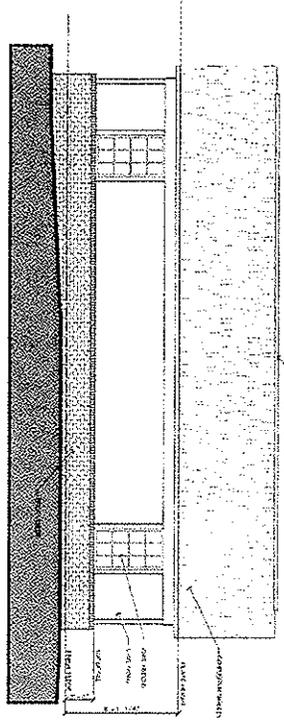
Vicinity Map
 Scale 1"=1000'



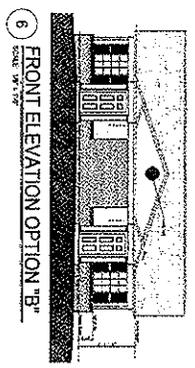
Scale 1"=50'
Carnall Addition
Lot 21A



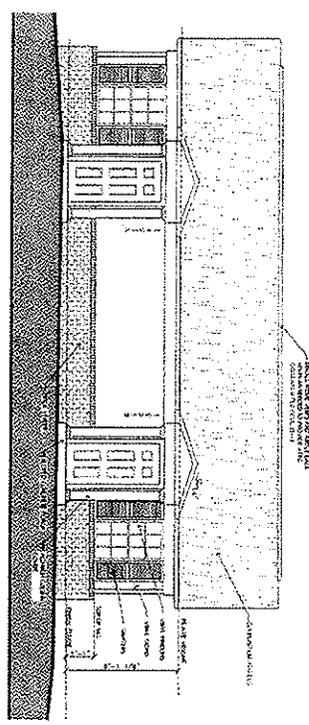
3 SIDE ELEVATION
SCALE: 1/8" = 1'-0"



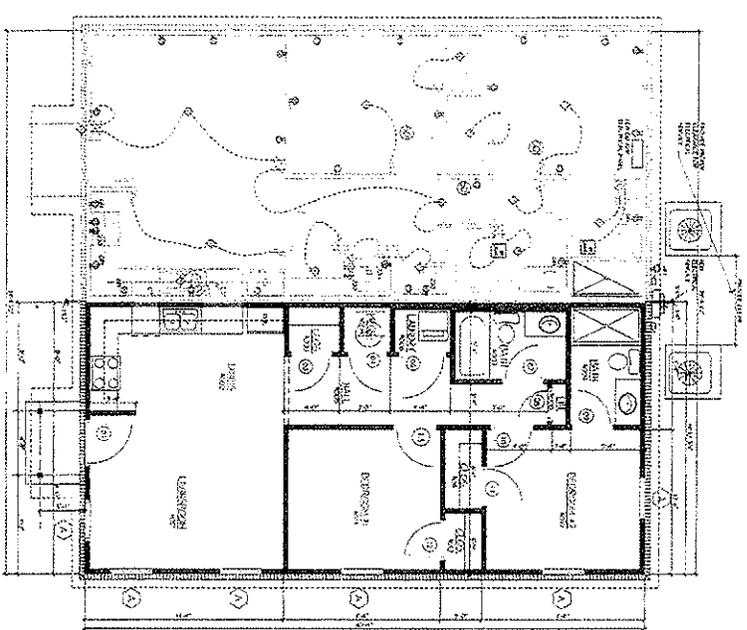
4 BACK ELEVATION
SCALE: 1/8" = 1'-0"



6 FRONT ELEVATION OPTION "B"
SCALE: 1/8" = 1'-0"



2 FRONT ELEVATION
SCALE: 1/8" = 1'-0"



1 FLOOR PLAN 2 BED 2 BATH
SCALE: 1/8" = 1'-0"

A2

REV 15.03.11
REV 15.08.10

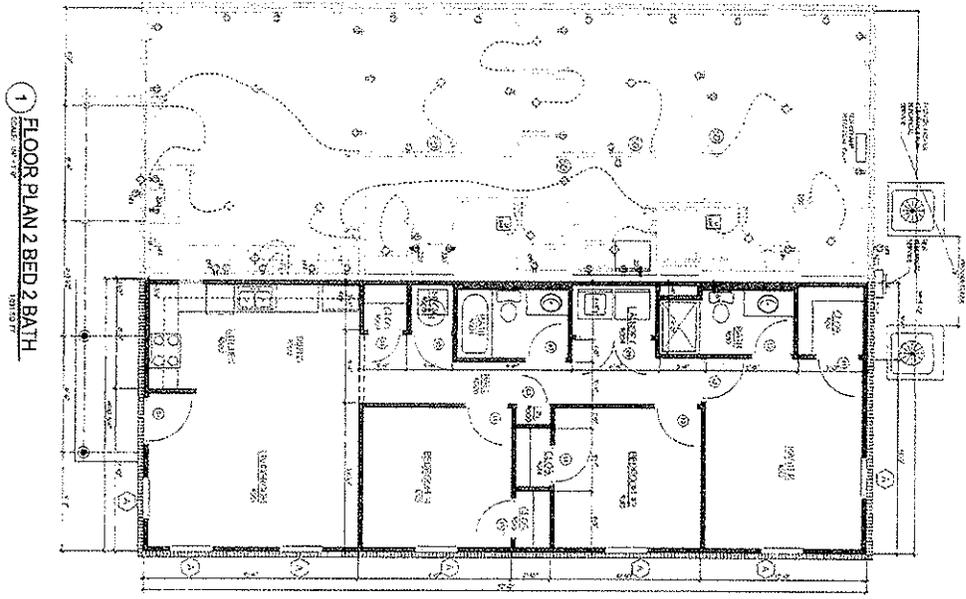
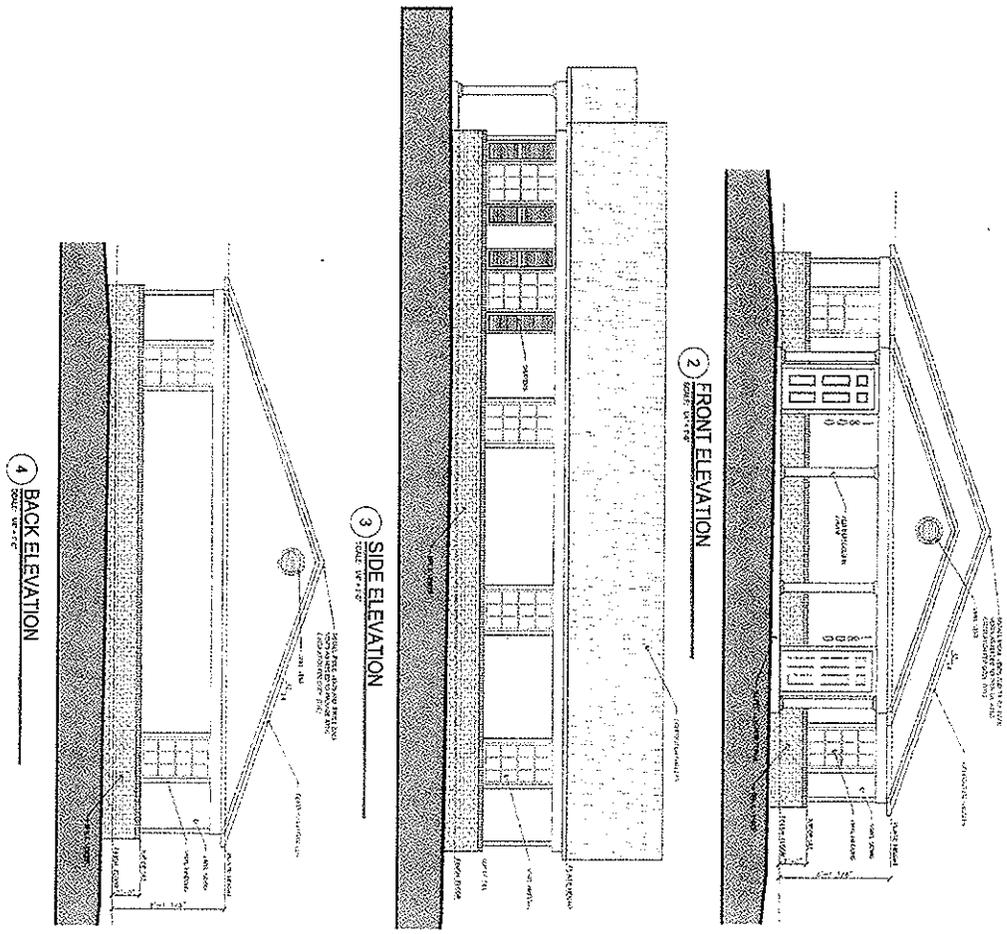
UNIT TYPE "A" 2 BED 2 BATH

BLAYLOCK DUPLEXES LOTS 1-4
NORTH "N" STREET FORT SMITH, AR.

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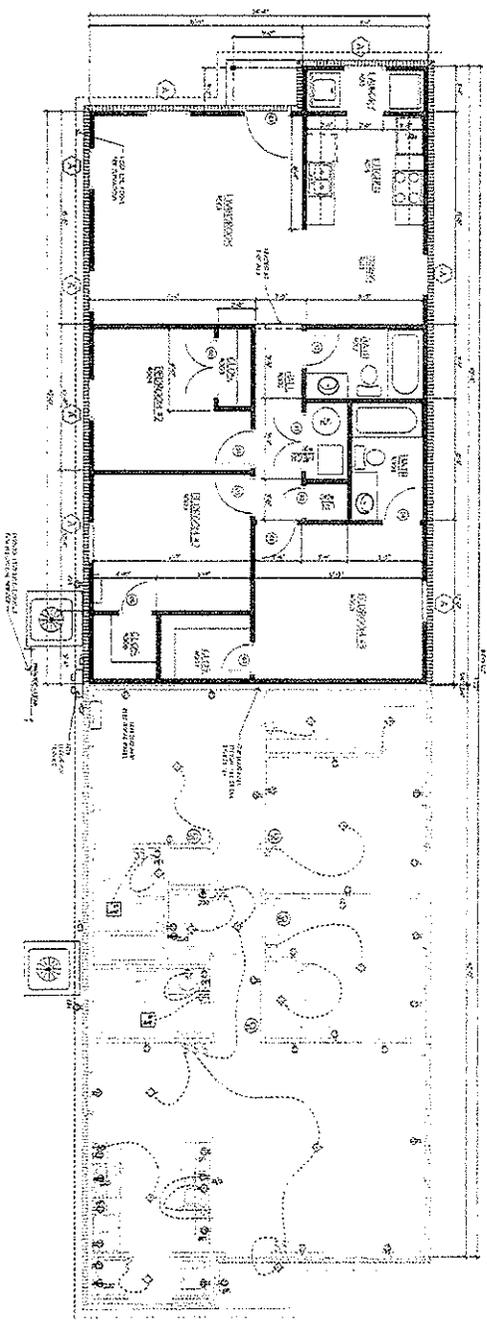


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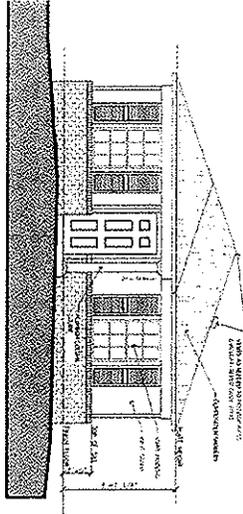
REV: 02/20
DATE: 02/20

UNIT TYPE "B" 3BED 2 BATH
BLAYLOCK DUPLEXES LOTS 1-4
NORTH "N" STREET
FORT SMITH, AR.

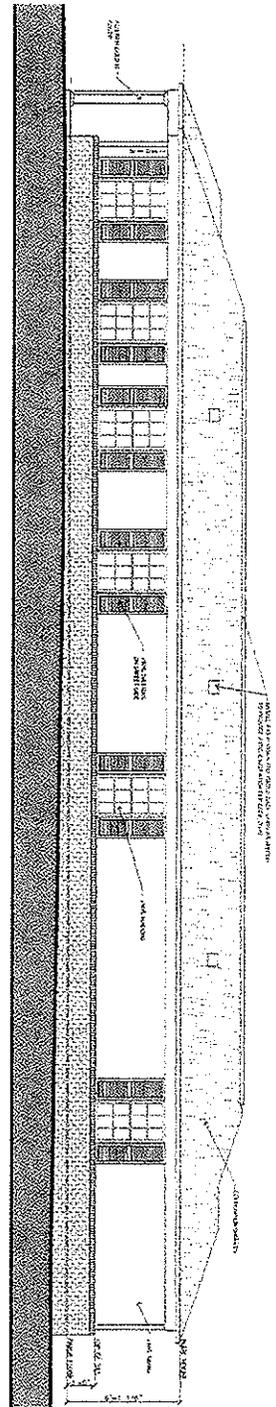
1 THREE BEDROOM 2 BATH FLOOR PLAN
 SCALE 1/8" = 1'-0"



2 FRONT AND BACK ELEVATION
 SCALE 1/8" = 1'-0"



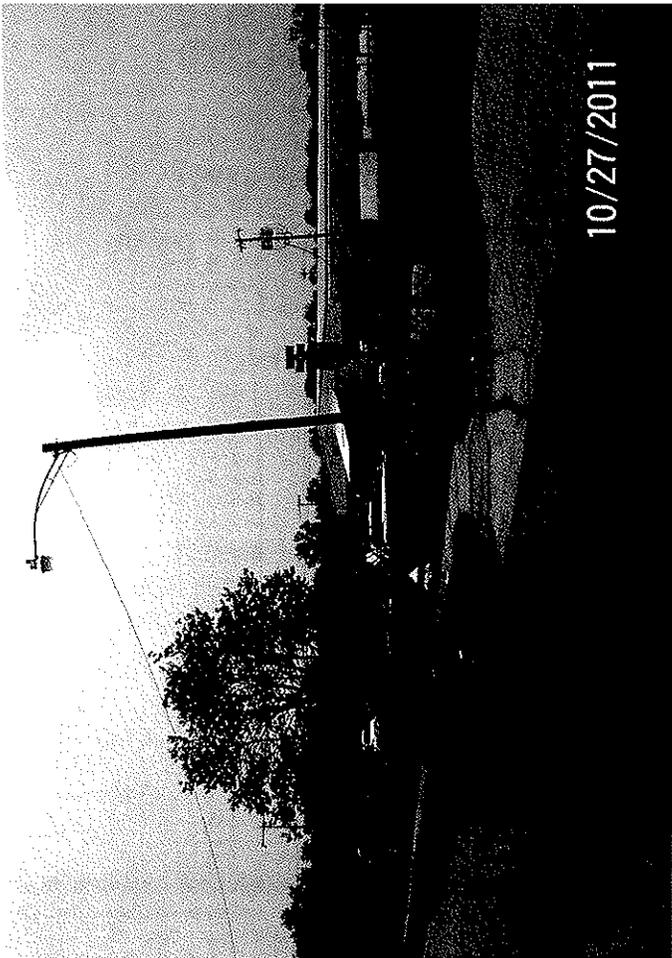
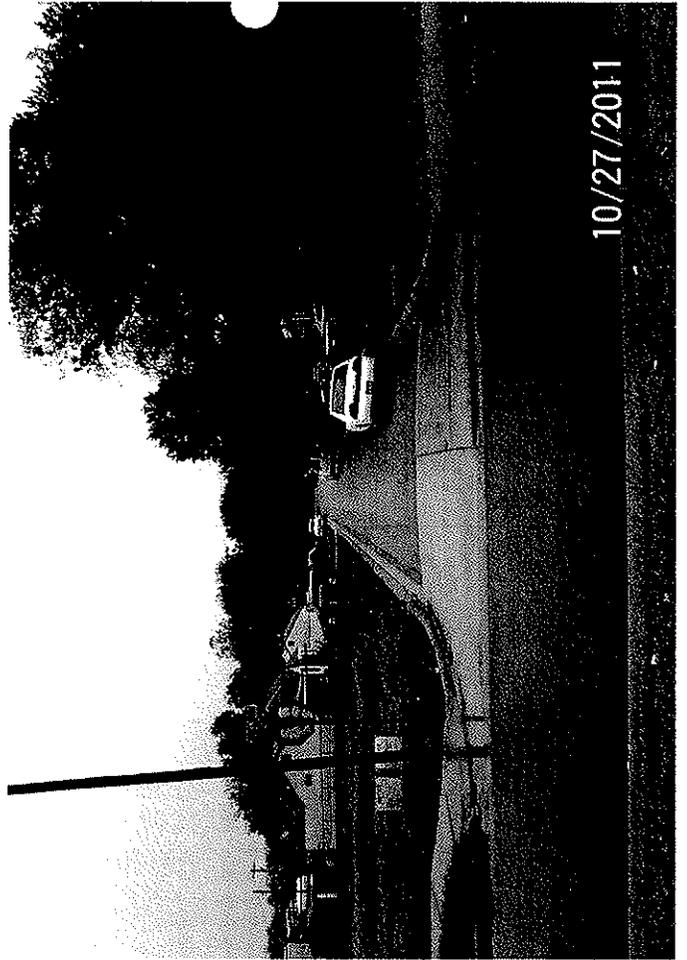
3 SIDE ELEVATION
 SCALE 1/8" = 1'-0"



A4

REV 00000
 3/17

DUPLEXES
 UNIT TYPE "C" 3 BEDROOM 2 BATH
 BRAZIL FORT SMITH, AR.



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KAMAL-U Properties
P. O. Box 6
Fayetteville, AR 72702

Edgar & Mary James, Jr.
909 Monroe Street West
Hempstead, NY 11552

Althea Mae Childress McGree
1315 North "M" Street
Fort Smith, AR 72901

Curtis Ball
1101 North 35th Street
Fort Smith, AR 72904

Raquel Sandoval
1307 North 14th Street
Fort Smith, AR 72901

Teresa Mae Harris
1325 North 14th Street
Fort Smith, AR 72901

Cynthia Moore
601 Drennen Street
Van Buren, AR 72956

Alton & Cathy Jones
1719 North 45th Street
Fort Smith, AR 72904

Baltazard & Florina Galvan
1915 North "N" Street
Fort Smith, AR 72904

Dusan Pejic
1821 North "N" Street
Fort Smith, AR 72901

Jose Torres
1919 North "N" Street
Fort Smith, AR 72901

Robert Wendell Flanagan
1901 North "N" Street
Fort Smith, AR 72901

Donna Hunter Living Trust
P. O. Box 2754
Fort Smith, AR 72913

Elsie Bolden
1817 North "N" Street
Fort Smith, AR 72904

Michael & Janet Blaylock
4809 Skywood Drive
Fort Smith, AR 72904

Nicholas & Nancy Cox
301 Rivercrest Drive
Fort Smith, AR 72903

Johnny Lowrey & Judy Ritter
3310 South 32nd Street
Fort Smith, AR 72903

Dave & Crystal Dickson
211 Maple Shade
Alma, AR 72921

Vernon Pulliam & Deloris Gibbs
1901 North "M" Street
Fort Smith, AR 72901

Joey Don King
1814 North "N" Street
Fort Smith, AR 72901

William Eugene Ross
1914 North "N" Street
Fort Smith, AR 72901

Howell & Marjorie Blake
1910 North "N" Street
Fort Smith, AR 72901

Chansyna Phouthachak
1808 North "N" Street
Fort Smith, AR 72901

Thomas Brock, Jr.
1710 North 45th Terrace
Fort Smith, AR 72904

Latisha Davis
1905 North "M" Street
Fort Smith, AR 72901

Linda Needham & Linda Brasuell
1107 North 13th Street
Fort Smith, AR 72901

John Schluterman
1823 North "M" Street
Fort Smith, AR 72901

Leona Armstrong
331 Oak Grove
Road
Van Buren, AR 72956

Marian Kathryn Twyford
3480 Sandpiper
Fayetteville, AR 72704

Duane & Celly McAfee
1800 North "N" Street
Fort Smith, AR 72904

Debbie Oliver
4715 North 37th Street
Fort Smith, AR 72904

Sammy & Louise Griffith
1600 North 18th Street
Fort Smith, AR 72901

Juan Carlos Ascencio
1317 North 14th Street
Fort Smith, AR 72904

James & Ophelia Cox
7601 Cypress Avenue
Fort Smith, AR 72908

Susie Dickerson
1221 North 14th Street
Fort Smith, AR 72901

MRW, Inc.
2000 Meridian Blvd.-Suite 270
Franklin, TN 37067

ARCO Environmental Remediation
c/o Atlantic Richfield Co.
P. O. Box 3092
Houston, TX 77253-3092

**Planning Commission Meeting Minutes
November 8, 2011**

- 6. Master Land Use Plan Amendment from Commercial Neighborhood to Residential Attached located at 1801-1813 North "N" Street. (companion item to item #7)**

- 7. Rezoning #34-11-11; A request by Pat Mickle, agent, for a zone change from Industrial Light (I-1) to Residential Multi-Family High Density (RM-4) by Extension located at 1801-1813 North "N" Street. (companion item to item #6)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for the development of four duplexes on four lots. Ms. Rice stated that a neighborhood meeting was held on October 27th at 5:30 p.m. at Blaylock Heating and Air with eight surrounding property owners attending the meeting. Questions were addressed relative to traffic, drainage and property values. Ms. Rice noted that the proposed project is consistent with established zoning to the south of the proposed zoning site and the proposed duplex development is a suitable land use for this location and will act as a transition between the commercial development to the north and the single family residences to the south and east.

Mr. Pat Mickle was present to speak on behalf of these request.

No one was present to speak in opposition to the requests.

Following a discussion by the Commission, Chairman Griffin called for the vote on these items.

- 6. Master Land Use Plan Amendment from Commercial Neighborhood to Residential Attached located at 1801-1813 North "N" Street. (companion item to item #7)**

Chairman Griffin called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 1 abstention (Howard).

- 7. Rezoning #34-11-11; A request by Pat Mickle, agent, for a zone change from Industrial Light (I-1) to Residential Multi-Family High Density (RM-4) by Extension located at 1801-1813 North "N" Street. (companion item to item #6)**

Chairman Griffin called for the vote on the rezoning request. The vote was 8 in favor and 1 abstention (Howard).

- 8. Conditional Use #29-11-11; A request by Kazuo Curry, agent, for a conditional use for a sign contractor shop located at 3124 Midland Boulevard.**

ORDINANCE _____

AN ORDINANCE ADOPTING AN AMENDMENT TO THE LAND USE MATRIX IN THE UNIFIED DEVELOPMENT CODE

WHEREAS, the City Planning Commission has held a public hearing to consider a request to amend the Land Use Matrix of the Unified Development Ordinance as described in Section 1 of this ordinance, and, having considered the request, recommended on November 8, 2011, that said change be made;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Article 400, Appendix A of the Fort Smith Municipal Code (Land Use Matrix) is hereby amended to provide that the use "sewing machine store (sales and service)" is a permitted use in the Commercial Light (C-2) zoning district.

SECTION 2: The codifier of the Fort Smith Municipal Code shall cause the amendment adopted by Section 1 to be codified by indicating a "P" under the Commercial Light (C-2) zone for the use "sewing machine store (sales and service)".

SECTION 3: Emergency Clause. It is hereby found and determined that the adoption of the foregoing amendment to the land use matrix in the unified development ordinance of the City of Fort Smith is necessary to alleviate an emergency created by the lack of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendment be effective immediately. Therefore, the amendment adopted by this Ordinance shall be in full force and effect as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS _____ DAY OF _____, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form:

JSC

City Attorney
Rudolph / time

Memorandum

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: 11/29/2011
Re: UDO Land Use Matrix Amendment

Recently the Planning Department staff became aware of an apparent discrepancy with the land use matrix as it relates to the proper zoning districts for sewing machine stores (sales and service). This land use is not currently permitted in Commercial-2 zoning districts, however, many similar uses are permitted in the Commercial-2 districts. Some similar or comparable land uses that are permitted in Commercial-2 zoning districts include computer and software shops, electronics and appliances sales and service (new merchandise) and camera, photographic supplies and service.

The staff felt this was an error in the land use matrix and presented the issue to the Planning Commission for their review and recommendation. The Planning Commission held a public hearing on this matter at their October 11, 2011, meeting. No comments were received concerning the proposed amendment.

The Planning Commission voted 9-0 in support of a recommendation to the Board of Directors for the approval of an amendment to the UDO that will allow sewing machine stores in Commercial-2 zoning districts.

A copy of the land use matrix with the highlighted change is enclosed.

Please contact me if you have any questions.

Memo

To: City Planning Commission

From: Planning Staff

Date: October 26, 2011

Subject: Zoning Ordinance Amendments – Unified Development Ordinance –
Appendix A

The Planning Department received a request to operate a sewing machine store (sales and service) within the Commercial Light (C-2) zoning district. Currently, the code prohibits a sewing machine store (sales and service) in the C-2 zone. Staff agrees that allowing a sewing machine store (sales and service) as a Permitted Use in the C-2 zone would be comparable to the following uses already allowed by right or conditional use: 1) Computer and Software Shop (P); 2) Electronics and Appliances Sales and Service (new merchandise) (P); and 3) Camera, Photographic Supplies and Service (P).

All changes are highlighted on the attached page.

Staff recommends approval of this amendment.

IA

P = Permitted Use, C = Conditional Use, A = Accessory Use	Districts	RE3	RE1	RS-1	RS-2	RS-3	RS-4	RS-5	RSD-2	RSD-3	RSD-4	RM-2	RM-3	RM-4	RMD	RH	T	C-1	C-2	C-3	C-4	C-5	C-6	I-1	I-2	I-3	
		Sewing machine store (sales & service)																									
Sporting goods, toys, & musical instruments																											
Thrift store																											
Consumer Goods, Other																											
Antique shop																											
Art dealers, art studio, galleries, supplies																											
Arts and craft shop																											
Flea market (indoor)																											
Flea market (outdoor)																											
Florist shop																											
Hobby shop																											
Office supply store																											
Pawnshop																											
Pawnshop (no outside storage)																											
Tobacco shop																											
Grocery, Food, Beverage, Dairy																											
Bakery or confectionery shop																											
Beer, wine and liquor store (with drive-through)																											
Beer, wine and liquor store (without drive-through)																											
Convenience store (with gasoline sales)																											
Farmer's market																											
Fruit and vegetable store																											
Grocery store or supermarket																											
Neighborhood store																											
Health and Personal Care																											
Cosmetics, beauty supplies, and perfume stores																											
Medical appliance services																											
Optical shop																											
Pharmacy or drug store																											
Finance and Insurance																											
Auto insurance claims office																											
Automatic teller machine																											
Bank, credit union, or savings institution																											
Credit and finance establishment																											
Fund, trust, or other financial establishment																											
Insurance office																											
Investment banking, securities, and brokerages																											
Rental and Leasing																											
Auto (rental and leasing)																											
Commercial, industrial machinery & equipment																											
Consumer rental center																											
Oil and gas field equipment																											
Video, music, software																											

1B

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTION 6-29(a)
OF THE FORT SMITH MUNICIPAL CODE**

**BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, THAT:**

SECTION 1: Section 6-29(a) of the Fort Smith Code of Ordinances is hereby amended to provide as follows:

(a) Applications to the building official for the issuance under this article of a permit for the construction of a new dwelling by any residential building contractor (as defined by A.C.A. § 17-25-502) or any home improvement contractor (as defined by A.C.A. § 17-25-502) for a single family residence (as defined in A.C.A. § 17-25-502) shall include a copy of the applicant's license issued by the Arkansas Residential Contractor's Committee pursuant to the provisions of the Arkansas State Residential Licensing Law (codified in subchapter 5 of chapter 25 of title 17 of the Arkansas Code); provided, proof of license shall not be required of any residential building contractor or home improvement contractor on any project when the total cost of the work done or to be done does not exceed two thousand dollars (\$2,000.00).

SECTION 2: The codifier of the Fort Smith Ordinances shall codify the provisions adopted by Section 1 above in lieu of the existing provisions of Section 6-29(a) of the Fort Smith Code.

SECTION 3: Emergency Clause. It is hereby determined that an emergency exists requiring the effectiveness of this Ordinance by January 1, 2012, in order to provide enforcement with reference to state legislative requirements then to be in effect. Therefore, in order to preserve the health, safety and welfare of the citizens of the City, this Ordinance shall be of full force and effect on January 1, 2012, and thereafter.

PASSED AND APPROVED THIS _____ DAY OF _____, 2011.

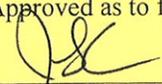
ATTEST:

City Clerk

APPROVED:

Mayor

Approved as to form:



City Attorney
Publish 1 Time

MEMORANDUM

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: November 29, 2011
Subject: Arkansas Residential Licensing Law

Act 1208 of 2011, an Act amending Arkansas law concerning residential building contractors, was passed during the last legislative session. The amendment now requires a person or entity acting as a residential building contractor or a home improvement contractor to be licensed by the Contractor's Licensing Board when the work at a residence exceeds two thousand dollars (\$2,000.00). The requirement applies to everything from a full remodel of a home, to additions, and repairs.

The Fort Smith Municipal Code, section 6-29, includes licensing requirements for residential building contractors and a reference to the Arkansas licensing requirements. After consulting with the City Attorney, it was determined that we need to amend the Fort Smith Municipal Code to properly reference the requirements of Act 1208. Mr. Canfield has prepared an Ordinance amending section 6-29 which we will present to the Board of Directors for their approval.

The Building Safety Division staff has been informing building permit applicants about the new State law for several months. We are sending notices to all residential building permit applicants that have applied for permits the past couple of years. We also have this information on our website.

Additionally we have received a letter from the Greater Fort Smith Association of Home Builders endorsing the proposed ordinance (*see attached letter*).

Please contact me if you have any questions.

GREATER FORT SMITH ASSOCIATION OF

HOME BUILDERS

November 8, 2011

Mr. Jimmie Deer
City of Fort Smith
Building Department
P. O. Box 1908
Ft. Smith, AR 72902

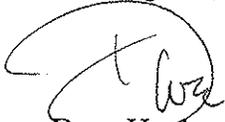
Dear Jimmie;

On behalf of the membership, I'd like to express our thanks to the City staff for presenting our program November 3rd, to review and clarify the two new laws effecting the home building industry; Remodeler's licensing, and the carbon monoxide detector requirement. Since both laws will be adopted in the State's building code the first of the year, we felt this was a timely presentation.

Regarding the licensing law, our leadership is endorsing the proposed City ordinance amending section 6-29(a) of the Ft. Smith Municipal Code that adds this statute. As you know the Arkansas Home Builders Association endorsed this legislation, as do the majority of our members.

We appreciate the City's consideration of the home building industry and look forward to working with you and the elected leadership in the future.

Best regards,



Dave Hughes
Executive Director

Cc; Jerry Denton
2011 GFSAHB President

ORDINANCE NO.

AN ORDINANCE AMENDING THE 2011 BUDGET

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE

CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: The revised 2011 revenue estimates as listed for the General Fund and the Street Maintenance Fund on Exhibit 1, and Exhibit 2 are hereby approved.

SECTION 2: There is hereby authorized an appropriation in the amount of \$44,000 from the unobligated balance of the General Fund to 4104-110 to provide funds to cover unemployment compensation claims during 2011.

THIS ORDINANCE ADOPTED THIS 6th DAY OF DECEMBER, 2011.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

*Approved as to form
JSC
No publication necessary*

**General Fund
Revenue Comparisons
2011**

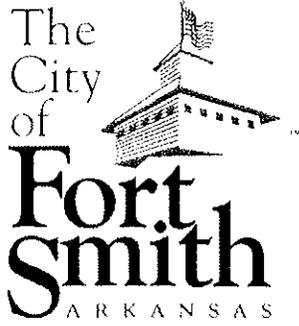
Exhibit 1

	<u>Budget FY 11</u>	<u>Estimated FY 11</u>
Intergovernmental		
State Turnback - General	\$ 1,244,154	\$ 1,379,344
Transit Reimbursement	1,750,000	2,837,314
Airport Security Reimbursement	150,000	155,244
COPS Grant	117,328	87,996
Taxes and Assessments		
Franchise	6,191,500	6,456,500
Ad Valorem	7,137,000	6,994,000
County Sales Tax	15,326,500	15,106,500
Gasoline Tax Refund - Transit	5,000	9,248
Court Fines and Forfeitures	1,950,000	2,116,528
Licenses and Permits		
Privilege	20,000	18,420
Construction	650,000	699,484
Alcohol	540,000	539,720
Other	130,000	129,148
Service Charges and Fees		
Community Centers	36,000	39,536
Fire Protection Contracts	71,400	73,008
Port Authority	12,000	29,784
Parks and Aquatics	150,000	186,502
Oak Cemetery	55,000	66,136
Animal Control	2,500	2,200
False Alarm Fees	4,000	24,432
Mobile Data Support Fees	48,000	53,040
Transit System	185,000	205,600
Miscellaneous		
Reimbursement from Airport	3,163	3,163
Interest Earned	42,000	1,836
Sebastian County Participation	567,347	535,768
Reimbursement from 911 Fund	255,000	255,000
Reimbursement from FSPS for SROs	35,000	38,605
Other	150,000	187,789
Transfers		
Sales Tax Fund	2,385,810	2,385,810
A & P Fund	21,000	20,904
Street Maintenance Fund	82,160	82,160
Water & Sewer Operating Fund	82,160	82,160
Sanitation Operating Fund	82,160	82,160
Total	<u>\$ 39,481,182</u>	<u>\$ 40,885,039</u>

**Street Maintenance Fund
Revenue Comparisons
2011**

Exhibit 2

	<u>Budget FY 11</u>	<u>Estimated FY 11</u>
Intergovernmental		
State Turnback - Gasoline Tax	\$ 3,812,730	\$ 4,094,928
Taxes and Assessments		
Ad Valorem	2,141,000	2,098,200
Miscellaneous		
Interest Earned	10,000	1,212
Other	5,000	11,085
	<u>5,968,730</u>	<u>6,205,425</u>
Total	<u>\$ 5,968,730</u>	<u>\$ 6,205,425</u>



MEMORANDUM

November 30, 2011

TO: Ray Gosack, City Administrator

FROM : Kara Bushkuhl, Director of Finance 

SUBJECT: Amendment of 2011 Budget

The revised revenue estimates for the General Fund and the Street Maintenance Fund that were presented in the proposed 2012 Budget must be approved in order to comply with accounting standards for the 2011 CAFR. The General Fund and Street Maintenance Fund budgets are reported in the City's CAFR and the budget schedules have to include the original budget and the final budget for revenues and expenditures.

Additionally, the Human Resources program requires a supplemental budget appropriation of \$44,000 to cover additional unemployment compensation claims during 2011. Even though total 2011 estimated General Fund expenditures are well below the appropriated budget, this program allocation is unique and its projected expenditures must be covered by this budget amendment.

The attached ordinance with the attached exhibits will provide for the above two actions. I recommend approval of this ordinance.

pc: Jeff Dingman

6.

ORDINANCE NO. _____

AN ORDINANCE TO ADOPT THE FISCAL YEAR 2012
OPERATING BUDGET AND TO PROVIDE OTHER
MATTERS RELATING THERETO

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS THAT:

Section 1: The City of Fort Smith fiscal year 2012 Operating Budget is approved
and authorized as on file in the City Clerk's office.

Section 2: The City Administrator is hereby authorized to transfer
appropriated monies among and within authorized programs.

Section 3: The 2011 year end encumbrances are hereby appropriated in the 2012
Budget.

Section 4: All ordinances and resolutions in conflict with the budget hereby
are amended to conform with the budget hereby approved.

PASSED AND APPROVED THIS 6th DAY OF DECEMBER 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form
[Signature]
Publish 1 time

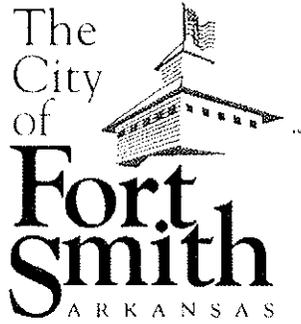
	Total	General Fund	Street Maintenance Fund	W/S Fund	Sanitation Fund
Policy & Administrative Services					
4100 Mayor	\$ 229,160	\$ 98,539	\$ 18,333	\$ 84,789	\$ 27,499
4101 Board of Directors	85,910	36,941	6,873	31,787	10,309
4102 City Administrator	720,450	309,793	57,636	266,567	86,454
4111 Downtown Development	304,580	304,580	-	-	-
4201 District Court	1,502,170	1,502,170	-	-	-
4202 City Prosecutor	171,990	171,990	-	-	-
4203 Public Defender	84,220	84,220	-	-	-
4204 City Attorney	231,000	115,500	57,750	-	57,750
4206 District Court - State Division	51,240	51,240	-	-	-
4405 Internal Auditor	121,570	52,275	9,726	44,981	14,588
Total Policy & Administrative Services	3,502,290	2,727,248	150,318	428,124	196,600
Management Services					
4104 Human Resources	556,310	350,475	38,942	116,825	50,068
4105 City Clerk	351,750	151,252	28,140	130,148	42,210
4301 Finance	1,111,760	478,057	88,941	411,351	133,411
4303 Collections	401,620	172,696	32,130	148,600	48,194
4304 Utility Billing/Customer Service	1,678,040	83,901	83,901	1,258,531	251,707
4306 Purchasing	540,550	232,437	43,244	200,004	64,866
4401 ITS	1,699,290	1,104,538	84,965	339,858	169,929
6912 Parking Deck - Personnel	38,850	38,850	-	-	-
Total Management Services	6,378,170	2,612,205	400,262	2,605,317	760,386
Development Services					
4103 Engineering	1,493,120	1,269,152	74,656	149,312	-
4106 Planning & Zoning	670,070	569,559	-	100,511	-
4108 Building Safety	802,160	802,160	-	-	-
Total Development Services	2,965,350	2,640,871	74,656	249,823	-
Police Services					
4701 Administration	953,070	953,070	-	-	-
4702 Support Services	4,256,440	4,256,440	-	-	-
4703 Investigations	2,855,550	2,855,550	-	-	-
4704 Patrol	7,068,270	7,068,270	-	-	-
4705 Radio Communications	385,090	385,090	-	-	-
4706 Airport Services	194,840	194,840	-	-	-
Total Police Services	15,713,260	15,713,260	-	-	-

Schedule of Expenditures/Expenses - Operating Funds
 2012 Budget Appropriations
 (Continued)

	<u>Total</u>	<u>General Fund</u>	<u>Street Maintenance Fund</u>	<u>W/S Fund</u>	<u>Sanitation Fund</u>
Fire Services					
4801 Administration, Training, & Prevention	\$ 927,400	\$ 927,400	\$ -	\$ -	\$ -
4802 Suppression	9,284,230	9,284,230	-	-	-
Total Fire Services	<u>10,211,630</u>	<u>10,211,630</u>	<u>-</u>	<u>-</u>	<u>-</u>
Operation Services					
Streets & Traffic Control					
5101 Administration	461,250	-	461,250	-	-
5302 Street Construction	991,250	-	991,250	-	-
5303 Street Drainage	1,185,110	-	1,185,110	-	-
5304 Street Maintenance	967,340	-	967,340	-	-
5401 Traffic Control	704,690	-	704,690	-	-
5402 Signals	158,120	-	158,120	-	-
5403 Street Lighting	1,200,000	-	1,200,000	-	-
5405 Sign Shop	114,980	-	114,980	-	-
Total Streets & Traffic Control	<u>5,782,740</u>	<u>-</u>	<u>5,782,740</u>	<u>-</u>	<u>-</u>
Operation Services					
Water & Sewer					
5501 Utility Administration	1,639,800	-	-	1,639,800	-
5601 Water/Wastewater Treatment Admin	208,700	-	-	208,700	-
5603 Sewer Treatment	3,312,280	-	-	3,312,280	-
5604 Water Treatment	4,073,120	-	-	4,073,120	-
5605 Laboratory Services	996,540	-	-	996,540	-
5606 Wastewater Equipment Maintenance	1,380,050	-	-	1,380,050	-
5609 Industrial Waste Monitoring	436,340	-	-	436,340	-
5610 Water Line Maintenance	2,043,090	-	-	2,043,090	-
5611 Sewer Line Maintenance	2,379,360	-	-	2,379,360	-
5613 Metering/Transmission Line Maint	1,603,750	-	-	1,603,750	-
5615 W/S Line Maintenance Administration	995,770	-	-	995,770	-
5616 Water Stationary Equipment	1,277,460	-	-	1,277,460	-
5618 Debt Service	14,705,295	-	-	14,705,295	-
Total Water & Sewer	<u>35,051,555</u>	<u>-</u>	<u>-</u>	<u>35,051,555</u>	<u>-</u>

Schedule of Expenditures/Expenses - Operating Funds
 2012 Budget Appropriations
 (Continued)

	<u>Total</u>	<u>General Fund</u>	<u>Street Maintenance Fund</u>	<u>W/S Fund</u>	<u>Sanitation Fund</u>
Operation Services					
Parks & Recreation					
6101 Health Services	\$ 159,800	\$ 159,800	\$ -	\$ -	\$ -
6201 Parks Maintenance	1,527,210	1,276,970	250,240	-	-
6202 Oak Cemetery	161,120	161,120	-	-	-
6204 Community Centers	179,550	179,550	-	-	-
6205 Aquatics	208,070	208,070	-	-	-
6206 Riverfront/Downtown Maintenance	287,890	287,890	-	-	-
6207 The Park at West End	35,610	35,610	-	-	-
Total Parks & Recreation	<u>2,559,250</u>	<u>2,309,010</u>	<u>250,240</u>	<u>-</u>	<u>-</u>
Operation Services					
Sanitation					
6301 Administration	713,300	-	-	-	713,300
6302 Residential Collections	2,649,970	-	-	-	2,649,970
6303 Commercial Collections	1,408,310	-	-	-	1,408,310
6304 Fleet & Grounds Maintenance	902,100	-	-	-	902,100
6305 Sanitary Landfill	3,140,710	-	-	-	3,140,710
6307 Roll -Off Collections	993,010	-	-	-	993,010
Total Sanitation	<u>9,807,400</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>9,807,400</u>
Operation Services					
Public Transit					
6550 Transit	2,316,100	2,316,100	-	-	-
Total Public Transit	<u>2,316,100</u>	<u>2,316,100</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total Operation Services	<u>55,517,045</u>	<u>4,625,110</u>	<u>6,032,980</u>	<u>35,051,555</u>	<u>9,807,400</u>
Non-Departmental					
6600 Non -Departmental	4,681,163	2,612,373	426,260	311,260	1,331,270
Total Expenditures/Expenses	<u>\$ 98,968,908</u>	<u>\$ 41,142,697</u>	<u>\$ 7,084,476</u>	<u>\$ 38,646,079</u>	<u>\$ 12,095,656</u>



MEMORANDUM

December 2, 2011

TO: Ray Gosack, City Administrator

FROM : Kara Bushkuhl, Director of Finance 

SUBJECT: 2012 Budget Hearing and Approval

Prior to the adoption of the 2012 Budget, the Board will conduct a hearing to obtain public input. I will present a brief overview of the revised proposed budget during the public hearing.

The attached schedule shows the adjustments made to the 2012 Proposed Budget for the fund balances/working capital, revenues, and expenditures/expenses. The Water and Sewer Operating Fund estimated beginning working capital has a net increase of \$455,075 due to higher water and sewer service charge revenue and more operating expenses for materials and utilities during 2011.

The revenue adjustments in the General Fund are primarily a result of changes to expenditures related to the revenue sources. The transit reimbursement is expected to increase due to the federal government shifting fuel reimbursement from a 50/50 match to an 80/20 match between the federal government and the city, respectively. The airport reimbursement is estimated to be \$50,000 more due to the continuance of three full-time officers providing airport security services. Additional Sebastian County participation is anticipated due to the pay increases added for the district court programs that were netted against the \$3,000 decrease from the reduction for the lease, rent, and taxes line item in this program. Based upon the actual reimbursement in 2011 from the Fort Smith Public School system, the estimated revenue for 2012 is increased by \$3,000. Also, the A&P collection fee had to be lowered due to the defeat of the prepared food tax.

During the budget review sessions with the Board, the following adjustments to the proposed 2012 Budget were made to the operating programs:

1. The adjustment for the Board of Directors program represents the reduction in travel by \$4,000 and the elimination of televised board meetings of \$26,430.
2. The City Administrator budget was reduced by \$97,200 for the elimination of the printed Focus newsletter and by \$30,000 for the reduction in the lobbyist contract.
3. The decrease to the Downtown Development program include the \$15,000 decrease in downtown events and the delaying of the 9th Street Streetscape with one-half (\$60,000) being obligated in the 2012 Budget and the remaining one-half (\$60,000) planned for appropriation in the 2013 Budget.
4. The District Court program was reduced by \$10,000 in its lease, rent, and taxes account.
5. In the Finance Department-Collections program, the position for collecting the prepared food tax has been removed from the budget.
6. The Planning and Zoning program was increased by \$38,000 to provide funding for updates/modifications to the comprehensive plan.
7. The net decrease of \$20,000 to the Building Safety program is a result of eliminating the purchase of a truck.
8. Police-Support Services was decreased by \$63,300 for the elimination of the 3FTE part-time call takers.
9. The \$306,400 reduction in Police-Patrol is due to the elimination of four patrol officers (4FTE) plus one cadet (.75FTE) and the transfer of one patrol officer (1FTE) back to the airport security services. There was approximately \$10,000 reduced from overtime as well.
10. The Police-Airport Security program was increased by \$52,380 as a result of transferring back the one patrol officer position from the patrol program.
11. The \$2,000 decrease in the Fire Department's suppression and rescue program reflects the reduction in their repair of buildings account.
12. The street lights budget was decreased by \$126,000 based upon the actual expenditures to date.
13. In water and sewer, the Utility Administration program was reduced by \$1,000 in the advertising, printing, and photo account.

14. The additional appropriations for the Water Treatment program are for USGS payments (\$26,030) in the bonds, insurance, and licenses account and the additional truck, (\$21,900) that was inadvertently omitted from the capital outlay list for this program.
15. The Water Equipment Maintenance program reflects the elimination of the requested seasonal maintenance positions (1FTE) at \$26,160.
16. The additional \$55,000 expense for the Water and Stationary Equipment program is for utilities during 2012.
17. The Parks Maintenance program was reduced by \$16,000 for costs associated with Christmas lights that will now be funded from the Mayor's program. Also, the two mowers (\$40,000) and the truck (\$30,000) replacements have been deleted from the budget.
18. The reduction to the Parks-Cemetery program is for Tales of the Crypt. This \$5,000 expenditure is to be absorbed by the Mayor's program.
19. The Parks-Riverfront/Downtown Maintenance program shows a reduction of \$30,000 for the elimination of two mowers from capital outlay.
20. The Transit budget was reduced by \$70,000 in personnel accounts, fuel and repair of equipment to reflect the reduction to services. Also, a \$1,500 decrease to bonds, insurance, and licenses was made.
21. In non-departmental accounts, the allocation to outside agencies was reduced by 10% or \$18,000; the \$35,000 for the 4th of July celebration was eliminated; the \$25,000 for RITA was not requested for 2012; and the \$777,000 transfer to the Convention Center Funds has to be appropriated.
22. The allocation of the 2% COLA and 80% of the reinstatement for merit/step pay increases is reflected for inclusion in the 2012 Budget.

Please note that the adjustments to Other Funds is listed at the bottom of this schedule.

Attached to the 2012 Budget ordinance is a schedule that shows the allocation of expenditures/expenses for the operating funds. This schedule has been updated to include all adjustments that were made to the 2012 Proposed Budget as described above.

If you have any questions or require more information, please do not hesitate to contact me.

Pc: Jeff Dingman

City of Fort Smith, Arkansas
 Schedule of Budget Amendments for the 2012 Budget

	Total	General Fund	Street Maintenance Fund	W/S Operating Fund	Sanitation Operating Fund
Operating Funds:					
Beginning Balance, 1/1/2012					
Proposed Budget Presented 11/1/2011	14,225,914	4,532,317	2,098,143	5,368,886	2,226,568
Adjustments	455,075	-	-	455,075	-
Proposed Budget Presented 12/6/2011	<u>14,680,989</u>	<u>4,532,317</u>	<u>2,098,143</u>	<u>5,823,961</u>	<u>2,226,568</u>
2012 Revenues					
Proposed Budget Presented 11/1/2011	96,991,220	39,663,578	6,245,092	38,682,550	12,400,000
Transit Adjustments	49,750	49,750	-	-	-
Airport Reimbursement	50,000	50,000	-	-	-
Sebastian County Participation - District Court	8,672	8,672	-	-	-
Reimbursement from FSPS for SRO Positions	3,000	3,000	-	-	-
A&P Collection Fee Adjustment	(62,850)	(62,850)	-	-	-
Proposed Budget Presented 12/6/2011	<u>97,039,792</u>	<u>39,712,150</u>	<u>6,245,092</u>	<u>38,682,550</u>	<u>12,400,000</u>
2012 Expenditures/Expenses					
Proposed Budget Presented 11/1/2011	97,661,118	40,262,427	7,130,819	38,282,867	11,985,005
Adjustments/Reductions at Board Review Sessions:					
Board of Directors	(30,430)	(13,085)	(2,434)	(11,259)	(3,652)
City Administrator	(127,200)	(54,696)	(10,176)	(47,064)	(15,264)
Downtown Development	(75,000)	(75,000)	-	-	-
District Court	(10,000)	(10,000)	-	-	-
Finance Department - Collections	(36,000)	(15,480)	(2,880)	(13,320)	(4,320)
Planning & Zoning	38,000	32,300	-	5,700	-
Building Safety	(20,000)	(20,000)	-	-	-
Police - Support Services	(63,300)	(63,300)	-	-	-
Police - Patrol	(306,400)	(306,400)	-	-	-
Police - Airport Security	52,380	52,380	-	-	-
Fire - Suppression & Rescue	(2,000)	(2,000)	-	-	-
Streets & Traffic Control - Street Lights	(126,000)	-	(126,000)	-	-
Water & Sewer - Utility Administration	(1,000)	-	-	(1,000)	-
Water & Sewer - Water Treatment	47,930	-	-	47,930	-
Water & Sewer - Wastewater Equipment Maintenance	(26,160)	-	-	(26,160)	-
Water & Sewer - Water Stationary Equipment	55,000	-	-	55,000	-
Parks - Parks Maintenance	(86,000)	(86,000)	-	-	-
Parks - Oak Cemetery	(5,000)	(5,000)	-	-	-
Parks - Riverfront/Downtown Maintenance	(30,000)	(30,000)	-	-	-
Transit	(71,500)	(71,500)	-	-	-
Non-Departmental:					
OSA	(18,000)	(18,000)	-	-	-
4th of July Celebration	(35,000)	(35,000)	-	-	-
RITA	(25,000)	(25,000)	-	-	-
Transfer to Convention Center Fund	777,000	777,000	-	-	-
2% COLA & 80% Merit Pay Adjustments	1,431,470	849,051	95,147	353,385	133,887
Proposed Budget Presented 12/6/2011	<u>98,968,908</u>	<u>41,142,697</u>	<u>7,084,476</u>	<u>38,646,079</u>	<u>12,095,656</u>
Ending Balance, 12/31/2012					
Proposed Budget Presented 11/1/2011	11,106,016	3,933,468	1,212,416	4,018,569	1,941,563
Capital Transfers	-	-	-	(1,750,000)	(700,000)
Adjustments	1,645,857	(831,698)	46,343	1,841,863	589,349
Proposed Budget Presented 12/6/2011	<u>12,751,873</u>	<u>3,101,770</u>	<u>1,258,759</u>	<u>4,110,432</u>	<u>1,830,912</u>
	12.82%	7.99%	18.79%	17.32%	16.84%
Adjustments for Other Funds:					
CDBG - Elimination of Part-Time Position	(24,250)				
Parking Authority Fund - Deck Operations & Maintenance	(2,000)				
Convention Center Fund - Operating Costs	(29,340)				

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING SALARIES AND BENEFITS AND RELATED PROCEDURES FOR CITY EMPLOYEES

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Pay Rates and Salaries

All employees shall be paid based on the salary grade ranges as shown in Appendix A.

A. On December 26, 2011, all city employees within their salary grade will receive a 2.0% pay increase. As to any employee not meeting performance expectations on December 26, 2011 the Department Head and City Administrator may withhold this pay increase. **For the duration of this Ordinance, all merit, performance, step or time in grade pay increases as defined throughout this Ordinance will be prorated to eighty per cent (80%) of the full amount provided for in Appendices A, B, C & D and calculated from the employee's current rate.**

B. For non uniformed employees below the midpoint of the salary grade, a pay for performance evaluation will take place shortly before their position anniversary date:

1. If the employee is meeting job requirements, a step increase will be granted on the position anniversary date.
2. An additional step increase may be granted if the employee at times exceeds job requirements (an average of 2.0 or better on the attached performance scale). Should the step increases place the salary at or above the midpoint, any pay increase over the midpoint shall be based on the formula found in Section C (2.) of this Ordinance.
3. Two additional step increases may be granted if the employee consistently exceeds job requirements (an average of 3.0 on the attached performance scale). Should the step increases place the salary at or above the midpoint, any pay increase over the midpoint shall be based on the formula found in Section C (1.) of this Ordinance.
4. No step increase will be granted to an employee evaluated as Progressing to Minimum Requirements (an average score of less than 1.0 or one or more evaluation category rating of E).
5. The 2012 pay increase will be rescinded if the employee is found to need improvement (an average score of less than 1.0 and one or more evaluation category rating of E) and a decision about the employee's future with the City will be made no later than the time of the evaluation.

C. For non uniformed employees at or above the midpoint of the salary grade, a pay for performance evaluation will take place shortly before their position anniversary date.

1. Based on the employee's average score, a pay increase of 3% will be granted if the employee consistently exceeds job requirements. The actual percentage will be determined by the attached scale in Appendix B and will be adjusted to either one third or two thirds of the total percentage in Appendix B if the employee's first or second step of the increase otherwise placed them above the midpoint.
2. Based on the employee's average score, a pay increase between 1-3% will be granted if the employee at times exceeds job requirements. The actual percentage will be determined by the attached scale in Appendix B and will be adjusted to one half of the total percentage in Appendix B if the employee's first step of the increase otherwise placed them above the midpoint.
3. No additional pay increases will be granted if the employee is evaluated as Meeting Job Requirements.
4. The 2012 pay increase may be rescinded if the employee is working toward expectations. (An average score of less than 1.0 or one or more evaluation category rating of E)
5. The 2012 pay increase will be rescinded if the employee is found to need improvement and a decision about the employee's future with the City will be made no later than the time of the evaluation. (An average score of less than 1.0 and one or more evaluation category rating of E)

While the preceding steps in SECTION 1. B. & C. are listed to illustrate the effect of the pay decisions based on their performance evaluation, Supervisors and Department Heads are encouraged to engage in periodic evaluation discussions with employees. These discussions can be a method to let employees know if they are meeting or exceeding expectations during the year. Supervisors and Department Heads should also deal with deficient performance issues immediately and not wait until the scheduled evaluation to inform the employee of these problems.

D. For non uniformed employees at or above the maximum salary for the grade, no salary increase will be granted if the employee is meeting expectations. A onetime payment that will not become part of the employee's permanent salary may be approved by the City Administrator if the employee consistently exceeds or at times exceeds job requirements. The amount of the onetime payment will follow the same percentages found in Section C (1.) & C (2.) of this Ordinance.

E. For Police uniformed employees, a step increase will be granted if the employee is evaluated as satisfactory regardless of their location on the pay grade until the employee has reached the last step. Additional step increases or promotional opportunities will follow the Police Department regulations based on the pay for performance criteria and other promotional and testing criteria.

No pay increases will be granted to any employee if they are found to "need

improvement" (a rating of E in the performance evaluation form) in any area of evaluation.

The pay plan outlined assumes that the overall ranking of "at times exceeding job requirements" or "consistently exceeding job requirements" can be attained but will be relatively infrequent and highly documented when granted.

- F. For Fire Department uniformed employees, a step increase will be granted if the employee is evaluated as satisfactory regardless of their location on the pay grade until the employee has reached the last step.

No pay increases will be granted, including cost of living, to any employee if they are found to be unsatisfactory in any one evaluation category.

- G. Employees designated by their department director as a language interpreter are eligible for language incentive pay of \$83.34 per month subject to certain conditions and procedures as follows:

Each employee will be required to pass a certification test verifying their ability to speak, listen or sign at the designated competency level required by their department.

The City will pay for the first two certification tests for the designated employee. If the employee fails to pass the certification test on the first two attempts then it will be the employee's responsibility to pay for any subsequent attempts to achieve certification.

- H. Employees designated as an IT user liaison are eligible for incentive pay of \$100.00 per month subject to certain conditions and procedures as follows:

Each employee will be required to attend IT user liaison training and pass a certification test verifying their competency. IT user liaisons will spend 5-10 % of their work week supporting IT users and the IT function of the city.

- I. All non uniformed employees shall receive longevity pay as follows:

1. After the first five (5) years of continuous and uninterrupted service, the sum of \$10.00 shall be added to monthly compensation.

2. After each five (5) year period of continuous and uninterrupted service thereafter, an additional \$5.00 per month for each said five year periods shall be added provided however, that \$30.00 per month shall be the maximum longevity pay.

- J. Employees designated by their department director as a member of the chlorine emergency response team are eligible for incentive pay of \$100.00 per month subject to certain conditions and procedures as follows: Each employee will be required to initially complete 40 hours of specialized training to be eligible to participate on the chlorine emergency response team. Then each member will be required to complete a minimum of 8 hours of continuing education each year to remain on the chlorine emergency

response team.

- K. Employees designated by their position description as a salesperson will be paid a commission of five per cent (5%) on all sales in excess of their gross sales (excluding "contract labor fees") for the same quarter of the previous year subject to certain conditions and procedures as follows: The gross sales amount for the previous year will be determined by the department director of the salesperson eligible to receive the commission.

SECTION 2: Non-Exempt Non-Uniformed Employees

- A. Shift Differential - a Non-Exempt employee assigned to work a second shift shall receive a shift differential of ten (10) cents per hour for each hour worked beginning with a regularly scheduled shift starting time of 2:00 p.m. and ending before 10:00 p.m. A Non-Exempt employee assigned to work a third shift shall receive a shift differential of fifteen (15) cents per hour for each hour worked beginning with a regularly scheduled shift starting time of 10:00 p.m. and ending before 6:00 a.m.
- B. Mileage Reimbursement - Employees, who, on written instructions, use their personal automobile(s) on City business will be reimbursed at the "Internal Revenue Service Code" rate.

SECTION 3: Exempt Employees Salaries

- A. In addition to any other current contributions, a contribution to the International City Managers Association - Retirement Corporation (ICMA-RC) of one-hundred dollars (\$100) per month will be made for each department head as listed below:

City Administrator	Deputy City Administrator
District Court Clerk	Police Chief
Fire Chief	Director of Engineering
Director of Development & Construction	Director of Human Resources
Director of Finance	Director of Utilities
Director of Sanitation	Director of Streets & Traffic Control
Director of Parks & Recreation	Director of Convention Center
Director of Information & Technology	Director of Transit
City Clerk	Internal Auditor

SECTION 4: Civil Service (uniformed) employees of the Fire Department shall be paid a rate of pay as set forth in Appendix C. **For the duration of this Ordinance, all merit, performance, step or time in grade pay increases as defined throughout this Ordinance will be prorated to eighty per cent (80%) of the full amount provided for in Appendix C and calculated from the employee's current rate.**

- A. All firefighters hired (including rehires) by the City shall initially be placed in Step A in the Firefighter F-1 position. Advancement to Step B shall occur on the first anniversary date of the date of appointment to the position if an employee's performance is found to be satisfactory. Advancement into each step subsequent to Step B shall occur on the respective subsequent anniversary date of the appointment to the position.

- B. Drivers, Captain, Battalion Chiefs, Fire Marshals, Training Officer and Assistant Chief are eligible on their position anniversary date for advancement to Step B (in the applicable range) based on merit as determined by a job performance evaluation. Advancement to each step subsequent to Step B shall also be based on merit as determined by a job performance evaluation on each subsequent promotion anniversary date.
- C. All hourly compensated firefighters shall have a work period of fourteen (14) days (106 hours) and shall be subject to the Section 7 (k) exemption of 29 CFR Part 553 application of the Fair Labor Standards Act to Employees of State and Local Governments.
- D. All firefighters shall receive compensation for an additional thirteen (13) days paid as legal holidays in accordance with the provisions of Act 501 of 1987. Compensation for holidays is based on the firefighter's daily rate of pay and is in addition to the regular pay schedule. Holiday compensation is included in the rates of pay provided in Appendix C. The thirteen (13) days of holiday equalization pay shall be prorated and paid during the regular payroll periods. "Daily rate of pay" for all hourly compensated firefighters is hereby defined for all budgetary purposes of the City of Fort Smith as being one-tenth of the biweekly base pay for the applicable employment grade and range. The biweekly base pay period for all firefighters shall be based on an average of one-hundred-twelve (112) hours worked biweekly.
- E. All firefighters shall be granted annual vacation as follows:
- After twelve (12) months of continuous and uninterrupted service, 144 hours.
 - After six (6) consecutive years of continuous and uninterrupted service, 168 hours.
 - After ten (10) consecutive years of continuous and uninterrupted service, 192 hours.
 - After fifteen (15) consecutive years of continuous and uninterrupted service, 216 hours.
 - After twenty (20) consecutive years of continuous and uninterrupted service, 240 hours.
- Annual vacation leave shall not be accumulated from calendar year to calendar year.
- F. For administrative convenience, the annual vacation of not less than fifteen (15) days with full pay for Fire Department employees as required by A.C.A. section 14-53-107 and provided in Section (E) above is hereafter defined in terms of annual vacation "hours" as provided in this section. Each three (3) days of annual vacation with full pay provided for in A.C.A. section 14-53-107 and each three (3) days of additional annual vacation granted by Section (E) above is deemed to be equal to one scheduled working shift of twenty-four (24) hours. For administrative record keeping of the City, the City Administrator and his designated agents are authorized to maintain records regarding annual vacation leave in terms of "scheduled working hours." Using such administrative procedure, the annual vacation provided by Section (E) above shall be provided in terms of three (3) calendar days being equal to one (1) working shift of twenty-four (24) hours. For each hour of vacation leave that a firefighter is away from a regularly scheduled work shift, one (1) hour shall be credited against his annual vacation benefit.
- G. The administrative procedures provided in Section (F) shall not be interpreted or construed to enlarge or decrease the current vacation leave benefit provided by A.C.A. section 14-53-107 and this Ordinance.

- H. Sick leave for firefighters shall accumulate at a rate of 360 hours per year beginning with the date of employment and decreasing to 288 hours per year beginning four (4) years after employment. Unused sick leave shall accumulate to firefighters provided with 360 hours per year and 288 hours per year sick leave to a maximum of 2400 hours. If at the end of his/her term of service, upon death or retirement defined as being eligible to receive normal, early or disability LOPFI retirement pension payments immediately upon separation of employment, any firefighter who has unused accumulated sick leave, he/she shall be paid for such sick leave at the regular rate of pay in effect at the time of retirement provided, however, that payment for unused sick leave upon retirement shall not exceed three (3) months salary as per state law, A.C.A. section 14-53-108.
- I. All Civil Service Fire Department personnel shall receive longevity pay as follows:
1. After the first five (5) years of continuous and uninterrupted service, the sum of \$10.00 shall be added to monthly compensation.
 2. After each five (5) year period of continuous and uninterrupted service thereafter, an additional \$5.00 per month for each said five year periods shall be added provided however, that \$30.00 per month shall be the maximum longevity pay.
- J. All firefighters, after their first year of probation, shall be eligible for a monthly pay bonus for the completion of certificates awarded by the Arkansas State Fire Academy or the National Fire Academy according to the following schedule.

<u>Certificate</u>	<u>Monthly Pay Bonus</u>
1. Pump Operation/Emergency Driving	\$15.00
2. Fire Inspector 1	\$15.00
3. First Responder	\$15.00
4. Fire Officer 1	\$15.00
5. Emergency Medical Technician EMT	\$15.00
6. Special Certification Certificate as per Fire Chief	\$15.00
7. Arson Investigation	\$15.00
8. Hazardous Materials	<u>\$15.00</u>
Total possible Certificate pay	\$120.00

- K. An additional ten per cent (10%), after their first year of probation, shall be added to the pay rate of a firefighter who becomes a Certified Paramedic. Certification must be maintained or certification pay will be eliminated.
- L. All firefighters shall receive an annual physical examination by the City to determine their physical fitness to perform firefighting activities.
- M. All firefighters are eligible for educational bonus pay subject to certain conditions and procedures as follows: If the employee's hire date is prior to or on December 31, 2004, and the employee has entered an educational program, then schedule (1) will be followed. If an employee has not entered an educational program prior to January 1, 2005, or the employee hire date is January 1, 2005, or later, then schedule (2) will be followed. If an employee who is eligible and receiving bonus pay based on schedule (1) earns a

bachelors degree, then that employee will be eligible for schedule (2).

Schedule (1)

<u>Educational Program</u>	<u>Percentage of Total Annual Pay Added as Bonus</u>
Entry into the Plan	1%
Completion of 15 semester hours	2%
Completion of 30 semester hours	3%
Completion of 45 semester hours	4%
Completion of 60 semester hours plus	5% attainment of Associates Degree

Schedule (2)

<u>Educational Program</u>	<u>Percentage of Total Annual Pay Added as Bonus</u>
Associates Degree	3%
Bachelors Degree	6%
Masters Degree	7%

- N. Firefighters designated by the fire department and certified to maintain and service breathing apparatus are eligible for incentive pay of \$100.00 per month.

SECTION 5: Civil Service (uniformed) employees of the Police Department shall be paid a rate of pay as set forth in Appendix D. **For the duration of this Ordinance, all merit, performance, step or time in grade pay increases as defined throughout this ordinance will be prorated to eighty per cent (80 %) of the full amount provided for in Appendix D and calculated from the employee's current rate.**

- A. All Police Officers hired (including rehires) by the City shall initially be placed in the Entry Level in the Patrol Officer/Detective P-1 Range. Advancement to subsequent levels of pay shall be based upon an officer's anniversary date as indicated in the schedule in Appendix D.
- B. Advancement to the Corporal rank P-1 will occur upon reaching the tenth step of a patrol officer/detective. Advancement to subsequent levels of pay shall be based upon an officer's position anniversary date as indicated on the schedule in Appendix D.
- C. All hourly compensated Police Officers shall have a work period of seven (7) days, shall receive overtime pay after 41 hours, and shall be subject to the Section 7 (K) exemption of 29 CFR Part 553 Application of the Fair Labor Standards Act to Employees of State and Local Governments.
- D. All Police Officers shall receive compensation for an additional thirteen (13) days as paid legal holidays in accordance with the provisions of Act 501 of 1987. Compensation for holidays is based on the officer's daily rate of pay and is in addition to the base pay schedule. In calculating the holiday pay, the "daily rate of pay" for all hourly compensated Police Officers is hereby defined for budgetary purposes of the City of Fort Smith as being the per hour rate of base pay times (8) hours for the applicable employment grade and range. Holiday compensation is included in the rates of pay provided in Appendix D. Holiday pay is to be prorated and paid during the regular payroll periods.

E. All Police Officers shall be granted annual vacations as follows:

1. After twelve (12) months of continuous and uninterrupted service, fifteen (15) working days.
2. After six (6) consecutive years of continuous and uninterrupted service, seventeen (17) working days.
3. After ten (10) consecutive years of continuous and uninterrupted service, twenty (20) working days.
4. In addition to the foregoing vacation days, each officer will receive one (1) discretionary day off with pay each year after (12) months of continuous service.

Annual vacation leave and the discretionary day shall not be accumulated for more than a twelve month period from the date of accrual for Civil Service Employees.

F. All Police Officers shall accumulate sick leave at the rate of twenty (20) working days (i.e., twenty-eight (28) calendar days) per year beginning one (1) year after the date of employment. Sick leave may be accumulated from year to year to maximum accumulation of one hundred twenty (120) working days (i.e., one hundred sixty-eight (168) calendar days) at any one time. If at the end of his/her term of service, upon death or retirement defined as being eligible to receive normal, early or disability LOPFI retirement pension payments immediately upon separation of employment, any Police Officer has unused accumulated sick leave, he/she shall be paid for such sick leave at the regular rate of pay in effect at the time of retirement or death, provided however, that payment of unused sick leave upon retirement or death shall not exceed (3) months salary for Police Officers in the rank of Captain and above and shall not exceed salary for five hundred twenty (520) hours for Police Officers in the rank of Sergeant and below.

G. All civil service police officers shall receive longevity pay as follows:

1. After the first five (5) years of continuous and uninterrupted service, the sum of \$10.00 shall be added to monthly compensation.
2. After each (5) year period of continuous and uninterrupted service thereafter, an additional \$5.00 per month for each of said five (5) year periods shall be added, provided, however, that \$30.00 per month shall be the maximum longevity pay.

H. All Police Officers, after their first year of probation, shall be eligible for a monthly pay bonus for the completion of the State of Arkansas Law Enforcement Standards and Training Certificates as follows:

1. General Certificate - \$20.00 added to monthly compensation
2. Intermediate Certificate - \$40.00 added to monthly compensation.
3. Advanced Certificate - \$60.00 added to monthly compensation.
4. Senior Certificate - \$80.00 added to monthly compensation.

All police officers are eligible for educational bonus pay subject to certain conditions and

procedures as follows:

If the employee's hire date is prior to or on December 31, 2004, and the employee has entered an educational program, then schedule (1) will be followed. If an employee has not entered an educational program prior to January 1, 2005, or the employee's hire date is January 1, 2005, or later, then schedule (2) will be followed. If an employee who is eligible and receiving bonus pay based on schedule (1) earns a bachelors degree, then that employee will be eligible for schedule (2).

Schedule (1)

<u>Educational Program</u>	<u>Percentage of Total Annual Pay Added as Bonus</u>
Entry into the Plan	1%
Completion of 15 semester hours	2%
Completion of 30 semester hours	3%
Completion of 45 semester hours	4%
Completion of 60 semester hours plus	5% attainment of Associates Degree

Schedule (2)

<u>Educational Program</u>	<u>Percentage of Total Annual Pay Added as Bonus</u>
Associates Degree	3%
Bachelors Degree	6%
Masters Degree	7%

SECTION 6: Policy

As to non uniformed employees, in extreme and unusual employment and promotional situations related to business necessity and efficiency, the City Administrator may waive or alter the step increase procedure to fill a position with the most highly qualified candidate and assign the appropriate wage within the job classification.

SECTION 7: All Ordinances and parts of Ordinances in conflict with this Ordinance are hereby repealed.

PASSED AND APPROVED THIS _____ day of December, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form
WJ
Asst CR
NPR*

Appendix A

HOURLY PAY GRADE RANGES
BUDGET YEAR 2012

(basis, 8 hrs/day, 5 days/week, 52 weeks/year)

Grade	Entry	Midpoint	Maximum	Step
1	\$ 9.26	\$ 11.20	\$ 13.13	\$ 0.39
2	\$ 10.35	\$ 12.52	\$ 14.68	\$ 0.43
3	\$ 11.43	\$ 13.83	\$ 16.23	\$ 0.48
4	\$ 12.54	\$ 15.16	\$ 17.78	\$ 0.52
5	\$ 13.64	\$ 16.48	\$ 19.32	\$ 0.57
6	\$ 14.72	\$ 17.79	\$ 20.85	\$ 0.61
7	\$ 15.80	\$ 19.10	\$ 22.41	\$ 0.66
8	\$ 16.88	\$ 20.41	\$ 23.94	\$ 0.70
9	\$ 17.98	\$ 21.75	\$ 25.50	\$ 0.75
10	\$ 19.07	\$ 23.06	\$ 27.05	\$ 0.80
11	\$ 20.16	\$ 24.38	\$ 28.60	\$ 0.85
12	\$ 21.23	\$ 25.96	\$ 31.74	\$ 1.15
13	\$ 22.47	\$ 27.31	\$ 33.38	\$ 1.21
14	\$ 23.51	\$ 28.92	\$ 35.35	\$ 1.29
15	\$ 24.82	\$ 30.24	\$ 36.98	\$ 1.35
16	\$ 25.85	\$ 31.92	\$ 39.00	\$ 1.42
17	\$ 26.90	\$ 33.25	\$ 40.66	\$ 1.48
18	\$ 27.96	\$ 34.61	\$ 42.31	\$ 1.54
19	\$ 29.01	\$ 35.99	\$ 44.00	\$ 1.60
20	\$ 30.08	\$ 37.33	\$ 45.65	\$ 1.66
21	\$ 31.10	\$ 38.70	\$ 47.31	\$ 1.72
22	\$ 32.17	\$ 40.04	\$ 48.96	\$ 1.79
23	\$ 33.23	\$ 41.40	\$ 50.63	\$ 1.85
24	\$ 33.23	\$ 42.76	\$ 52.28	\$ 1.91

BI-WEEKLY PAY GRADE RANGES
BUDGET YEAR 2012

(basis, 8 hrs/day, 5 days/week, 52 weeks/year)

Grade	Entry	Midpoint	Maximum	Step
1	\$ 740.80	\$ 896.00	\$ 1,050.40	\$ 31.20
2	\$ 828.00	\$ 1,001.60	\$ 1,174.40	\$ 34.40
3	\$ 914.40	\$ 1,106.40	\$ 1,298.40	\$ 38.40
4	\$ 1,003.20	\$ 1,212.80	\$ 1,422.40	\$ 41.60
5	\$ 1,091.20	\$ 1,318.40	\$ 1,545.60	\$ 45.60
6	\$ 1,177.60	\$ 1,423.20	\$ 1,668.00	\$ 48.80
7	\$ 1,264.00	\$ 1,528.00	\$ 1,792.80	\$ 52.80
8	\$ 1,350.40	\$ 1,632.80	\$ 1,915.20	\$ 56.00
9	\$ 1,438.40	\$ 1,740.00	\$ 2,040.00	\$ 60.00
10	\$ 1,525.60	\$ 1,844.80	\$ 2,164.00	\$ 64.00
11	\$ 1,612.80	\$ 1,950.40	\$ 2,288.00	\$ 68.00
12	\$ 1,614.40	\$ 2,076.80	\$ 2,539.20	\$ 92.00
13	\$ 1,698.40	\$ 2,184.80	\$ 2,670.40	\$ 96.80
14	\$ 1,797.60	\$ 2,313.60	\$ 2,828.00	\$ 103.20
15	\$ 1,880.80	\$ 2,419.20	\$ 2,958.40	\$ 108.00
16	\$ 1,985.60	\$ 2,553.60	\$ 3,120.00	\$ 113.60
17	\$ 2,068.00	\$ 2,660.00	\$ 3,252.80	\$ 118.40
18	\$ 2,152.00	\$ 2,768.80	\$ 3,384.80	\$ 123.20
19	\$ 2,236.80	\$ 2,879.20	\$ 3,520.00	\$ 128.00
20	\$ 2,320.80	\$ 2,986.40	\$ 3,652.00	\$ 132.80
21	\$ 2,406.40	\$ 3,096.00	\$ 3,784.80	\$ 137.60
22	\$ 2,488.00	\$ 3,203.20	\$ 3,916.80	\$ 143.20
23	\$ 2,573.60	\$ 3,312.00	\$ 4,050.40	\$ 148.00
24	\$ 2,658.40	\$ 3,420.80	\$ 4,182.40	\$ 152.80

ANNUAL PAY GRADE RANGES
BUDGET YEAR 2012

(basis, 8 hrs/day, 5 days/week, 52 weeks/year)

Grade	Entry	Midpoint	Maximum	Step
1	\$ 19,260.80	\$ 23,296.00	\$ 27,310.40	\$ 811.20
2	\$ 21,528.00	\$ 26,041.60	\$ 30,534.40	\$ 894.40
3	\$ 23,774.40	\$ 28,766.40	\$ 33,758.40	\$ 998.40
4	\$ 26,083.20	\$ 31,532.80	\$ 36,982.40	\$ 1,031.60
5	\$ 28,371.20	\$ 34,278.40	\$ 40,185.60	\$ 1,185.60
6	\$ 30,617.60	\$ 37,003.20	\$ 43,368.00	\$ 1,268.80
7	\$ 32,864.00	\$ 39,728.00	\$ 46,612.80	\$ 1,372.80
8	\$ 35,110.40	\$ 42,452.80	\$ 49,795.20	\$ 1,456.00
9	\$ 37,398.40	\$ 45,240.00	\$ 53,040.00	\$ 1,560.00
10	\$ 39,665.60	\$ 47,964.80	\$ 56,264.00	\$ 1,664.00
11	\$ 41,932.80	\$ 50,710.40	\$ 59,488.00	\$ 1,768.00
12	\$ 41,974.40	\$ 53,996.80	\$ 66,019.20	\$ 2,392.00
13	\$ 44,158.40	\$ 56,804.80	\$ 69,430.40	\$ 2,516.80
14	\$ 46,737.60	\$ 60,153.60	\$ 73,528.00	\$ 2,683.20
15	\$ 48,900.80	\$ 62,899.20	\$ 76,918.40	\$ 2,808.00
16	\$ 51,625.60	\$ 66,393.60	\$ 81,120.00	\$ 2,953.60
17	\$ 53,768.00	\$ 69,160.00	\$ 84,572.80	\$ 3,078.40
18	\$ 55,952.00	\$ 71,988.80	\$ 88,004.80	\$ 3,203.20
19	\$ 58,156.80	\$ 74,859.20	\$ 91,520.00	\$ 3,328.00
20	\$ 60,340.80	\$ 77,646.40	\$ 94,952.00	\$ 3,452.80
21	\$ 62,566.40	\$ 80,496.00	\$ 98,404.80	\$ 3,577.60
22	\$ 64,688.00	\$ 83,283.20	\$ 101,836.80	\$ 3,723.20
23	\$ 66,913.60	\$ 86,112.00	\$ 105,310.40	\$ 3,848.00
24	\$ 69,118.40	\$ 88,940.80	\$ 108,742.40	\$ 3,972.80

Appendix B

<u>Performance Level</u>	<u>Performance Points</u>
A	3
B	2
C	1
D	0
E	0

Performance Increase

<u>Average Score</u>	<u>Increase</u>
1.2 - 1.3	1.0%
1.4 - 1.5	1.5%
1.6 - 1.7	2.0%
1.8 - 1.9	2.5%
2.0 - 2.1	3.0%
2.2 - 2.3	3.0%
2.4 - 2.5	3.0%
2.6 - 2.7	3.0%
2.8 - 2.9	3.0%
3.0	3.0%

Appendix C

City of Fort Smith
Fire Department
Pay Schedule
Budget Year 2012

Rank	Range	Rate	A	B	C	D	E	F	G
Probationary Firefighter & Firefighter	F1	Hourly	\$ 10.02	\$ 10.82	\$ 11.59	\$ 12.37	\$ 13.12	\$ 13.90	\$ 14.62
Driver	F2	Hourly	\$ 15.18	\$ 16.65					
Captain	F3	Hourly	\$ 18.11	\$ 19.83					
Fire Marshal Battalion Chief Training Officer Assistant Chief	F5	Monthly	\$ 5,433.74	\$ 6,112.98					

Appendix D

City of Fort Smith
Police Department
Pay Schedule
Budget Year 2012

Rank	Rate	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	
Patrol	Hourly	Entry \$ 16.12 \$ 0.81 \$ 16.93	Step 1 \$ 17.15 \$ 0.86 \$ 18.01	Step 2 \$ 17.63 \$ 0.88 \$ 18.51	Step 3 \$ 18.15 \$ 0.91 \$ 19.06	Step 4 \$ 18.67 \$ 0.93 \$ 19.60	Step 5 \$ 19.18 \$ 0.96 \$ 20.14	Step 6 \$ 19.71 \$ 0.99 \$ 20.70	Step 7 \$ 20.21 \$ 1.01 \$ 21.22	Step 8 \$ 20.73 \$ 1.04 \$ 21.77	
Corporal	Hourly	Step 10	Step 11 \$ 21.24 \$ 1.06 \$ 22.30	Step 12 \$ 21.79 \$ 1.09 \$ 22.88	Step 13	Step 14 \$ 21.79 \$ 1.09 \$ 22.88	Step 15	Step 16 \$ 22.07 \$ 1.10 \$ 23.17	Step 17	Step 18	Step 19
Sergeant	Hourly	Entry \$ 22.89 \$ 1.14 \$ 24.03	Step 1 \$ 23.55 \$ 1.18 \$ 24.73	Step 2 \$ 24.27 \$ 1.21 \$ 25.48	Step 3 \$ 24.94 \$ 1.25 \$ 26.19	Step 4 \$ 25.61 \$ 1.28 \$ 26.89	Step 5 \$ 26.32 \$ 1.32 \$ 27.64				
Captain	Annually	Entry \$ 57,470.41 \$ 2,873.52 \$ 60,343.93	Step 1 \$ 58,550.06 \$ 2,927.50 \$ 61,477.56	Step 2 \$ 59,629.71 \$ 2,981.49 \$ 62,611.20	Step 3 \$ 60,709.34 \$ 3,035.47 \$ 63,744.81	Step 4 \$ 61,788.99 \$ 3,089.45 \$ 64,878.44	Step 5 \$ 62,889.19 \$ 3,144.46 \$ 66,033.65				
Major	Annually	Entry \$ 66,033.68 \$ 3,301.68 \$ 69,335.36	Step 1 \$ 68,153.10 \$ 3,407.66 \$ 71,560.76	Step 2 \$ 70,272.52 \$ 3,513.63 \$ 73,786.15	Step 3 \$ 72,391.94 \$ 3,619.60 \$ 76,011.54	Step 4 \$ 74,511.36 \$ 3,725.57 \$ 78,236.93	Step 5 \$ 76,630.77 \$ 3,831.54 \$ 80,462.31				

M E M O R A N D U M

TO: Ray Gosack, Acting City Administrator
FROM: Richard B. Jones, Director of Human Resources
DATE: December 2, 2011



SUBJECT: AN ORDINANCE ESTABLISHING SALARIES AND BENEFITS AND RELATED PROCEDURES FOR CITY EMPLOYEES FOR 2012

Attached is the annual ordinance establishing salaries and benefits for city employees. The changes from the 2011 ordinance are as follows:

1. Section 1A is changed to read: On December 26, 2011, all city employees within their salary grade will receive a 2.0% pay increase. As to any employee not meeting performance expectations on December 26, 2011 the Department Head and City Administrator may withhold this pay increase. **For the duration of this ordinance, all merit, performance, step or time in grade pay increases as defined throughout this ordinance will be prorated to 80% of the full amount provided for in Appendices A, B, C & D and calculated from the employee's current rate.**
2. Sections 4 is changed to read: Civil Service (uniformed) employees of the Fire Department shall be paid a rate of pay as set forth in Appendix C. **For the duration of this ordinance, all merit, performance, step or time in grade pay increases as defined throughout this ordinance will be prorated to 80% of the full amount provided for in Appendix C and calculated from the employee's current rate.**
3. Section 5 is changed to read: Civil Service (uniformed) employees of the Police Department shall be paid a rate of pay as set forth in Appendix D. **For the duration of this ordinance, all merit, performance, step or time in grade pay increases as defined throughout this ordinance will be prorated to 80 % of the full amount provided for in Appendix D and calculated from the employee's current rate.**
4. Section 5C is changed to read: All hourly compensated Police Officers shall have a work period of seven (7) days, shall receive overtime pay after 41 hours, and shall be subject to the Section 7 (K) exemption of 29 CFR Part 553 Application of the Fair Labor Standards Act to Employees of State and Local Governments.

There are no other changes to this ordinance for 2012.

I recommend approval of this ordinance.

ORDINANCE NO. _____

AN ORDINANCE DIVIDING THE CITY OF FORT SMITH INTO FOUR WARDS AND REPEALING ORDINANCE NO. 57-91 AND OTHER ORDINANCES IN CONFLICT THEREWITH

WHEREAS, Section 3 of Act 36 of the 1967 Acts of Arkansas provides that the Board of Directors of the city shall review the apportionment among the wards of the city after each federal census, and that the Board of Directors may reapportion the wards to maintain substantially equal population.

NOW THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: For the purpose of election of four (4) of the seven (7) Directors of the Fort Smith Board of Directors and for all other purposes of Act 36 of the 1967 Acts of Arkansas and all other lawful purposes of the City of Fort Smith, Arkansas, the city is hereby divided into the four (4) wards hereinafter respectively identified and described as follows:

WARD 1

Beginning at the intersection of the existing city limits line and the centerline of the Garrison Avenue bridge; thence in a southeasterly direction along said centerline of the Garrison Avenue bridge and the centerline of Garrison Avenue to its intersection with the centerline of North 13th Street; thence northeast along the centerline of North 13th Street to its intersection with the centerline of Grand Avenue; thence east along the centerline of Grand Avenue to its intersection with the centerline of North Greenwood Avenue; thence north along the centerline of North Greenwood Avenue to its intersection with the centerline of North "L" Street; thence east along the centerline of North "L"; thence east along the centerline of North "L" Street to its intersection with the centerline of May Avenue to its intersection with the centerline of North "O" Street; thence east along the centerline of North "O" Street to its intersection with the centerline of North 54th Street (Waldron Road); thence south along the centerline of North 54th Street (Waldron Road) to its intersection with the centerline of Cross Lane; thence east along the centerline of Cross Lane, and Cross Lane (extended) to its intersection with the centerline of Interstate Highway I-540; thence north along the

*Approved as to form
JSC
Publish 1 time*

centerline of Interstate Highway I-540 to its intersection with the centerline of Kelley Highway; thence east along the centerline of Kelley Highway, and Kelley Highway (extended) to its intersection with the existing city limits line, being the same as the Sebastian County - Crawford County boundary line; thence in a southerly direction along said city limits line to its intersection with the centerline of Free Ferry Road (extended); thence west along the centerline of Free Ferry Road (extended) to its intersection with the centerline of South 74th Street (Wildcat Mountain Road); thence South along the centerline of South 74th Street to its intersection with the centerline of Euper Lane; thence west along the centerline of Euper Lane to its intersection with the centerline of Rogers Avenue (Arkansas Highway No. 22); thence northwest and west along the centerline of Rogers Avenue to its intersection with the centerline of South 46th Street; thence south along the centerline of South 46th Street to its intersection with the centerline of South "P" Street; thence west along the centerline of South "P" Street to its intersection with the centerline of South Albert Pike Avenue; thence south along South Albert Pike Avenue to a curve to the west to its intersection with the centerline of South "T" Street; thence west along South "T" Street to its intersection with the centerline of Hendricks Boulevard; thence North along Hendricks Boulevard to its intersection with the centerline of South "S" Street; thence West along the centerline of South "S" Street to its intersection with the centerline of South 31st Street; thence north along South 31st Street to its intersection with the centerline of South "O" Street; thence west along the centerline of South "O" Street to its intersection with South Greenwood Avenue; thence south along the centerline of South Greenwood Avenue to its intersection with the centerline of South "Q" Street; thence west along the centerline of South "Q" Street to its intersection with the centerline of Lexington Avenue; thence south along the centerline of Lexington Avenue to its intersection with the centerline of South "Q" Street; thence west along the centerline of South "Q" Street to its intersection with the centerline of South 12th Street; thence north along the centerline of South 12th Street to its intersection with the centerline of South "O" Street; thence west along the centerline of South "O" Street and South "O" Street (extended) to its intersection with the Arkansas-Oklahoma State Line, being the same as the city limits line; thence north along the said state and city limits line to its intersection with said centerline of the Garrison Avenue bridge, being the point of beginning.

WARD 2

Beginning at the intersection of the centerline of Garrison Avenue and the centerline of North 13th Street; thence in a northwesterly direction along the centerline of Garrison Avenue to its intersection with the existing city limits line, being the same as the centerline of the Arkansas River; thence northerly, easterly and southeasterly, along said city limits line to its intersection with the centerline of Kelley Highway (extended); thence west along the centerline of Kelley Highway (extended) and Kelley Highway to its intersection with the centerline of Interstate Highway I-540; thence south

along the centerline of Interstate Highway I-540 to its intersection with the centerline of Cross Lane (extended); thence west along the centerline of Cross Lane (extended) and Cross Lane to its intersection with the centerline of North 54th Street (Waldron Road); thence north along the centerline of North 54th Street (Waldron Road) to its intersection with the centerline of North "O" Street; thence west along the centerline of North "O" Street to its intersection with the centerline of May Avenue; thence south along the centerline of May Avenue to its intersection with the centerline of North "L" Street; thence west along the centerline of North "L" Street to its intersection with the centerline of North Greenwood Avenue; thence south along the centerline of North Greenwood Avenue to its intersection with the centerline of Grand Avenue; thence west along the centerline of Grand Avenue to its intersection with the centerline of North 13th Street; thence in a southwesterly direction along the centerline of North 13th Street to the centerline of Garrison Avenue, being the point of beginning.

WARD 3

Beginning at the intersection of the centerline of South "O" Street (extended) and the Arkansas-Oklahoma State Line, being the same as the city limits line; thence east along the South "O" Street (extended) and South "O" Street centerline to its intersection with the centerline of Towson Avenue; thence south along the centerline of Towson Avenue to its intersection with the centerline of South "W" Street; thence east along the centerline of South "W" Street to its intersection with the centerline of Jenny Lind Avenue; thence south along the centerline of Jenny Lind Avenue to its intersection with the centerline of South Dallas Street; thence east along South Dallas Street to its intersection with the centerline of South 27th Street; thence south along the centerline of South 27th Street to its intersection with the centerline of South Gary Street; thence east along the centerline of South Gary Street and South Gary Street (extended) to its intersection with the centerline of Old Greenwood Road; thence in a southeasterly direction along the centerline of Old Greenwood Road to its intersection with the centerline of Cliff Drive; thence southwesterly along the centerline of Cliff Drive to its intersection with the centerline of South 31st Street (extended); thence south along the centerline of South 31st Street (extended) and South 31st Street to its intersection with the centerline of Phoenix Avenue; thence west along the centerline of Phoenix Avenue to its intersection with the centerline of South 24th Street; thence south along the centerline of South 24th Street to its intersections with the centerline of Arkansas State Highway 255 (Zero Street) and US Highway 71 South; thence southeasterly along the centerline of US Highway 71 South to its intersection with the centerline of Interstate Highway I-540; thence northeasterly along the centerline of Interstate Highway I-540 to its intersection with the centerline of South 36th Street (extended); thence south along the centerline of South 36th Street (extended), said line also being the existing City Limits line; thence northeasterly and east along the City Limits line to its intersection with the centerline of Arkansas State Highway 45; thence southeasterly along the centerline of Arkansas State

Highway 45 and the City Limits line to its intersection with the centerline of Commerce Road; thence east along the centerline of Commerce Road to the end of Commerce Road; thence North along the City Limits line to approximately the end of Planters Road; thence easterly and northeasterly along the City Limits lines to a point on the City Limits line that lies west of Massard Road; thence generally south along the City Limits lines and then generally west along the City Limits lines to the Arkansas-Oklahoma state line, State line being the same as the City Limits line; thence generally north along the City Limits lines to its intersection with the said centerline of South "O" Street (extended), being the point of beginning.

WARD 4

Beginning at the intersection of the centerline of South Zero Street (Arkansas Highway 255) with the centerline of Old Greenwood Road (Arkansas State Highway 45); thence west along the centerline of South Zero Street (Arkansas Highway 255) to its intersection with the centerline of South 31st Street; thence south along the centerline of South 31st Street and South 31st Street (extended) to the intersection with the centerline of Interstate I-540, said line also being the Fort Smith City Limit line; thence southwesterly along the centerline of Interstate I-540 to its intersection with the centerline of US Highway 71 South; thence northwesterly along the centerline of US Highway 71 South to its intersection with South Zero Street (Arkansas Highway 255); thence north along the centerline of South 24th Street to its intersection with the centerline of Phoenix Avenue; thence east along the centerline of Phoenix Avenue to its intersection with the centerline of South 31st Street; thence north along the centerline of South 31st Street to its intersection with Cliff Drive; thence easterly along the centerline of Cliff Drive to its intersection with Old Greenwood Road; thence in a northwesterly direction along the centerline of Old Greenwood Road to its intersection with the centerline of Gary Street; thence west along the centerline of South Gary Street and South Gary Street (extended), to its intersection with the centerline of South 27th Street; thence north along the centerline of South 27th Street to its intersection with the centerline of South Dallas Street; thence west along the centerline of South Dallas Street to its intersection with the centerline of Jenny Lind Avenue; thence north along the centerline of Jenny Lind Avenue to its intersection with the centerline of South "W" Street; thence west along the centerline of South "W" Street to its intersection with the centerline of Towson Avenue; thence north along the centerline of Towson Avenue to its intersection with the centerline of South "O" Street; thence east along the centerline of South "O" Street to its intersection with the centerline of South 12th Street; thence south along the centerline of South 12th Street to its intersection with the centerline of South "Q" Street; thence east along the centerline of South "Q" Street to its intersection with the centerline of Lexington Avenue; thence north along the centerline of Lexington Avenue to its intersection with the centerline of South "Q" Street; thence east along the centerline of South "Q" Street to its intersection with the centerline of South Greenwood Avenue; thence north

along the centerline of South Greenwood Avenue to its intersection with the centerline of South "O" Street; thence east along the centerline of South "O" Street to its intersection with the centerline of South 31st Street; thence south along the centerline of South 31st Street to its intersection with the centerline of South "S" Street; thence east along the centerline of South "S" Street to its intersection with the centerline of Hendricks Boulevard; thence south along Hendricks Boulevard to its intersection with the centerline of South "T" Street; thence east along the centerline of South "T" Street to a curve to the north to the intersection of South Albert Pike Avenue; thence north along South Albert Pike Avenue to its intersection with South "P" Street; thence east along the centerline of South "P" Street to its intersection with the centerline of South 46th Street; thence north along the centerline of South 46th Street to its intersection with the centerline of Rogers Avenue (Arkansas Highway No. 22); thence south and east along the centerline of Rogers Avenue to the intersection of the centerline of Euper Lane; thence east along the centerline of Euper Lane to its intersection with the centerline of South 74th Street (Wildcat Mountain Road); thence north along South 74th Street to its intersection with the centerline of Free Ferry Road (extended); thence east along the centerline of Free Ferry Road (extended) to its intersection with the existing city limits, located in the center of the Arkansas River; thence along said city limits line generally in an easterly, then southerly, then westerly direction to the point of beginning, being the intersection of the centerline of South Zero Street (Arkansas Highway 255) with the centerline of Old Greenwood Road.

SECTION 2: The City Clerk is hereby authorized and directed to furnish a certified copy of this ordinance to the Sebastian County Board of Election Commissioners.

SECTION 3: All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed and Ordinance No. 57-91 is hereby specifically repealed in its entirety.

PASSED AND APPROVED this 6th day of December, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

MEMORANDUM

To: Mayor and Board of Directors
From: Sherri Gard, City Clerk
Date: December 2, 2011
Re: Ward Reapportionment

Under the City Administrator form of government, the Board of Directors “...shall review the apportionment among the wards after each federal census in the city or in the event there is an imbalance in population among the wards in excess of fifteen percent (15%).” The 2010 federal census indicated the largest variance between city wards was 11.7%. Due to such being less than 15%, no reapportionment is required; however, due to recent and anticipated growth to the south and southeast, such is expected to drastically effect the population difference between wards in the 2020 federal census.

In accordance with state law, staff reviewed the apportionment among wards and presented proposed changes of city ward boundaries at the October 25, 2011 study session. In order to avoid the necessity of a greater readjustment in ward boundaries after the next census, staff recommended moving three (3) voting precincts to different wards. Such will bring the population of each ward within 2% of the average population per ward, and reduces the largest variance between wards from 11.7% to 3.1%. The Board concurred with the recommended realignment and placed an ordinance on the December 6, 2011 regular meeting agenda.

No formal public hearing is required for passage of the ordinance to realign ward boundaries; however, a public review and comment period was scheduled through November 23, 2011. A public notice advising of the review and comment period was published in the Times Record on November 2, 2011 and posted at all Fort Smith Public Library locations. The public notice, proposed reapportionment map and staff report from the October 25, 2011 study session were available for review and comment in the City Clerk’s Office, as well as posted on the City’s website. To date, the City Clerk’s Office has received no comments or requests to view the aforementioned reapportionment documents.

As requested, an ordinance has been prepared to formally realign the four (4) wards as proposed at the October 25, 2011 study session. Upon approval, the ward boundary changes will be effective for the 2012 municipal elections.

If you have any questions, please let me know.



Population figures shown were taken from the 2010 U.S. Census Bureau "Census Block" data.

The Voting Precincts were provided to the City of Fort Smith by Western Arkansas Planning and Development District and Sebastian County.

Ward Population Totals

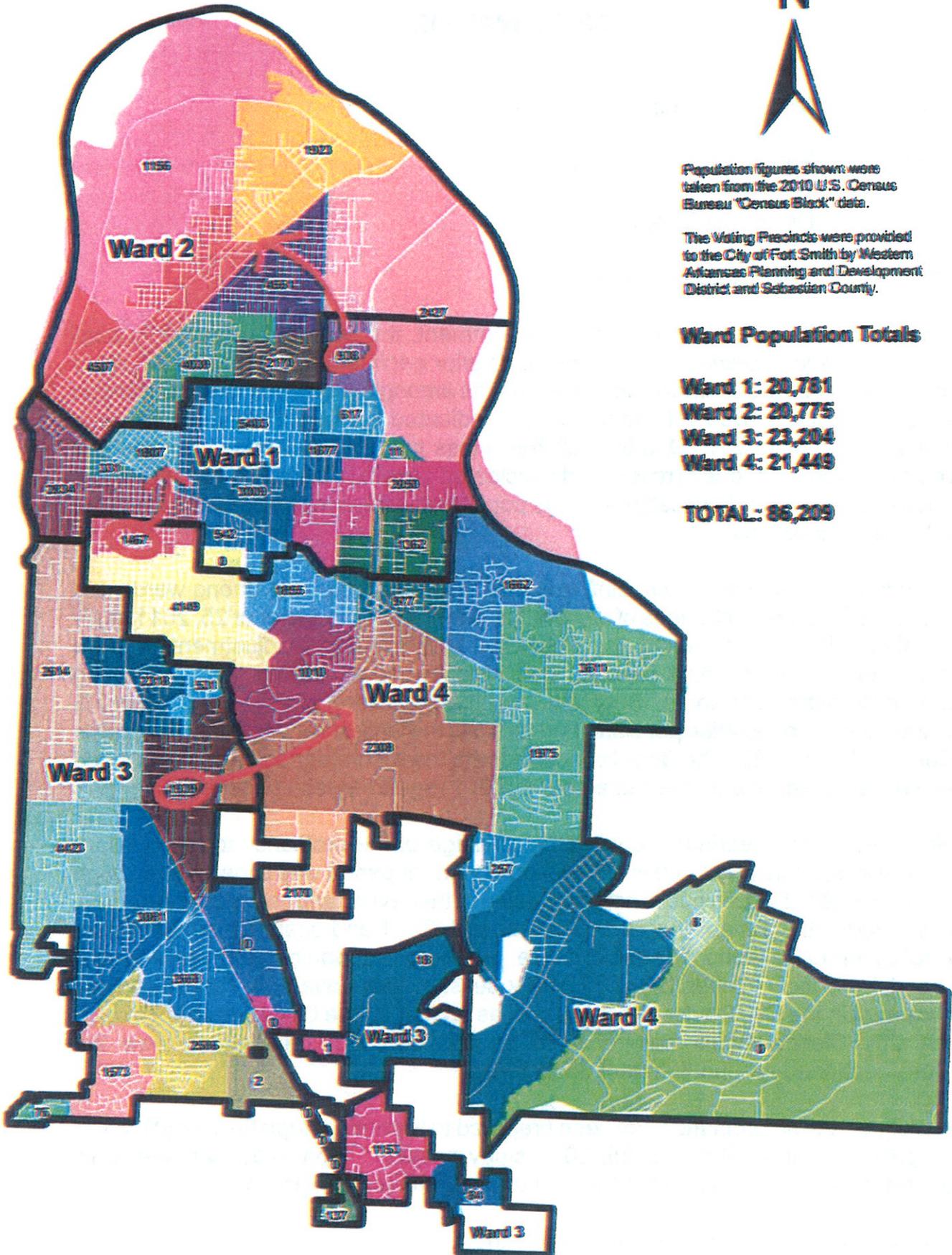
Ward 1: 20,781

Ward 2: 20,775

Ward 3: 23,204

Ward 4: 21,449

TOTAL: 86,209





3

MEMORANDUM

October 21, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Ward Reapportionment

After a census count, the city must examine the population totals in its 4 wards to ensure there's equal representation for each ward. Attached is a letter from the legal staff which explains when ward reapportionment must occur.

Based on 2010 census figures, the city isn't required to re-draw its ward boundaries to achieve population balance. However, the board may find it desirable to do so. There's a nearly 12% population difference between ward 2 (20,775 persons) and ward 3 (23,204 persons). Below is a discussion of the advantages of each option and considerations should the board decide to re-draw ward boundaries.

- Leaving ward boundaries unchanged means that no precinct has to be moved from one ward to another. This results in no confusion that changes in ward boundaries might create.
- Fort Smith's continued growth to the south and southeast will worsen the imbalance between wards 2 and 3. The population imbalance among wards has been increasing over the last 20 years as shown on an attached spreadsheet. If the imbalance isn't addressed now, the changes needed after the 2020 census will likely be more substantial.
- If ward boundaries are re-drawn, they should be done so that each ward is as **geographically compact** as possible, **follows voting precinct boundaries** so that precincts aren't divided into multiple wards, involves **moving as few precincts** between wards as possible, and achieves the **greatest equity in population distribution**.

If the board desires to leave ward boundaries unchanged, it will need to pass a resolution confirming that the current ward boundaries will continue in effect. If the board desires to adjust ward boundaries, the staff has prepared a map (attached) which meets the criteria discussed above. This map keeps the population of all 4 wards within 2% of the average population per ward and reduces the largest variance between wards from 11.7% to 3.1%. It results in moving only 3 voting precincts from one ward to another.

Any changes in ward boundaries don't require a public hearing. However, the board may find it desirable to allow for a period of public comment before any ward map is considered for adoption.

The staff recommends that a ward reapportionment occur as shown on the attached map and spreadsheet. The disparity in populations between wards has increased over the last 20 years, and will continue to become more disparate as Fort Smith grows to the south and southeast. A reapportionment made now will also avoid the need for a more extensive ward reapportionment when the 2020 census is taken. If there's any questions or a need for more information, please contact Sherri Gard or me.

Ray

Attachments

cc: Jerry Huff, Sebastian County Election Coordinator

NOTE: Sebastian County was required to re-draw precinct boundaries to comply with the state's legislative re-districting which occurred earlier this year. The city's re-districting of wards is based on these new precinct boundaries. These new precinct boundaries have some slight variations from the previous ones.

**City of Fort Smith
Ward Reapportionment 2011
Based on 2010 Census**

	<u>Ward 1</u>	<u>Ward 2</u>	<u>Ward 3</u>	<u>Ward 4</u>	<u>Total</u>	<u>Average Population Per Ward</u>
Current Population	20,781	20,775	23,204	21,449	86,209	21,552
<u>Adjustments</u>						
Precinct 1B	(938)	938				
Precinct 4C	1,467			(1,467)		
Precinct 3C			(1,939)	1,939		
Reapportioned Population	21,310	21,713	21,265	21,921	86,209	
% Difference from Average	-1.12%	0.75%	-1.33%	1.71%		
Largest Variance Between Wards						
Before Reapportionment		11.69% (wards 2 and 3)				
After Reapportionment		3.08% (wards 3 and 4)				

City of Fort Smith Population by Ward 1990-2010

	Ward 1	Average	% Diff. from	Ward 2	Average	% Diff. from	Ward 3	Average	% Diff. from	Ward 4	Average	% Diff. from	Total	Average Per Ward
1990 Census	18,139		0.33%	18,225		-0.14%	18,065		0.74%	18,369		-0.92%	72,798	18,200
2000 Census	20,333		-1.31%	19,197		4.53%	19,939		0.64%	20,799		-3.52%	80,268	20,067
2010 Census	20,781		3.71%	20,775		3.74%	23,204		-7.12%	21,449		0.48%	86,209	21,552

Largest Variance Between Wards

1990	1.68% (wards 3 and 4)
2000	8.35% (wards 2 and 4)
2010	11.69% (wards 2 and 3)



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

~ PUBLIC NOTICE ~
November 1, 2011

**REQUEST FOR PUBLIC REVIEW AND COMMENT
REGARDING PROPOSED REAPPORTIONMENT OF
CITY WARD BOUNDARIES**

NOTICE is hereby given that reapportionment of city ward boundaries will be considered by the City of Fort Smith Board of Directors at their December 6, 2011 regular meeting, 6:00 p.m. at the Fort Smith Public Schools Service Center, Building "B", 3205 Jenny Lind Road.

A copy of the proposed reapportionment of city ward boundaries is available for public inspection, review and comment in the Fort Smith City Clerk's Office during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., in Room 303 of the Stephens Building, 623 Garrison Avenue.

The proposed city ward boundaries are also available for review and comment on the City of Fort Smith website, www.fortsmithar.gov.

All interested parties are invited to review and comment. Written comments may be mailed to the City Clerk's Office, P.O. Box 1908, Fort Smith, AR 72902 or emailed to cityclerk@fortsmithar.gov, and should be submitted no later than Wednesday, November 23, 2011.

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

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING AN AMENDMENT TO THE FORT SMITH
FLOOD DAMAGE PREVENTION ORDINANCE**

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY
OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Section 11-6 of the Fort Smith Municipal Code, Basis for establishing the areas of special flood hazard, is hereby amended to read as follows:

The areas of special flood hazard for the City of Fort Smith identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for Sebastian County Arkansas," dated March 2, 2012 with effective Flood Insurance Rate Maps (FIRM) dated March 2, 2012 are hereby adopted by reference and declared to be a part of this chapter.

SECTION 2: EMERGENCY CLAUSE

It is hereby found and determined that an emergency exists by reason of the need for amended regulations of the floodplain within the City of Fort Smith, and that the immediate effectiveness of this amendment to the Fort Smith Flood Damage Prevention Ordinance is necessary because of said emergency. Therefore, for the protection of the health, safety and welfare of the inhabitants of the City, this Ordinance shall be effective, and same is hereby made effective, as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS _____ DAY OF DECEMBER, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

JTC

- No Publication Required
- Publish 1 Times

MEMORANDUM

To: Ray Gosack, City Administrator
From: Stan Snodgrass, P.E., Director of Engineering *SS*
Subject: **Amendment to the Flood Damage Prevention Ordinance**
Date: December 1, 2011

The Federal Emergency Management Agency (FEMA) recently completed updates for several floodplains areas identified in the Flood Insurance Rate Maps and Study for the City. These updates, known as physical map revisions (PMRs), are being reissued with an effective date of March 2, 2012. The City's current Flood Insurance Rate Maps and Study were last reissued on May 20, 2010.

At our request, approximately 12 stream miles of floodplains were restudied which included updated hydrologic and hydraulic methodologies and the revised floodplains were remapped utilizing the City's 2-ft contour maps. The revisions for these floodplains can be found on FEMA's website at the following link: <http://maps.riskmap6.com/AR/Sebastian/> Drawings showing the limits of the PMRs for these floodplains are also attached with this memo. The PMRs will affect the following FEMA regulatory floodplains. A preliminary assessment of the revisions to each floodplain is noted.

Mill Creek - From US Highway 271 to Cavanaugh Road

Base flood elevations lowered benefitting 179 residential structures and 5 commercial structures.

Massard Creek - From Rogers Avenue to south of Zero Street

Base flood elevations lowered benefitting 17 residential structures and 1 commercial structure.

Spivey Creek - From Massard Creek to Geren Road

Floodplain zone was redefined benefitting 1 commercial structure and impacting 5 commercial structures.

The City of Fort Smith Arkansas
Engineering Department
623 Garrison Avenue • P.O. Box 1908
Fort Smith, Arkansas 72902
Phone: 479-784-2225 • Fax: 479-784-2245

No Name Creek - From west of 66th Street to south of Gordon Lane

Base flood elevations were remapped impacting 10 apartment structures and 3 self storage rental structures. South of Free Ferry Road the base flood elevations lowered benefiting 2 residential structures and 3 commercial structures.

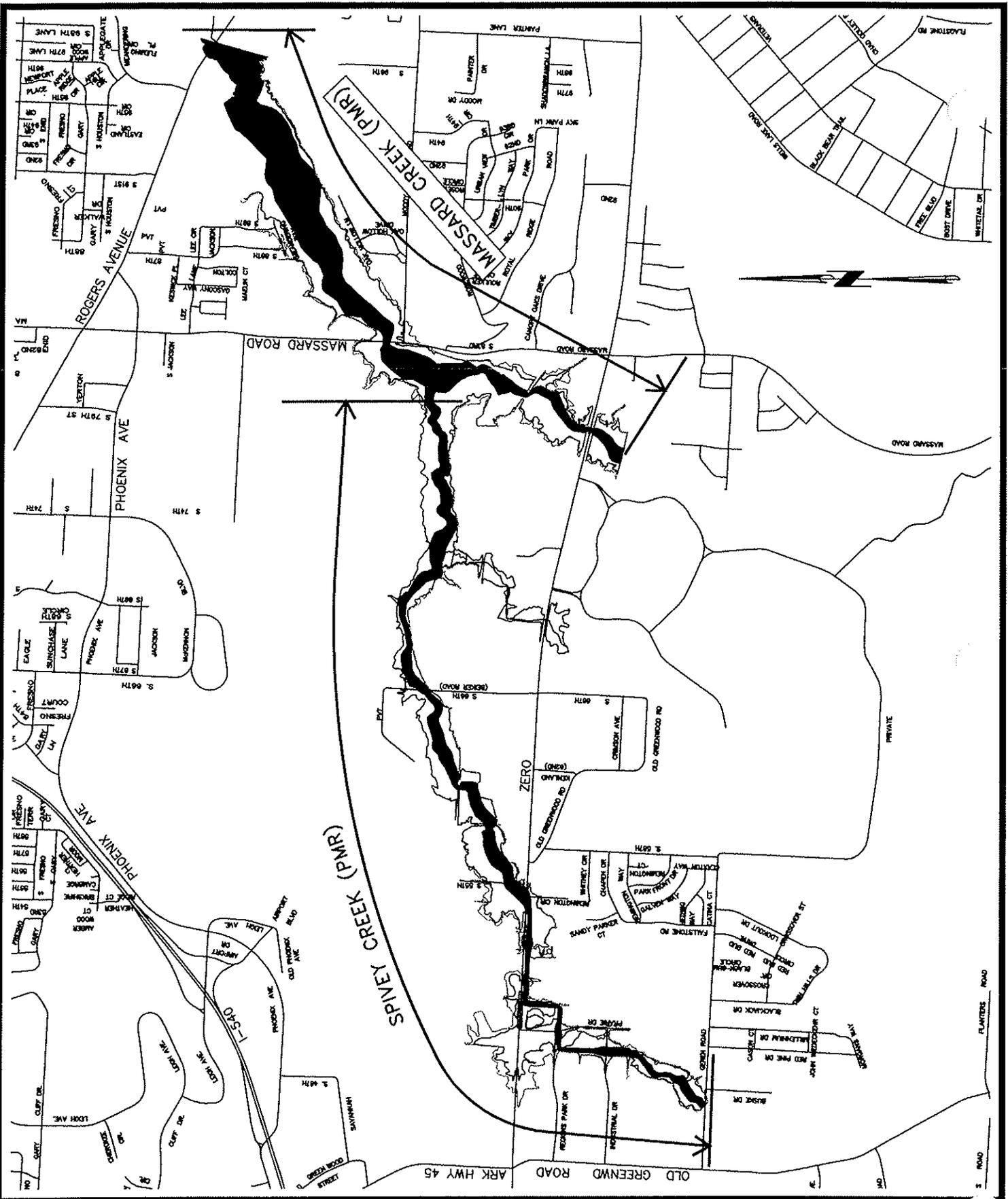
No Name Creek Tributary - From No Name Creek to west of South 46th Street

Base flood elevations lowered benefiting 13 residential structures, 4 apartment structures and 4 commercial structures. The floodplain was extended westerly impacting 1 residential structure.

The City has to approve an ordinance adopting the updated (March 2, 2012) Flood Insurance Rate Maps and Study. Failure to adopt the ordinance will result in suspension of the City from the National Flood Insurance Program and no flood insurance would be available to property owners within the City. Also property within the City located in the FEMA 100 year floodplain would be ineligible for most mortgage loans. The City would also be ineligible for certain disaster assistance and mitigation funds.

Attached is an ordinance to provide for this amendment to the flood damage prevention ordinance. I recommend that the ordinance be adopted by the Board at the next regular meeting.

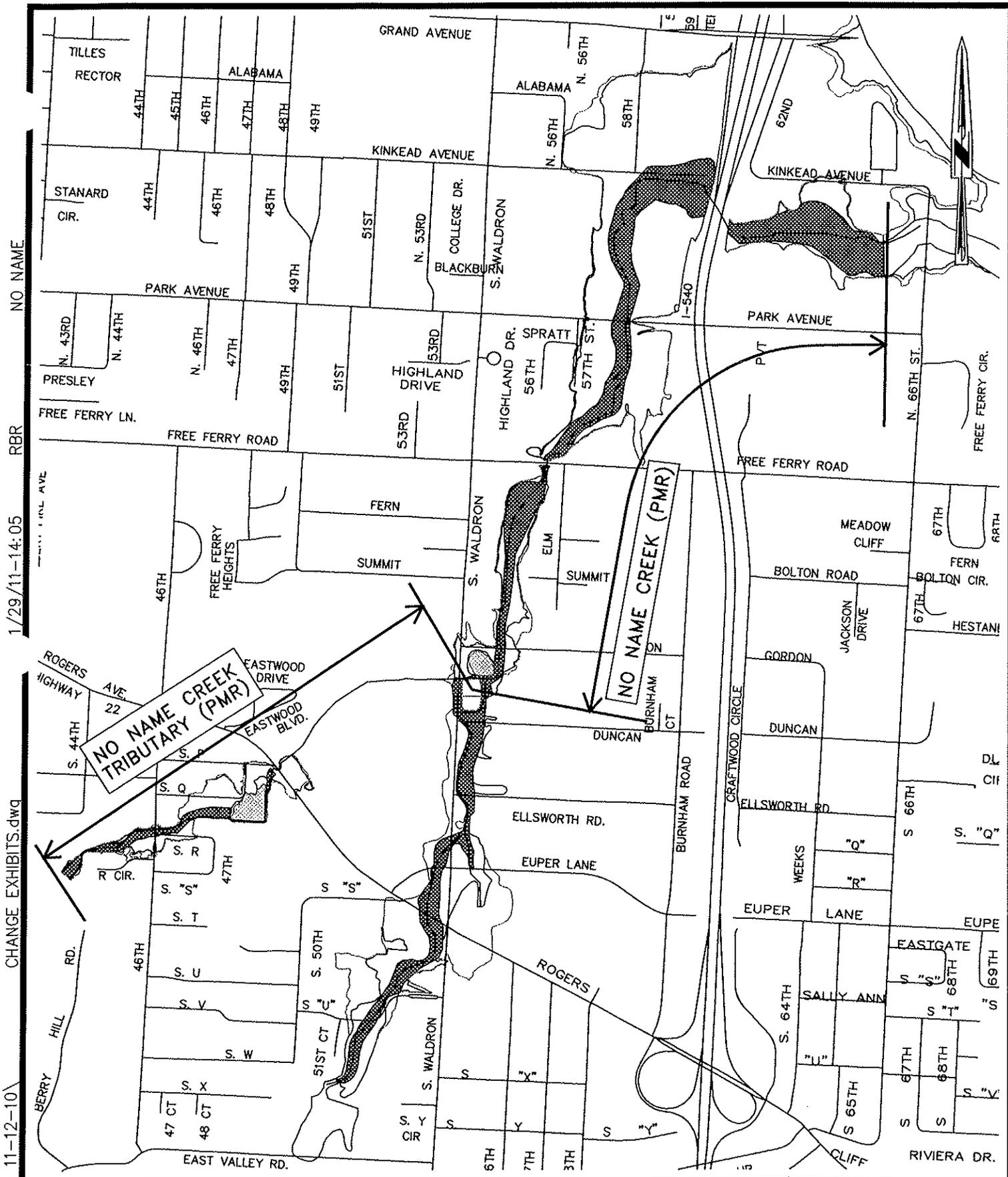
Enclosures



PHYSICAL MAP REVISION (PMR)
 SPIVEY AND MASSARD CREEKS AREAS
 FORT SMITH, ARKANSAS



Project:	DFIRM
Date:	NOVEMBER 2011
Scale:	NONE
Drawn By:	RBR



1/29/11-14:05
 RBR
 NO NAME
 CHANGE EXHIBITS.dwg
 11-12-10

PHYSICAL MAP REVISION (PMR)
 NO NAME CREEK AREA
 FORT SMITH, ARKANSAS



Project:	DFIRM
Date:	NOVEMBER 2011
Scale:	NONE
Drawn By:	RBR

G:\DFIRM F

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 2-48 OF THE FORT SMITH
CODE OF ORDINANCES REGARDING APPOINTMENT AND REMOVAL OF
MEMBERS OF APPOINTED BOARDS, COMMISSIONS OR COMMITTEES

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, that:

SECTION 1: Section 2-48 of the Fort Smith Municipal Code is
amended to read as follows:

Section 2-48. Appointment and Removal of Members of Appointed
Boards, Commissions or Committees.

(a) Citizens appointed to boards, commissions, committees, task forces and similar panels shall be registered voters in the City of Fort Smith, Arkansas. Non-residents and persons not registered to vote in the City shall not be considered for appointment. Citizens who are appointed shall maintain residency in the City of Fort Smith and shall continue to be registered voters therein throughout their term of appointment. Non-residents who are serving on a board, commission, committee, task force or similar panel upon the passage of this Ordinance may continue doing so until their current term expires.

(b) Prior to being considered for appointment to a board, commission or committee, a citizen shall have submitted a current application within the last twelve (12) months. Applicants whose applications are older than twelve (12) months will not be considered for appointment.

(c) Members of boards, commissions and committees, except as otherwise specifically provided by state law or this Code, may be removed by a two-thirds' vote of the entire board of directors. Procedurally, the issue of potential removal of a member of a board, commission or committee shall first be discussed in an executive session of the board of directors. If formal removal of a member of a board, commission or committee is then contemplated, the board of directors shall state the cause(s) for the contemplated removal and the matter shall be placed on the agenda for the board of

directors' next regular meeting, and the affected board or committee member or commissioner shall be notified of the contemplated removal and cause(s) therefor and given an opportunity, personally, to address the board of directors concerning the removal. Grounds for removal, although not deemed exclusive, may be that the member:

- 1) Lacks at any time during the member's term of appointment any qualifications for the board, commission, or committee membership prescribed by law or this Code; or
- 2) Is absent from three consecutive regular meetings. The determination of whether a member's absence is excused or unexcused shall be made by the other members of the same board, commission or committee; or
- 3) For cause (cause shall include, but not necessarily be limited to, misfeasance, malfeasance or nonfeasance).

(d) A board, commission or committee membership becomes vacant, except as otherwise specifically provided by state law or this Code, on the happening of any of the following events before expiration of the term:

- (1) The death of the appointee;
- (2) His or her incompetence as determined by final judgment or final order of a court of competent jurisdiction;
- (3) His or her resignation;
- (4) His or her removal from office;
- (5) His or her conviction of a felony or of any offense involving a violation of his or her official duties;
- (6) Failure to maintain residency in Fort Smith;
- (7) Failure to be a qualified elector; or
- (8) His or her conviction of a felony (conviction includes pleas of guilty or nolo contendere as well as findings of guilt after trial by bench or jury) or of violating the substance abuse laws of the state.

SECTION 2: Emergency Clause. The immediate effectiveness

of this Ordinance establishing procedures for the appointment and removal of members of boards, commissions and committees is required to provide for the orderly conducting of the affairs of the governing body and the City. Therefore, an emergency is declared, and this Ordinance shall be in full force and effect immediately upon its passage and approval.

This Ordinance adopted this _____ day of _____, 2011.

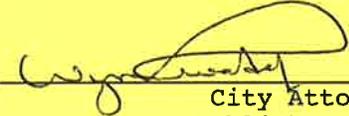
APPROVED:

Mayor

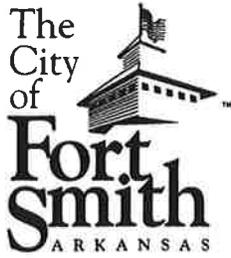
ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
Publish 1 Time



MEMORANDUM

November 29, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Appointments to Boards, Commissions,
Committees and Task Forces

Attached is an ordinance which implements the board's policy direction regarding the appointment of non-residents to boards, commissions, committees, task forces and similar panels. The direction was provided at the November 22nd study session.

The policy would require appointees to be residents and registered voters of Fort Smith at the time of appointment and throughout their term of service. Non-residents wouldn't be considered for appointment to any board, commission, committee, task force or similar panel. Non-residents currently serving (such as the water efficiency study task force) could continue doing so until their current terms expire. All of these provisions would be incorporated into section 2-48(a) of the municipal code.

The requirement to submit a current application (no older than 12 months) is also recommended for addition to the municipal code. This would become section 2-48(b). Sections 2-48(c-d) are the current provisions for removal of members. There are no changes to these sections other than their re-numbering.

The staff recommends approval of the attached ordinance. This will establish a clear policy regarding eligibility for appointment to boards, commissions, committees, task forces and similar panels.

Attachment

Ray

MEMORANDUM

November 17, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Appointments to Boards, Commissions,
Committees and Task Forces

You've asked for a policy discussion regarding the appointment of citizens to boards, commissions, committees, and task forces. Of particular interest is whether or not non-residents should be considered for appointment. Below is a discussion of the current policy and various options for the board's consideration.

CURRENT POLICY

In 2008, the board adopted a policy regarding appointments. That resolution is attached. In summary, the policy provides that:

- ▶ Generally, a citizen will be appointed to no more than one board, commission or committee. A few exceptions are permitted. This was done to provide opportunity for the greatest number of citizens to serve.
- ▶ An applicant for appointment must submit a current application (no older than 1 year) in order to be considered.

The policy doesn't address the eligibility of non-residents. The board has occasionally appointed non-residents to task forces in the past, but there's never been a clear policy statement about non-residents' eligibility for appointment.

OPTIONS

Options regarding appointment of non-residents to boards, commissions, committees, and task forces which the board may wish to consider include:

- Appoint only citizens of Fort Smith who are registered voters to **permanent** boards, commissions and committees. In some cases, state law requires that these appointments be citizens of Fort Smith. In other cases, such as the A & P Commission, non-residents may be appointed.

Analysis:

This option limits participation on regular boards, commissions and committees to Fort Smith citizens. This may be desirable since many of these panels recommend ordinances and influence city services (e.g., parks commission, library board, transit commission, parking authority, airport commission, community development advisory committee), and apply state and local laws (e.g., planning commission, building code boards, historic district commission, port authority) to city services and operations. Perhaps the power to apply laws should be limited to citizens of the city.

- Appoint only citizens of Fort Smith who are registered voters to task forces, ad hoc committees, or similar panels.

Analysis:

This option limits participation on task forces, etc. to citizens of Fort Smith and excludes non-residents. It results in only city residents participating in task force work. Non-residents who might be affected by the task force's work wouldn't be included.

- Accept applications from non-residents for task forces, ad hoc committees, or similar panels. Criteria for considering non-residents could include:
 - The panel is dealing with an issue or service that is regional.
 - The non-residents represent Fort Smith business interests that are affected by the work of the

panel.

- Non-residents may offer a particular expertise not otherwise available.
- Non-residents shall comprise no more than ___% of the membership of the panel.
- The board of directors determines in the resolution creating the panel to accept applications from non-residents.

Analysis:

This option allows non-residents to participate on task forces, etc. This may be beneficial where the task force's subject affects people outside of Fort Smith; or when it affects Fort Smith businesses whose owners or top management don't live in Fort Smith. It also gives flexibility to utilize outside expertise or perspectives that wouldn't otherwise be allowed to participate.

Following the board's policy discussion on appointments, the staff will prepare an amendment to the 2008 resolution which incorporates the board's directions. Please contact me if there's any questions or a need for more information.

Attachment

RESOLUTION NO. R-61-08

**A RESOLUTION ESTABLISHING A POLICY
REGARDING APPOINTMENTS TO
BOARDS, COMMISSIONS AND COMMITTEES**

WHEREAS, the City of Fort Smith has approximately 30 boards, commissions and committees comprised of more than 200 citizen volunteers who provide important guidance and decision-making; and

WHEREAS, maximum citizen involvement is fundamental to the success of each of these boards, commissions and committees; and

WHEREAS, the Mayor and Board of Directors desire to provide opportunity for the greatest number of citizens possible to participate on these boards, commissions and committees;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

SECTION 1: The general policy regarding appointments to boards, commissions and committees is that a citizen will serve on only one board, commission or committee at a time. The Mayor and Board of Directors will generally not appoint a person to serve on more than one board, commission or committee at a time. Exceptions may be considered where one of the appointments is to a board, commission or committee which has special or unique qualifications for membership, thereby limiting the number of qualified applicants; or where there may be a short period of overlap in terms.

*Approved as per
JSC
No publication
required*

SECTION 2: Prior to being considered for appointment to a board, commission or committee, a citizen shall have submitted a current application within the last 12 months. Applicants whose applications are older than 12 months will not be considered for appointment.

This Resolution passed this 15th day of April, 2008.



Mayor

ATTEST:



City Clerk)

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE NON-EXCLUSIVE FRANCHISE
ISSUED TO TCA CABLE PARTNERS D/B/A COX COMMUNICATIONS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS that:

The non-exclusive franchise for the construction, maintenance and operation of a community antennae and closed circuit electronic system within the City of Fort Smith, Arkansas, issued to Cox Communications by Ordinance No. 53-03 and previously extended by Ordinance No. 80-08 to February 28, 2009 and by Ordinance No. 19-09 to December 31, 2011 is hereby extended to March 31, 2012.

This Ordinance adopted this _____ day of December, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

JEC

City Attorney
Publish 1 time(s)

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING EXTENSION OF AN AGREEMENT WITH AT&T OF ARKANSAS FOR USE OF THE CITY RIGHTS-OF-WAY TO PROVIDE IP-ENABLED VIDEO SERVICES, AND SIMILAR IP-ENABLED SERVICES, WITHIN THE COROPORATE LIMITS OF THE CITY OF FORT SMITH, ARKANSAS; AND FOR OTHER PURPOSES

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS that:

The Mayor is hereby authorized to execute an extension of the agreement with AT&T of Arkansas to use City rights-of-way to provide IP-enabled video services to the citizens located within the corporate limits of the City of Fort Smith, effective until December 31, 2011 as authorized by Ordinance 16-07, until March 31, 2012. As per the agreement, such extension is mutually agreed upon by the parties and attached as Exhibit A.

This Ordinance adopted this _____ day of December, 2011.

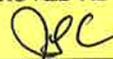
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
Publish 1 time(s)

Exhibit A
to Ordinance No. _____

EXTENSION OF AGREEMENT

The Agreement dated February 21, 2007 made by and between Southwestern Bell Telephone, L.P., a Texas limited partnership doing business as AT&T Arkansas and the City of Fort Smith, Arkansas and authorized by City of Fort Smith Ordinance No. 16-07 is set to expire on December 31, 2011 per terms of the Agreement. Such term may be extended upon mutual agreement of the parties.

NOW, THEREFORE, the AT&T Arkansas and the City of Fort Smith do hereby agree to extend the term of such agreement authorized by Ordinance No. 16-07 until March 31, 2012.

AT&T ARKANSAS

CITY OF FORT SMITH, ARKANSAS

By: _____
Name: _____
Title: _____

By: _____
Sandy Sanders
Mayor

ATTEST:

Sherri Gard, City Clerk

Memo



To: Ray Gosack, City Administrator
From: Jeff Dingman, Deputy City Administrator
Date: 11/22/2011
Re: Short-term extension of TV franchises

The franchise agreements with Cox Communications and AT&T Arkansas to provide video services both are set to expire as of December 31, 2011. Staff and the City Attorney are in the process of negotiating long-term agreements with each entity, but as time is getting short and there are public notice requirements to consider we will not have new agreements finalized within the required timeframe.

Presented for Board approval at the December 6 regular meeting are ordinances extending the existing arrangements with Cox Communications and AT&T Arkansas for an additional 90 days (until March 31, 2012). It is certainly our intention to present long-term franchise agreements to the Board for approval as quickly as possible within that extended timeframe.

You will notice that they are slightly different, based on how the arrangements were originally approved. The one with Cox is framed in terms of extending a franchise, and the one with AT&T Arkansas is framed in terms of an extension of an agreement that was adopted by reference.

Any member of the Board is invited to contact me if they have questions regarding these agenda items.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH DAILY & WOODS,
P.L.L.C. FOR GENERAL LEGAL SERVICES FOR 2012

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

The legal services agreement with Daily & Woods, P.L.L.C. for general legal
services for 2012 attached hereto is hereby approved. The Mayor is hereby
authorized to execute said agreement on behalf of the city.

THIS RESOLUTION PASSED THIS _____ DAY OF December, 2011.

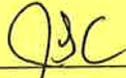
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
No Publication Required

Memo



To: Ray Gosack, City Administrator
From: Jeff Dingman, Deputy City Administrator
Date: 11/28/2011
Re: General Legal Services for 2012

Attached for the board of directors' consideration is a resolution authorizing a contract for general legal services for 2012. Section 2-112 of the municipal code requires the board to approve a contract for legal services prior to the first of each calendar year.

Proposals from Professional Service Providers were solicited earlier this year. Daily & Woods was the only firm to submit a proposal for general legal services. The firm has provided legal services to the city for more than 35 years. The proposed contract with Daily & Woods for legal services in 2012 is attached. Aside from an increase in hourly rate from \$130/hr to \$135/hr, the contract is similar to that used in previous years.

The staff recommends approval of the attached resolution. Please contact me if there are any questions regarding this agenda item.

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
ROBERT R. BRIGGS, P.A. †
C. MICHAEL DAILY, P.A. † ♦
L. MATTHEW DAVIS, P.A. †
COLBY T. ROE

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

JAMES E. WEST
PHILLIP J. NORVELL*
DALE CARLTON *

OF COUNSEL

HARRY P. DAILY (1886-1965)
JOHN P. WOODS (1886-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

WRITER'S E-MAIL ADDRESS
JCanfield@DailyWoods.com

† Also Licensed in Oklahoma
♦ Also Licensed in Wyoming & North Dakota
◊ Certified Mediator

November 9, 2011

Mr. Jeff Dingman
Deputy City Administrator
City of Fort Smith
623 Garrison Avenue, 3rd Floor
Fort Smith, AR 72901

Re: General Legal Services for 2012

Dear Mr. Dingman:

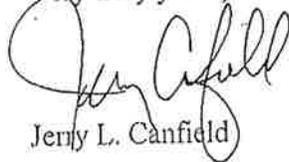
Thanks for the inquiry by your e-mail of November 9, 2011.

I am enclosing a copy of the October 3, 2011 letter which we issued to the City Clerk stating our desire to provide legal services in 2012 and identifying our qualifications. I am enclosing a copy of the Legal Services Agreement executed on December 7, 2010 and a draft of an Agreement which might be used for the year 2012. Resolution R-207-10 approved the execution of the Agreement and, I assume, a similar resolution will be use this year. Finally, I am enclosing a draft of an Exhibit "1" to Legal Services Agreement which show a billing rate of \$135.00 per hour for the year 2012. The billing rate has been \$130.00 per hour since 2009. We would be pleased to discuss the proposed rate with you.

Please call if we need to discuss this matter further.

Thank you for your attention to this matter.

Very truly yours,



Jerry L. Canfield
cmm

Enclosures

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
ROBERT R. BRIGGS, P.A. †
C. MICHAEL DAILY, P.A. † ●
L. MATTHEW DAVIS, P.A. †
COLBY T. ROE

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

JAMES E. WEST
PHILLIP J. NORVELL*
DALE CARLTON *

OF COUNSEL

HARRY P. DAILY (1886-1965)
JOHN P. WOODS (1886-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

† Also Licensed in Oklahoma
● Also Licensed in Wyoming & North Dakota
○ Certified Mediator

WRITER'S E-MAIL ADDRESS
JCanfield@DailyWoods.com

October 3, 2011

Ms. Sherri Gard
City Clerk
City of Fort Smith
623 Garrison Avenue, Room 303
P.O. Box 1908
Fort Smith, AR 72902

Re: Statement of Qualifications and Performance Data for Legal Services - 2012

Dear Ms. Gard:

We note the City's recent advertisement for receipt of "Statement of Qualifications and Performance Data" for professional services, including legal services, for the year 2012. On behalf of the firm of Daily & Woods, P.L.L.C., we respectfully request that the information in this letter and its attachments be filed as our "Statement of Qualifications and Performance Data" and be considered by the City for the year 2012.

We are enclosing a description of the educational and professional experience of the attorneys in the firm in the form of the most current publication of Martindale-Hubbell Law Directory, a national register of attorneys. All of the attorneys in our office are licensed as attorneys in the State of Arkansas and are actively engaged in the practice of law in the City of Fort Smith. The legal experience of the lawyers in our firm ranges from more than forty years of practice to others who have only recently commenced their legal practice. Because of our providing legal services to the City in the immediate past, all of the attorneys in our office have experience in areas of law material to the representation of the City, and some of the lawyers in our office are among those most experienced in the State of Arkansas in the areas of municipal corporation law. Michael Daily joined the firm in 2005, L. Matthew Davis joined the firm in 2007, and Colby Roe joined the firm in 2009.

As you know and as the records of the City reflect, the lawyers of this firm have provided legal services to the City since the adoption of the city administrator form of government in Fort Smith in the late 1960s. Mr. Rick Wade, with the assistance of other lawyers, provided services as District Court prosecutor from January, 1993, until 2007, when the City retained other lawyers to provide that function "in house." Mr. Wade has continued to provide "back up" assistance to the

City's retained prosecutor. We believe that this experience gives us valuable insight to the areas of law with which the City must deal and insight into the ongoing activities of the City. We believe such insight creates substantial efficiencies in our providing legal services for the City. We also note our firm's continued, direct involvement in some of the more significant capital improvements projects undertaken by the City in the past several years. The City continues to expend substantial sums on major capital projects, including streets and major utility facility expansions. We believe our experience from past involvement in said projects makes us uniquely qualified to continue to provide legal services to the City.

We look forward to continued service to the City and an opportunity to discuss and amplify on the information in this letter at your request.

The firm values the City as a very important client. All of our lawyers have the commitment to make ourselves available for the legal needs of the City. Please feel free to have your staff members call on any of the attorneys in the office for the performing of legal services.

So there is certainty regarding responsibility, we do note the following attorneys generally provide the following types of services for the City (again, please feel free to call any of the attorneys):

Jerry L. Canfield - Overall responsibility; general availability for immediate consultation by City staff; attending Board meetings; general litigation;

Wyman R. Wade, Jr. - Supplemental District Court Prosecutor's duties and Police Department civil rights litigation; general availability for immediate consultation by City staff;

Robert R. Briggs and Matt Davis - eminent domain and construction project consultations; employment litigation; general availability for immediate consultation by City staff; and,

Douglas Carson - workers' compensation and employment litigation.

Thank you for your attention to this matter.

Very truly yours,

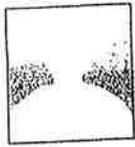
Jerry L. Canfield
cmm

Enclosure

cc: Mr. Ray Gosack
Ms. Kara Bushkuhl



Print Close Window



Jerry L. Canfield, (P.A.)

Member
Daily & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating
5.0/5.0
AV® Preeminent™

Client Rating
5.0/5.0
Submit a review

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AV Peer Review Rated

Experience & Credentials

Ratings & Reviews

Practice Areas

- Litigation
- Appellate Practice
- Natural Resources Litigation
- Municipal Law
- Insurance Defense Law

University University of Arkansas, B.A. in Arts, 1968
Law School University of Arkansas (Law, 1960; J.D., with highest honors, 1970)
Admitted 1970, Arkansas
Memberships Sebastian County, Arkansas and American Bar Associations; Arkansas Association of Defense Counsel.
Born Fayetteville, Arkansas, May 29, 1946
Biography Case Editor, Arkansas Law Review, 1969. Instructor, Torts, University of Arkansas at Fayetteville Law School, 1974-1975. City Attorney, Fort Smith, Arkansas, 1974—.
ISLN 908566660

Office Information

Jerry L. Canfield, (P.A.)
Daily & Woods, P.L.L.C.
58 South 6th Street
Fort Smith, AR 72902



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Profile Visibility
 #5 in weekly profile views out of 324 lawyers in Fort Smith, Arkansas
 #7,394 in weekly profile views out of 1,450,836 total lawyers Overall

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Thomas A. Daily, (P.A.)

Member
Daily & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating
 5.0/5.0
 AV⁵ Preeminent™

Client Rating
 N/R

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AV Peer Review Rated

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[Experience & Credentials](#)

[Ratings & Reviews](#)

Practice Areas

- Natural Resources
- Commercial Law
- Estate Planning Law

University University of the South, B.A., 1967

Law School University of Arkansas, J.D., with honors, 1970

Admitted 1970, Arkansas

Memberships Sebastian County, Arkansas (President, 2003-2004) and American Bar Associations.

Born Fort Smith, Arkansas, January 8, 1946

Biography Co-Author: "Well Now, Ain't That Just Fugacious, A Basic Primer of Arkansas Oil & Gas Law"; "Lawyerling the Fayetteville Shale Play—Welcome to My World," 44 Ark. Law 10 (Spring 2009). Adjunct Professor of Law, Varsity of Arkansas School of Law.

ISLN 908047404

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Office Information

Thomas A. Daily, (P.A.)
 Daily & Woods, P.L.L.C.
 58 South 6th Street
 Fort Smith, AR 72902



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Wyman R. Wade, Jr. (P.A.)

Member
Daily & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating
 4.4/5.0
BY® Distinguished™

Client Rating
N/R

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BY Peer Review Rated

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[Ratings & Reviews](#)

Practice Areas

- Employment Law
- Municipal Law
- Family Law
- Collections

University University of Georgia; Florida State University, B.A., 1969; University of Arkansas, M.A., 1975

Law School University of Arkansas, J.D., with honors, 1979

Admitted 1979, Arkansas

Memberships Sebastian County (President, 1993-1994), Arkansas and American Bar Associations; The Association of Trial Lawyers of America.

Military With U.S. Air Force, 1970-1973

Born Jacksonville, Florida, September 7, 1946

Biography Pi Sigma Alpha; Phi Alpha Delta. Editor-in-Chief, Arkansas Law Review, 1978-1979. Member, Arkansas Board of Bar Examiners, 1989-1995. City Prosecuting Attorney, Fort Smith, Arkansas, 1993-2007. Adjunct Professor, University of Arkansas, Fort Smith, 2005—.

ISLN 903024417

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Profile Visibility
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#122,036 in weekly profile views out of 1,450,836 total lawyers Overall

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Office Information

Wyman R. Wade, Jr. (P.A.)
Daily & Woods, P.L.L.C.
58 South 6th Street
Fort Smith, AR 72902



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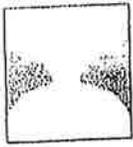
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Douglas M. Carson, (P.A.)

Member
Daily & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating
4.4/5.0
BVSM Distinguished

Client Rating
N/R

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BV Peer Review Rated

Experience & Credentials

Bar Status & Reviews

Practice Areas

- Insurance
- Products Liability
- Workers Compensation
- Intellectual Property
- Employment Discrimination Defense
- Commercial Litigation
- Natural Resources

University University of Arkansas, B.A., 1979

Law School University of Arkansas, J.D., 1982

Admitted 1983, Arkansas

Memberships Sebastian County, Arkansas and American Bar Associations; Defense Research Institute, Inc.; Arkansas Association of Defense Counsel.

Born Fort Sill, Oklahoma, February 7, 1955

Biography Member, National Moot Court Team, 1980. Student Works Editor, Arkansas Law Review, 1981-1982. Director, Legal Writing & Appellate Advocacy, University of Arkansas School of Law, 1982-1983.

ISLN 908509179

Office Information

Douglas M. Carson, (P.A.)
Daily & Woods, P.L.L.C.
58 South 6th Street
Fort Smith, AR 72902



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Affiliations

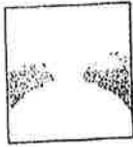


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Robert R. Briggs, (P.A.)

Member
Dally & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating
N/R

Client Rating
N/R

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Experience & Credentials

Practice Areas

- General Practice
- Real Estate
- Natural Resources
- Litigation
- Business Law
- Estate Planning
- Contract Law

University Providence College, B.A., cum laude, 1992

Law School University of Arkansas, J.D., 2001

Admitted 2001, Arkansas; 2002, Oklahoma

Memberships Washington County, Arkansas and Oklahoma Bar Associations; Arkansas Realtor's Association.

Born Edmond, Oklahoma, October 23, 1966

Biography Delta Theta Phi. Articles Editor, Arkansas Law Review, 2000-2001. Author: "Aycok Pontiac, Inc. v. Aycok; Express Trust Terms Beware-Implied Reversions are Here," 53 Ark.L.Rev. 885. Adjunct Professor, University of Arkansas, Fort Smith.

ISLN 916493644

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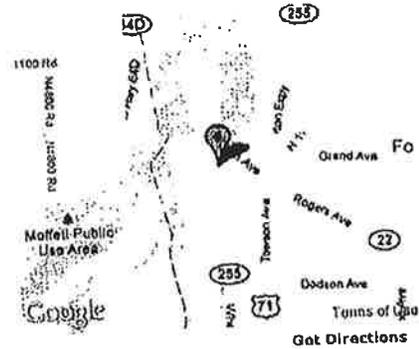
#39 in weekly profile views out of 124 lawyers in Fort Smith, Arkansas

#122,036 in weekly profile views out of 1,450,036 total lawyers Overall

Source: Martindale-Hubbell

Office Information

Robert R. Briggs, (P.A.)
Dally & Woods, P.L.L.C.
58 South 6th Street
Fort Smith, AR 72902



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C. Michael Daily, (P.A.)

Member
Daily & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating
N/R

Client Rating
N/R

Submit a review

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Experience & Credentials

Practice Areas

- Natural Resources
- Oil and Gas Law
- Collections
- Business Law
- Probate
- Estate Planning

University Hendrix College, B.A., Economics/Business, 1999; University of Arkansas at Little Rock, M.B.A., 2002

Law School University of Arkansas at Little Rock, J.D., 2005

Admitted 2005, Arkansas; 2006, Oklahoma; 2011, North Dakota and Wyoming

Memberships Sebastian County, Arkansas, Oklahoma, North Dakota, Wyoming and American Bar Associations.

Born Fort Smith, Arkansas, March 10, 1977

Biography Phi Kappa Phi.

ISLN 918809573

Profile Visibility - 1
#39 in weekly profile views out of 324 lawyers in Fort Smith, Arkansas
#122,036 in weekly profile views out of 1,450,836 total lawyers Overall

Office Information

C. Michael Daily, (P.A.)
Daily & Woods, P.L.L.C.
58 South 6th Street
Fort Smith, AR 72902



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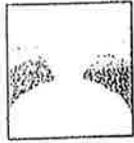
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L. Matthew Davis, (P.A.)

Member
Dally & Woods, P.L.L.C.
Fort Smith, AR U.S.A.

Phone 479-782-0361

Peer Rating

N/R

Client Rating

5.0/5.0

Submit a review

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Experience & Credentials

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Practice Areas

- Natural Resources
- Estate Planning

University	University of Arkansas at Little Rock, B.A., Liberal Arts, 1998; Arkansas Tech University, M.A., 2002
Law School	Oklahoma City University School of Law, J.D., 2006
Admitted	2007, Arkansas; 2008, Oklahoma
Memberships	Sebastian, Arkansas, Oklahoma and American Bar Associations.
Born	Fort Smith, Arkansas, August 14, 1973
Biography	Phi Alpha Delta, Robert J. Turner Inn of Court.
ISLN	919267167

Profile Visibility ⁱⁱ

#9 in weekly profile views out of 324 lawyers in Fort Smith, Arkansas
#10,210 in weekly profile views out of 1,450,836 total lawyers Overall

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Office Information

L. Matthew Davis, (P.A.)
Dally & Woods, P.L.L.C.
58 South 6th Street
Fort Smith, AR 72902



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LEGAL SERVICES AGREEMENT

This Legal Services Agreement made the ___ day of _____, 2011, between the City of Fort Smith, Arkansas, a municipal corporation ("City"), acting by and through its authorized officers, and Daily & Woods, P.L.L.C., of 56 South 6th Street, Fort Smith, Arkansas ("Attorney").

WHEREAS, pertinent portions of Act 636 of the 1989 Acts of Arkansas (also contained within Fort Smith Code of Ordinances § 2-182) require annual notice of solicitation of bids for professional services, including, but not limited to, legal services, and,

WHEREAS, such notice has been duly published and a Statement of Qualifications and Performance Data has been received by the City from all persons or firms who desire to be considered by the City at the time the City enters into any contract for professional legal services throughout the year 2012, and,

WHEREAS, the City, having received and reviewed such Statement of Qualifications and Performance Data from the law firm of Daily & Woods, P.L.L.C., and the City having determined that said firm is the most qualified and capable in handling the legal services for the City, does hereby enter into this Agreement for the use of and compensation of such legal services, to-wit:

SECTION ONE

City retains Daily & Woods, P.L.L.C. to act as attorney for the City and to render to the City and its authorized officers all legal advice and to represent City and its authorized officers as provided in Fort Smith Code of Ordinances §§ 2-112, 2-113, and 2-114.

SECTION TWO

Attorney accepts the compensation schedule as outlined in Exhibit "1" to this Agreement.

SECTION THREE

As compensation in full for all services to be rendered by Attorney under and pursuant to this Agreement, City shall pay to Attorney for Attorneys' services such compensation as is set forth in detail in the letter attached hereto as Exhibit "1" and incorporated herein by reference.

SECTION FOUR

This Agreement shall terminate on December 31, 2012. This Agreement may also be terminated at any time after date of execution of this Agreement after written notice from either party to the other party.

SECTION FIVE

This Agreement shall be governed by, construed, and enforced in accordance with the law of Arkansas.

SECTION SIX

This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

SECTION SEVEN

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party or an authorized representative of each party.

SECTION EIGHT

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

Each party has caused this Agreement to be executed at Fort Smith, Arkansas, on the date indicated below.

Dated this ___ day of _____, 2011.

City of Fort Smith, Arkansas

Daily & Woods, P.L.L.C.

By: _____
Mayor

By: _____
Authorized Representative

EXHIBIT "1" TO LEGAL SERVICES AGREEMENT

2012 Billing Rate: \$135.00 per hour

Additionally, all actual expenses incurred, e.g., copying, postage, long distance phone calls, travel, etc., are to be reimbursed to Daily & Woods, P.L.L.C., by the City.

RESOLUTION NO. _____

A RESOLUTION APPROVING CLAIM SERVICE, SPECIFIC EXCESS INSURANCE AND AGGREGATE EXCESS INSURANCE FOR CITY'S WORKERS' COMPENSATION COVERAGE

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

SECTION 1: The Renewal Agreement with Regions Insurance to provide Claims Administration, Specific Excess Insurance and Aggregate Excess Insurance for the year 2012 for the Self-Insured Workers' Compensation program for employees of the City of Fort Smith, Arkansas is accepted.

SECTION 2: The City Administrator or his designee is hereby authorized to execute all documents necessary to bind coverage and secure the claims service.

This Resolution adopted this _____ day of December 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form
JSC
No publication required*

MEMORANDUM

TO: Ray Gosack, City Administrator

FROM: Richard B. Jones, Director of Human Resources

DATE: December 2, 2011

SUBJECT: Workers' Compensation Resolution



The total fixed cost for our self insured program will be approximately \$116,736 for 2012. This includes claims administration and the purchase of specific and aggregate excess insurance. **(Most of the cost of our workers' compensation program is from medical treatment and lost time claims where an employee is unable to work)** The total fixed cost for our self insured program for 2011 will be approximately \$108,858 (The final payroll has yet to be applied to the estimated premium). The total fixed cost for our self insured program for 2010 was \$104,475 and for 2009 was \$98,147.

The City's comprehensive management of our Workers' Compensation Program as is essential to keeping cost as low as possible. Currently our comprehensive Workers' Compensation Program includes the following parts: Prevention by all city departments; triage done telephonically by an organization called Company Nurse; claims handling including required State of Arkansas and specific and aggregate excess insurance reporting provided by Regions Claims Service; Regions Insurance to secure specific and aggregate excess insurance currently with Midwest Employers Casualty Company; Dr. Holder and Dr. Clark to provide occupational medicine services through Copper Clinic; claims review, repricing and case management done by Corvell Corporation and legal services provided by the City Attorney.

The City's comprehensive Workers' Compensation Program has had excellent results which are evident in the attached Management View Report which benchmarks the performance of our program. Specifically the average cost of a claim is 47% below the benchmark and 33% below best practice.

I recommend approval of this resolution.

PREMIUM SUMMARY

COVERAGE	ESTIMATED ANNUAL PREMIUM 11-12 MECC	ESTIMATED ANNUAL PREMIUM 12-13 MECC	ESTIMATED ANNUAL PREMIUM 12-13 Safety National
EXCESS WORKERS COMPENSATION	\$69,694.00 (Rate 5.98%) Payroll \$38,162,777 Estimated Standard Premium \$1,165,445	\$85,531.00 (Rate 7.61%) Payroll \$38,162,777 Estimated Standard Premium \$1,123,926	\$77,572.00 (Rate 6.75%) Payroll \$38,162,777 Estimated Standard Premium \$1,149,211
TOTAL	*\$69,694.00	**\$85,531.00	***\$77,572.00

***11-12 \$450,000 retention fire fighters, police men and women, \$400,000 retention all other classes, \$400,000 aggregate loss limit.**

****12-13 \$600,000 all classes, \$500,000 aggregate loss limit.**

Midwest Employers Casualty Company has offered additional options increasing retentions and aggregate loss limit detailed behind tab 1, recapped below:

MECC OPTIONS:

**Option 1: \$650,000 retention all classes, \$550,000 aggregate loss limit. (Rate 7.1%)
1 Year \$79,799 estimated premium.**

**Option 2: \$750,000 retention all classes, \$500,000 aggregate loss limit. (Rate 6.14%)
1 Year \$69,009 estimated premium.**

*****12-13 \$500,000 retention fire fighters, police men and women, \$450,000 retention all other classes, \$500,000/\$450,000 aggregate loss limit**

Safety National Casualty Corporation has offered an option increasing the retention and aggregate loss limit detailed behind tab 2, recapped below:

**Option 1: \$500,000 retention all classes, \$500,000 aggregate loss limit. (Rate 6.25%)
1 Year \$71,826 estimated premium.**

DISCLAIMER – The included forms are provided for illustration purposes only. These forms do not replace, supplement, alter, or amend the terms and conditions of your insurance policy. You should read your policy carefully since it's written terms and conditions specify the rights and duties of both you and the insurance company.

MARKET RECAP

COMPANY	RESPONSE
ACE	Declined - \$150,000 Minimum Premium \$1,000,000 Retention for police/fire
Arch	Declined – \$150,000 Minimum Premium \$1,000,000 Retention for police/fire
Liberty Mutual	Declined - \$350,000 Minimum Premium
New York Marine	Quoted – See Tab 3
Midwest Employers Casualty Company	Quoted – See Tab 1
Travelers (Discover Re)	Declined – 250,000 Minimum Premium
Safety National Casualty Corporation	Quoted – See Tab 2
Star Insurance	Declined – Treaty restriction police/fire
Zurich	Declined – Too small

DISCLAIMER – The included forms are provided for illustration purposes only. These forms do not replace, supplement, alter, or amend the terms and conditions of your insurance policy. You should read your policy carefully since it's written terms and conditions specify the rights and duties of both you and the insurance company.

Management View Report



City of Fort Smith

01/01/2006 - 12/31/2011

Management View Report



***How does our Workers' Compensation program perform?
To what are we being compared?***



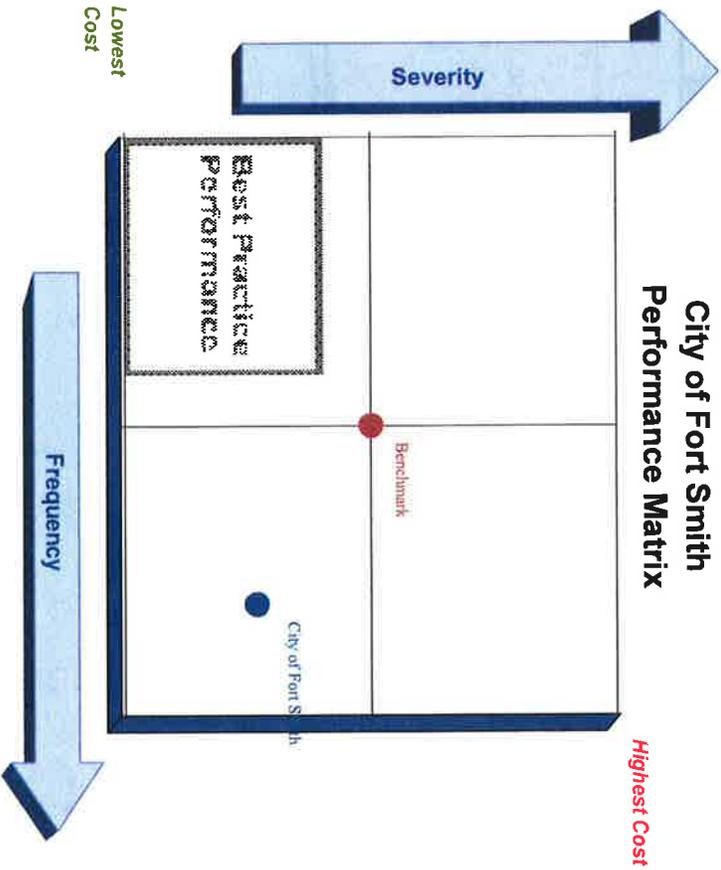
City of Fort Smith's Benchmark Expected Losses

City of Fort Smith's payroll exposure is assembled by class, state, and year to arrive at their own unique benchmark. All job classifications are included, and the largest classes based on payroll volume are:

- * 7720 - Police Officers
- * 7710 - Firefighters & Drivers
- * 8810 - Clerical Office Employees Noc
- * 9410 - Municipal Township Empl Noc
- * 9403 - Garbage Ashes Refuse Collectng

Expected losses relative to payroll from MECC's Benchmark Database are applied to City of Fort Smith's payroll. This is City of Fort Smith's unique Benchmark expected loss.

Executive Summary



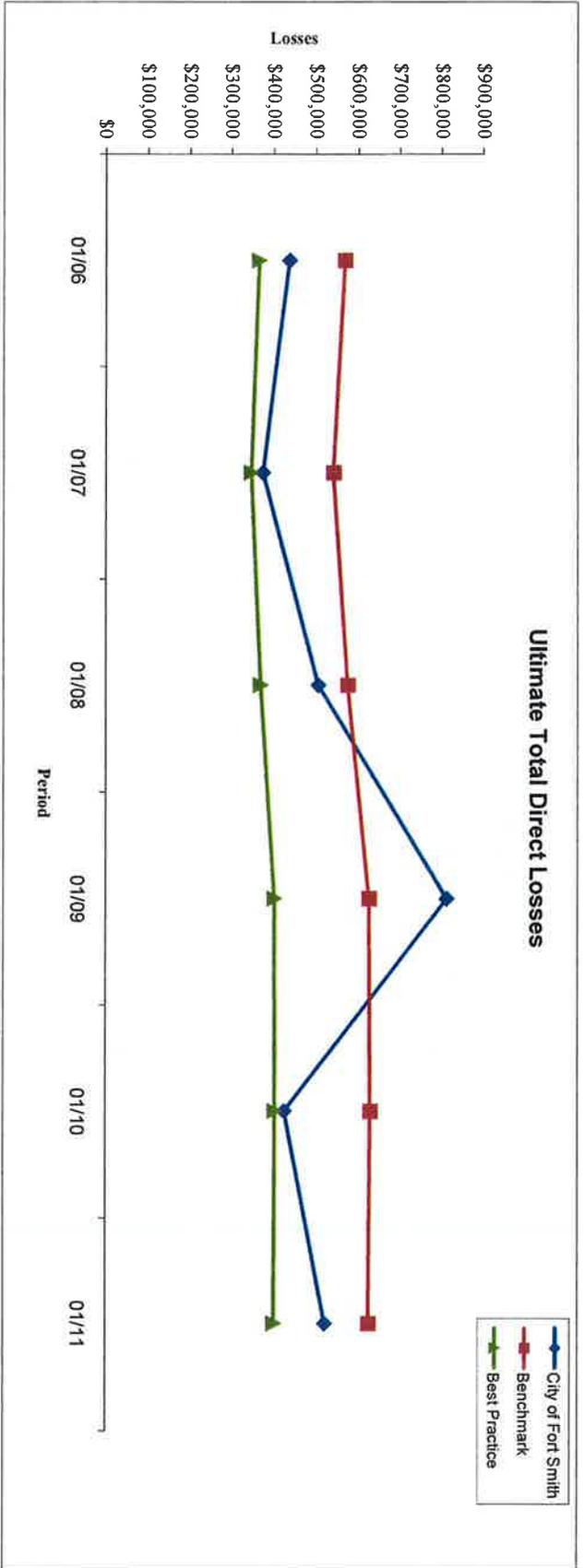
Frequency:
 62% more claims than benchmark.

Severity:
 47% less than benchmark.

Total Cost:
 Total direct losses: \$493,100 less than benchmark, and \$790,700 more than the Best Practice Performance Level.

Less than 10% of employers analyzed by MECO perform within the Best Practice area.

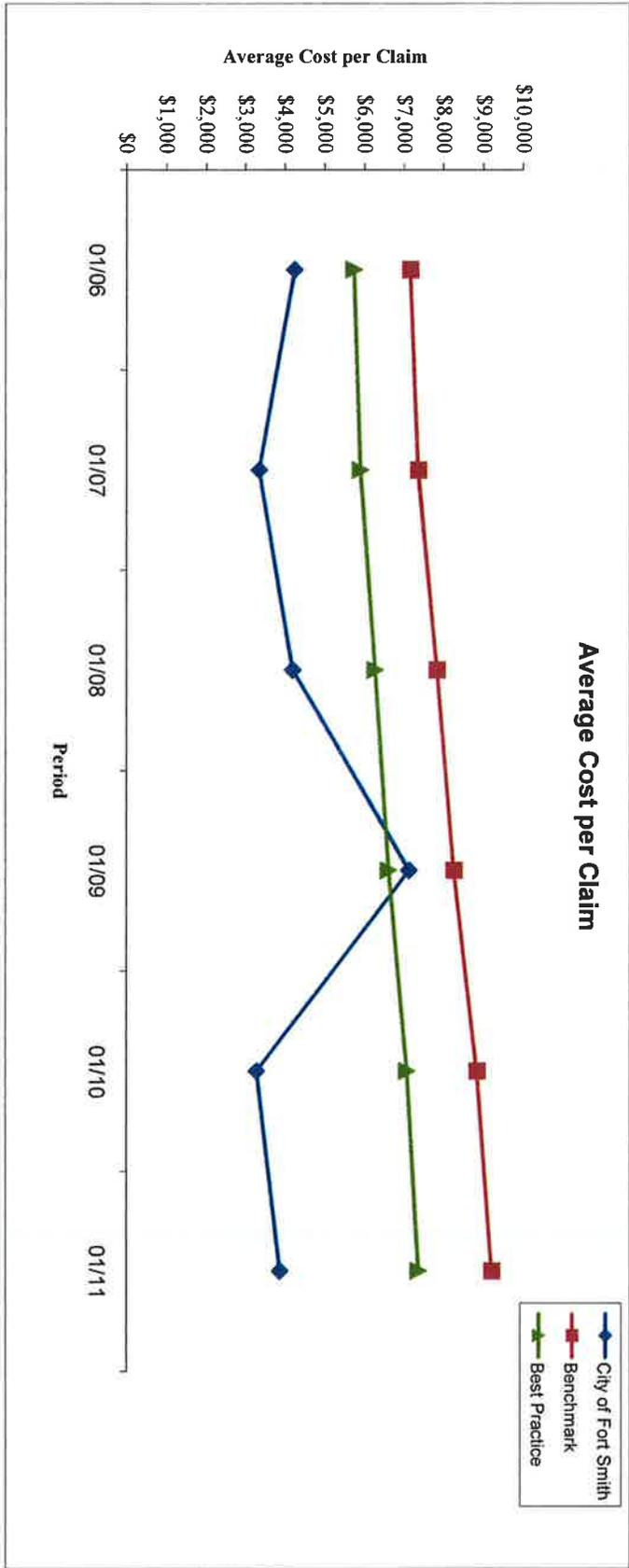
Benchmarking Results: Total Direct Losses



Data valued as of 6/30/2011

	Total	Avg.	Diff.						
City of Fort Smith	\$437,000	\$373,000	\$506,000	\$811,000	\$425,000	\$521,000	\$3,073,000	\$512,167	
Benchmark	\$568,283	\$541,232	\$574,891	\$626,901	\$629,537	\$625,273	\$3,566,117	\$594,353	-14%
Best Practice	\$363,701	\$346,388	\$367,930	\$401,217	\$402,904	\$400,175	\$2,282,315	\$380,386	35%

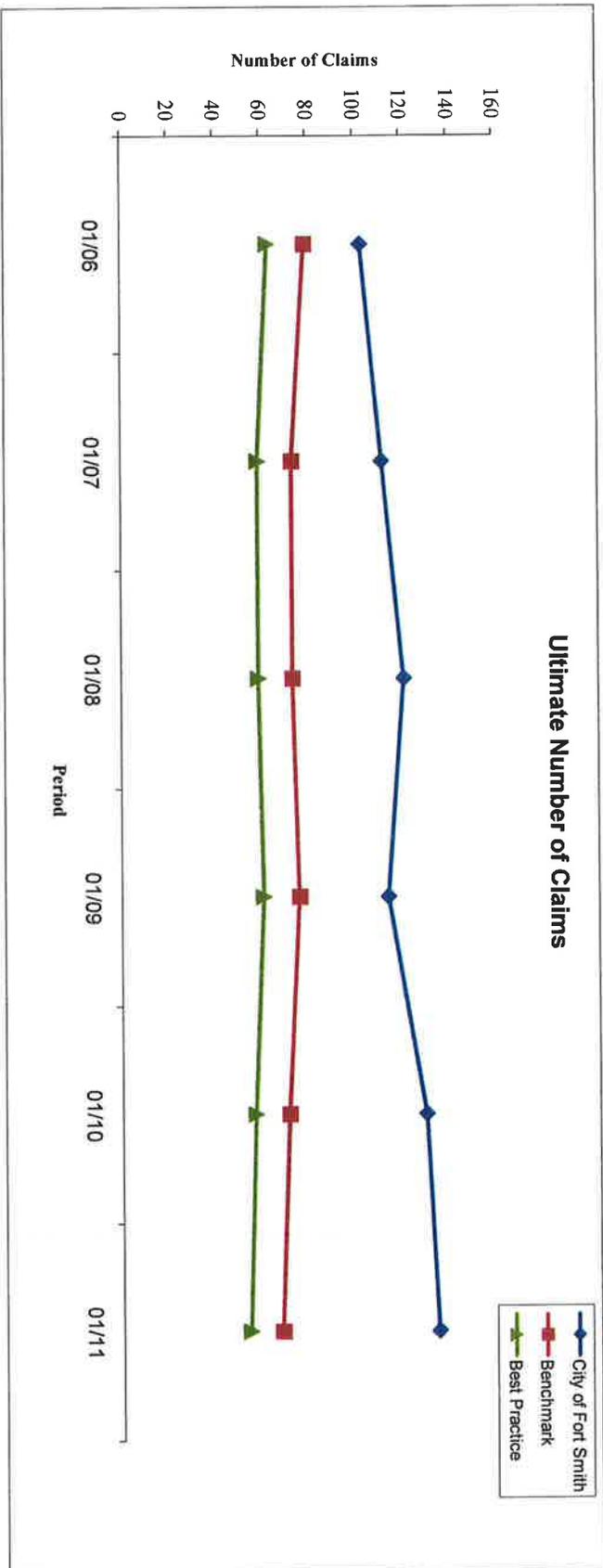
Benchmarking Results: Average Cost per Claim



Data valued as of 6/30/2011

Period	City of Fort Smith	Benchmark	Best Practice	Avg.	Dif.
	\$4,243	\$7,165	\$5,732	\$4,298	
	\$3,330	\$7,362	\$5,889	\$8,074	-47%
	\$4,182	\$7,819	\$6,255	\$6,459	-33%
	\$7,114	\$8,244	\$6,595		
	\$3,269	\$8,829	\$7,063		
	\$7,356	\$8,074	\$6,459		

Benchmarking Results: Number of Claims

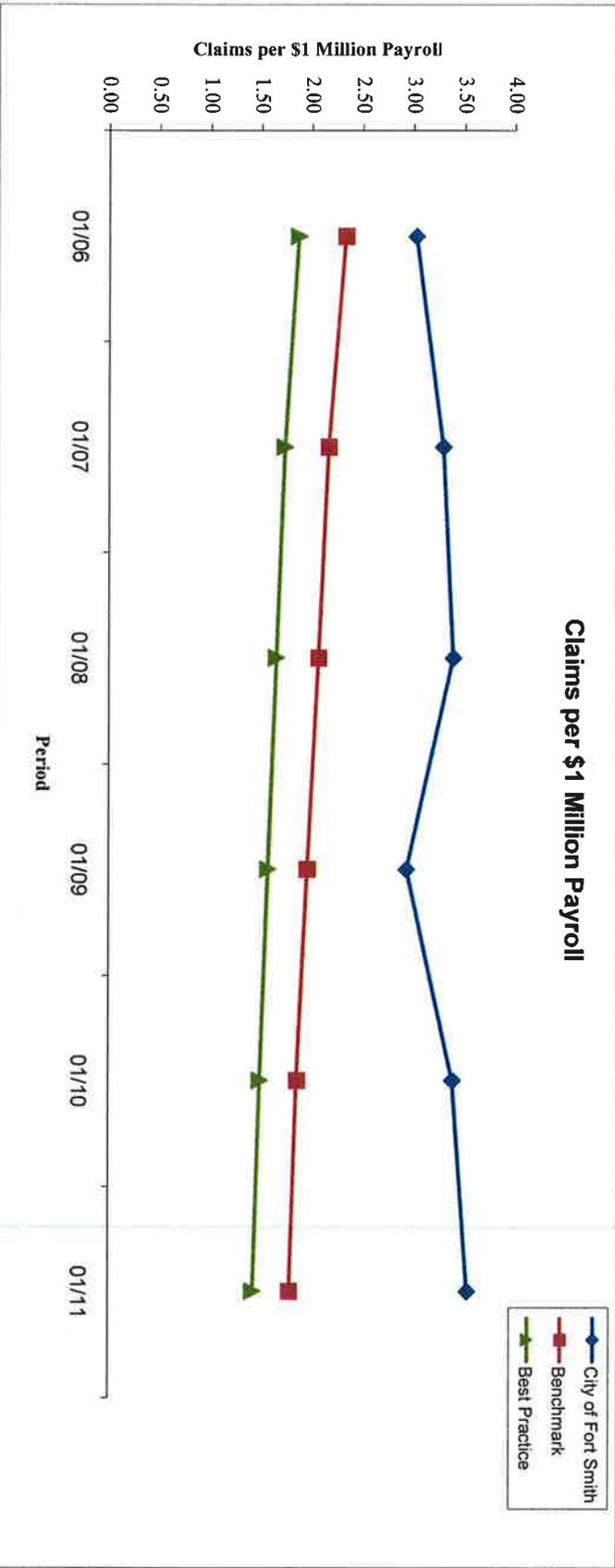


Data valued as of 6/30/2011

	Total	Avg.	Diff.
City of Fort Smith	715	119	
Benchmark	442	74	62%
Best Practice	353	59	102%

Period	1/1/06	1/1/07	1/1/08	1/1/09	1/1/10	1/1/11
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Benchmarking Results: Claims per \$1 Million of Payroll



Data valued as of 6/30/2011

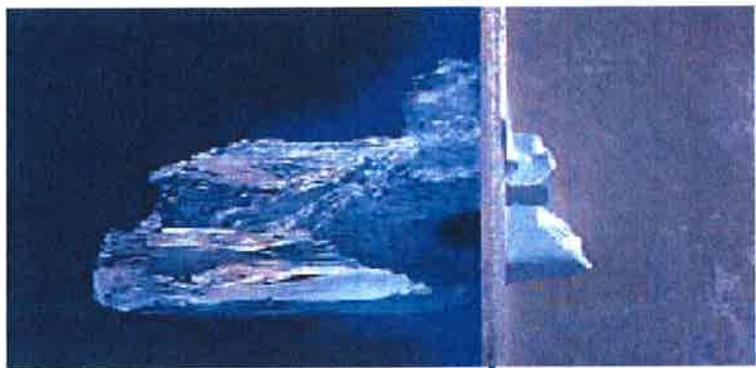
Period	City of Fort Smith	Benchmark	Best Practice	Avg.	Diff.
1/1/06	3.03	2.33	1.86	3.26	
1/1/07	3.29	2.16	1.73	2.02	62%
1/1/08	3.39	2.06	1.65	1.61	102%
1/1/09	2.93	1.96	1.56		
1/1/10	3.39	1.86	1.49		
1/1/11	3.54	1.78	1.43		

Total Cost of Workers' Compensation Risk (TCOR)

Total Cost of Risk = Direct + Indirect Costs

For every \$1 in Direct Loss Costs . . .

- Medical Costs
- Lost Time Wages
- Claims Administration Expenses



Indirect Loss Costs are 3-10 Times Higher*

- Lost Productivity or Service Standards
- Additional Supervisor/Administrative Time Required
- Recruiting, Hiring and Training Replacement Workers
- Temporary Labor and Overtime Costs
- Damage to Building, Equipment, Materials
- Interim Equipment Rentals
- Emergency Supplies
- OSHA Fines
- Accident Investigation Costs

*** Sources Cited:**
 National Council on Compensation Insurance
 National Safety Council
 National Academy of Social Insurance
 Integrated Benefits Institute

Economic Impact of Workers' Compensation

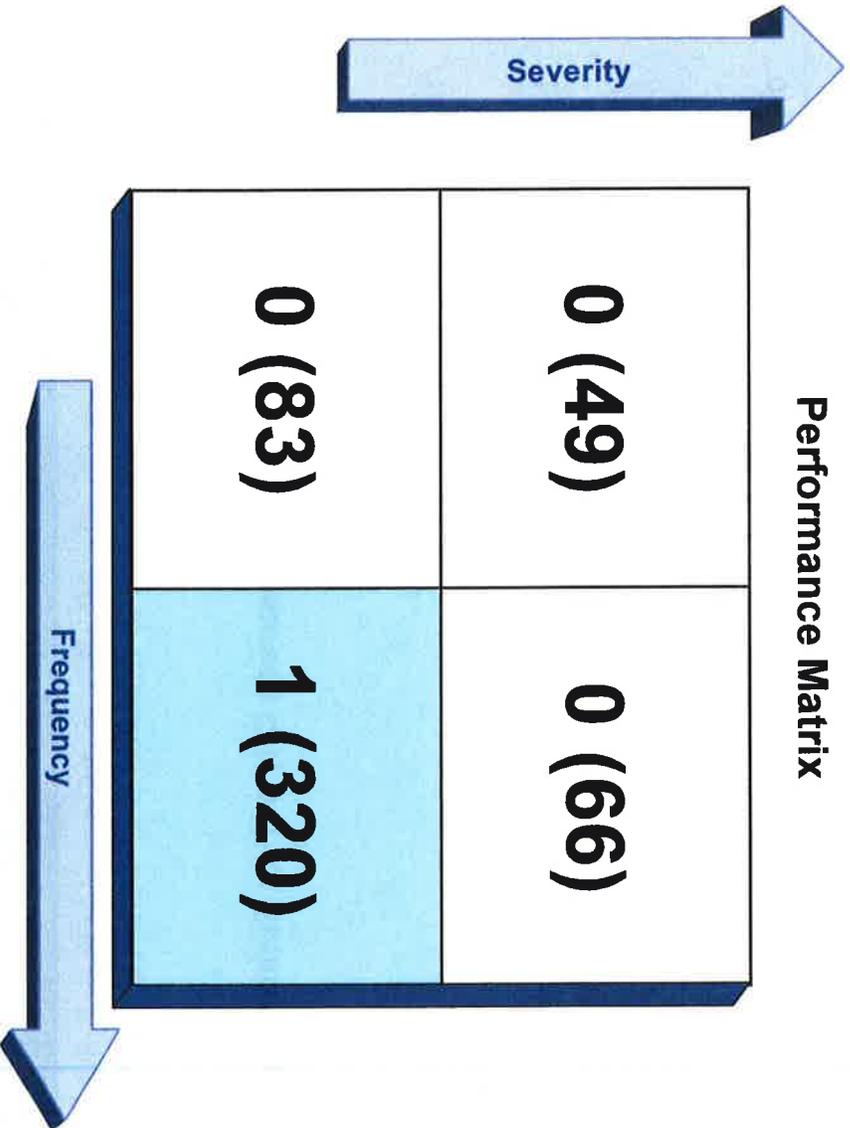
Historical Average	Benchmark	City of Fort Smith	City of Fort Smith Goal
Expected Number of Claims	74	119	74
Expected Average Cost Per Claim	\$8,074	\$4,298	\$4,083
Expected Total Direct Losses	\$594,353	\$512,167	\$300,575
Estimated Total Indirect Losses (1:1 ratio)	\$594,353	\$512,167	\$300,575
TOTAL COST OF RISK (direct costs + indirect costs)	\$1,188,706	\$1,024,333	\$601,151
POTENTIAL SAVINGS OPPORTUNITY (City of Fort Smith TCOR - Goal TCOR)			
			\$423,182

ECONOMIC IMPACT OF WORKERS' COMPENSATION ON CITY OF FORT SMITH:	
Operating Margin	5%
Income Required to Fund WC Losses (Annual Avg)	\$20,486,667
Income Required to Fund WC Losses over Target	\$8,463,649

Benchmarking Results: Comparison to Similar Self-Insured Employers

Distribution of Similar Employers Compared to Each of Their Own Benchmarks:

Performance Matrix

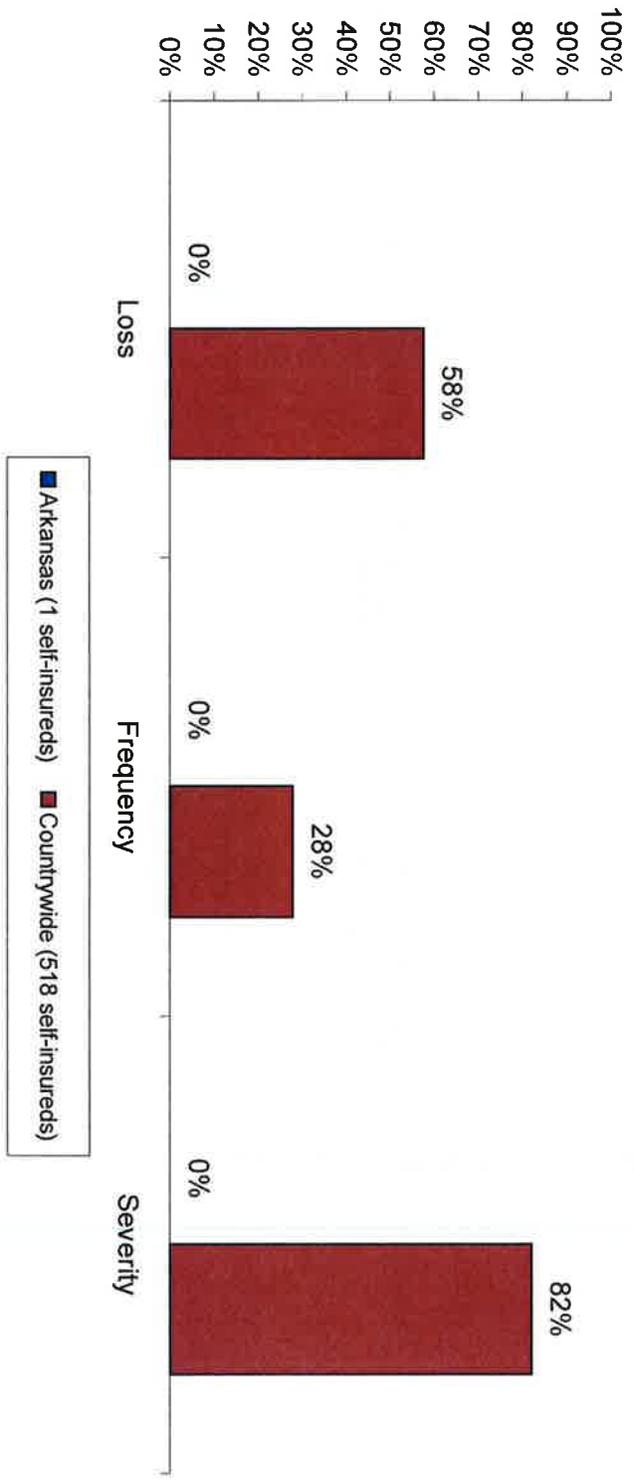


Number of Employers in the State and (Countrywide)

Example: 0 Government self-insured employers in Arkansas perform in Quadrant 1

Benchmarking Results: Comparison to Similar Self-Insured Employers

Percent of Other Government Self-Insureds City of Fort Smith Outperforms



Example: City of Fort Smith outperforms 0% (0 of 1) government self-insureds in Arkansas (in terms of total losses relative to benchmark)

Loss = Total Loss Dollars
 Frequency = Number of Claims per \$1 Million Payroll
 Severity = Average Cost per Claim

RESOLUTION NO. _____

A RESOLUTION APPROVING CLAIM SERVICE, SPECIFIC EXCESS INSURANCE AND AGGREGATE EXCESS INSURANCE FOR THE CITY'S EMPLOYEE HEALTH COVERAGE

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

SECTION 1: The Renewal Agreement with UMR to provide Claims Administration and with HCC to provide Specific Excess Insurance and Aggregate Excess Insurance for the year 2012 for the Self-Insured Health Coverage program for employees of the City of Fort Smith, Arkansas is accepted.

SECTION 2: The City Administrator or his designee is hereby authorized to execute all documents necessary to bind coverage and secure the claims service.

This Resolution adopted this _____ day of December 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form
JHC
no publication required*

MEMORANDUM

TO: Ray Gosack, City Administrator

FROM: Richard B. Jones, Director of Human Resources 

DATE: December 2, 2011

SUBJECT: Health Coverage Resolution

The Renewals for the City's health coverage administration and specific and aggregate stop loss are attached. The estimated cost for stop loss coverage is increasing by 16.2% from \$470,825 to \$547,014. This cost increase is directly related to the current market conditions for stop loss coverage and the Patient Protection and Affordable Care Act's ("PPACA") passed by Congress into law in 2010. In addition, please note that most carriers that provide stop loss coverage declined to quote because they could not provide competitive rates. This is because The City's current rates and stop loss experience are so far below the expected benchmarks for an organization our size.

UMR the City's third party administrator (TPA) has not changes our rates for service since January 1, 2007. They are asking for a 1.76% increase from an estimated annual cost of administration of \$402,872 to \$409,995.

I recommend approval of this resolution.

City of Ft. Smith

Stop Loss Market Analysis

Effective January 1, 2012

This analysis contains a financial cost summary and an outline of key policy provisions. Although cost is an important factor in placing coverage with a stop loss carrier, key policy provisions are also critical to the selection process as they may represent additional financial liability. A stop loss policy that supercedes a client's plan document language could have a negative financial impact on the Plan. For example, if the client's plan document has a different definition of experimental than the definition contained in the stop loss policy, it could have a financial impact on the plan. Although most stop loss carriers will agree to cover medically necessary and generally accepted practices and procedures, there may be other limitations which should be considered prior to policy acceptance.

The "Analysis of Key Stop Loss Policy Provisions" section includes key coverage limitations / exclusions provisions. It contains a comparison of your SPD and the carriers proposed stop loss provisions.

The intent of this analysis is to provide you with general information regarding the status of, and/or potential concerns related to your current employee benefits environment. It does not necessarily fully address all of your specific issues. It should not be construed as, nor is it intended to, provide legal advice. Questions regarding specific issues should be addressed by your general counsel or an attorney who specializes in this practice area.

Presented by Gallagher Benefit Services, Inc.

November 11, 2011

**City of Ft. Smith
Estimate of Stop-Loss Renewal Effective January 1, 2012**

Specific Stop-Loss	HCC		Fairmont	
	Current	Renewal	24/12	
Monthly Premium Rates				
Employee	\$20.71	\$23.46	\$31.98	
Family	\$62.27	\$71.74	\$90.74	
Annual Premium	\$440,378	\$505,255	\$651,166	
Percent Increase		14.7%	47.9%	
Additional Premium		\$64,877	\$210,788	
Aggregate Stop-Loss	HCC Current	HCC Renewal	Fairmont	
Annual Premium	\$30,447	\$41,759	\$23,576	
Percent Increase		37.2%	-22.6%	
Attachment Factor - Single	\$419.35	\$419.39	\$416.88	
Attachment Factor - Family	\$1,024.85	\$1,025.83	\$1,064.95	
Attachment Point	\$7,659,472	\$7,664,903	\$7,860,172	
Percent Increase		0.1%	2.6%	
TOTAL FIXED STOP LOSS COSTS	\$470,825	\$547,014	\$674,741	
Percent Increase		16.2%	43.3%	

Based on: 437 Single
 444 Family
 881

This analysis contains a financial cost summary as well as an outline of key policy provisions which may represent additional financial liability. It is intended to provide you with a detailed illustration of both cost and potential liability. We urge you to carefully review this material prior to making a final determination.

While GBS does not guarantee the financial viability of any health insurance carrier or market, it is an area we recommend that clients closely scrutinize when selecting a health insurance carrier or HMO. There are a number of rating agencies that can be referred to including, A.M. Best, Fitch, Moody's, Standard & Poor's, and Weiss Ratings (TheStreet.com). Generally, agencies that provide ratings of U.S. Health Insurers, including traditional insurance companies and other managed care (e.g., HMO) organizations, reflects their opinion based on a comprehensive quantitative and qualitative evaluation of a company's financial strength, operating performance and market profile. However, these ratings are not a warranty of an insurer's current or future ability to meet its contractual obligations.

Estimate of Stop-Loss Renewal Effective January 1, 2012

Specific Stop-Loss

	HCC Current	HCC Renewal	Fairmont 24/12
	\$175,000	\$175,000	\$175,000

Monthly Premium Rates

Employee Family

	\$20.71	\$27.31	\$37.99
	\$62.27	\$81.67	\$105.68
Annual Premium	\$440,378	\$578,351	\$762,283
Percent Increase		31.3%	73.1%

Additional Premium

\$137,974 \$321,905

Aggregate Stop-Loss

	HCC Current	HCC Renewal	Fairmont
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Annual Premium
Percent Increase

\$30,447 \$41,442 \$21,884
36.1% -28.1%

Attachment Factor - Single
Attachment Point
Percent Increase

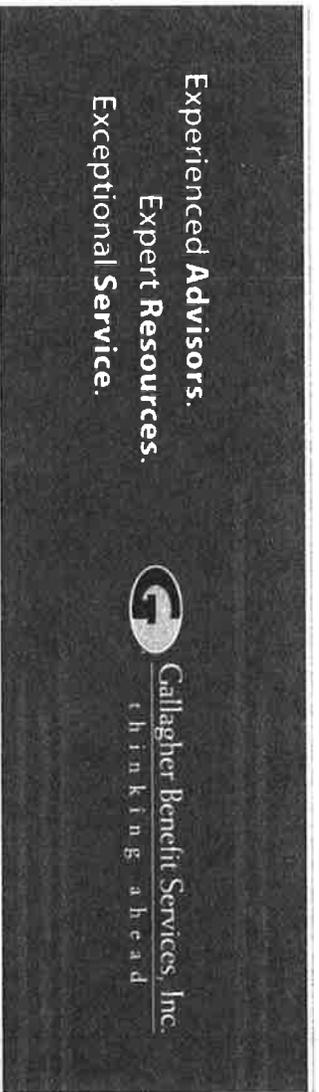
\$419.35 \$411.91 \$411.03
\$1,024.85 \$1,006.75 \$1,049.97
\$7,659,472 \$7,524,020 \$7,749,681
-1.8% 1.2%

TOTAL FIXED STOP LOSS COSTS	\$470,825	\$619,794	\$784,167
Percent Increase		31.6%	66.6%

Based on: 437 Single
444 Family
881

This analysis contains a financial cost summary as well as an outline of key policy provisions which may represent additional financial liability. It is intended to provide you with a detailed illustration of both cost and potential liability. We urge you to carefully review this material prior to making a final determination.

While GBS does not guarantee the financial viability of any health insurance carrier or market, it is an area we recommend that clients closely scrutinize when selecting a health insurance carrier or HMO. There are a number of rating agencies that can be referred to including, A.M. Best, Fitch, Moody's, Standard & Poor's, and Weiss Ratings (TheStreet.com). Generally, agencies that provide ratings of U.S. Health Insurers, including traditional insurance companies and other managed care (e.g., HMO) organizations, reflects their opinion based on a comprehensive quantitative and qualitative evaluation of a company's financial strength, operating performance and market profile. However, these ratings are not a warranty of an insurer's current or future ability to meet its contractual obligations.



This analysis is for illustrative purposes only, and is not a guarantee of future expenses, claims costs, managed care savings, etc. There are many variables that can affect future health care costs including utilization patterns, catastrophic claims, changes in plan design, health care trend increases, etc. This analysis does not amend, extend, or alter the coverage provided by the actual insurance policies and contracts. Please see your policy or contact us for specific information or further details in this regard.

Purpose

This report is intended to provide the management group with information to assist in making a determination as to the structure of the reinsurance coverage associated with its partially self-funded medical benefit plan for Plan Year 2012.

Background

The City of Fort Smith has been at the forefront of innovation with its medical benefit plan design by introducing and evolving various elements that promote "wellness" through increasing awareness of risk factors, emphasizing health screenings, and providing resources for chronic disease management. All of the measures are intended to reduce the severity and frequency of large claims.

Through the first nine months of Plan Year 2011, The City of Fort Smith had no specific stop loss claims reported. This is a continuation of a pattern of fewer than expected specific stop loss claims year-to-year since the "wellness" oriented plan design was implemented.

As a result, the specific and aggregate stop loss premium for The City of Fort Smith has lagged far behind the "benchmark" rates for all of the major reinsurance companies to the point that they deem it necessary to bring the City's rates closer to "benchmark" in spite of excellent plan performance over the past several years. Reinsurance is somewhat

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sensitive to the claim experience of a particular employer, but it is also blended with "benchmarking" rates in order to achieve a level of price stability year-to-year.

Plan Year 2012 Specific and Aggregate Stop Loss Renewal

As we do each year, Gallagher Benefit Services conducted an RFP for The City of Fort Smith for reinsurance coverage. Most of our major reinsurance partners declined to quote, stating that the in-force rates and renewal offering by the incumbent carrier were well below their own "benchmark" rates, making them uncompetitive.

The incumbent's proposal for maintaining the current level of specific and aggregate stop loss coverage resulted in an annual premium increase of \$135,575.

We also obtain proposals for increasing the specific stop loss deductible from \$175,000 to \$200,000. It is proper to increase the specific stop loss deductible periodically to off-set medical cost trending.

If The City of Fort Smith implements a \$200,000 specific stop loss in Plan Year 2012, the annual premium increase associated with the higher deductible would be reduced to \$62,480.

The higher specific stop loss deductible increases the aggregate stop loss premium by only \$317. It increases the aggregate claim liability maximum by only \$5,431.

The City of Fort Smith would be benefited by the higher specific stop loss deductible provided the number of claims exceeding \$200,000 is three or fewer during Plan Year 2012.

The analytics for this information are presented on the following pages.

SPECIFIC STOP LOSS DEDUCTIBLE – PREMIUM ANALYSIS

THE CITY OF FORT SMITH SPECIFIC STOP LOSS DEDUCTIBLE PREMIUM ANALYSIS

Type of Coverage	Number Enrolled	Monthly Rate	Premium		Monthly Rate	Premium		Amount of Change
			Monthly	Annual		Monthly	Annual	
Employee Only	437	\$20.71	\$9,050	\$108,603	\$27.31	\$11,934	\$143,214	\$34,610
Employee & Dependents	444	\$62.72	\$27,848	\$334,172	\$81.67	\$36,261	\$435,138	\$100,966
Total	881		\$36,898	\$442,775		\$48,196	\$578,351	\$135,576

\$200,000 Specific Stop Loss Deductible - 125% Aggregate Level								
Type of Coverage	Number Enrolled	Monthly Rate	Premium		Monthly Rate	Premium		Amount of Change
			Monthly	Annual		Monthly	Annual	
Employee Only	437	\$20.71	\$9,050	\$108,603	\$23.46	\$10,252	\$123,024	\$14,421
Employee & Dependents	444	\$62.72	\$27,848	\$334,172	\$71.74	\$31,853	\$382,231	\$48,059
Total	881		\$36,898	\$442,775		\$42,105	\$505,255	\$62,480

Premium Differential \$175,000 vs \$200,000 Specific Stop Loss Deductible \$73,096

The plan would be benefited by the higher specific stop loss deductible and lower premium with three claims or less in excess of \$200,000.

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AGGREGATE STOP LOSS – PREMIUM ANALYSIS

THE CITY OF FORT SMITH AGGREGATE STOP LOSS PREMIUM ANALYSIS									
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Type of Coverage	Number Enrolled	Monthly Rate	Premium		Monthly Rate	Premium		Amount of Change
			Monthly	Annual		Monthly	Annual	
Employee Only	437	\$2.88	\$1,259	\$15,103	\$3.92	\$1,713	\$20,556	\$5,454
Employee & Dependents	444	\$2.88	\$1,279	\$15,345	\$3.92	\$1,740	\$20,886	\$5,541
Total	881		\$2,537	\$30,447		\$3,454	\$41,442	\$10,995

Type of Coverage	Number Enrolled	Monthly Rate	Premium		Monthly Rate	Premium		Amount of Change
			Monthly	Annual		Monthly	Annual	
Employee Only	437	\$2.88	\$1,259	\$15,103	\$3.95	\$1,726	\$20,714	\$5,611
Employee & Dependents	444	\$2.88	\$1,279	\$15,345	\$3.95	\$1,754	\$21,046	\$5,701
Total	881		\$2,537	\$30,447		\$3,480	\$41,759	\$11,312

Premium Differential \$175,000 vs \$200,000 Specific Stop Loss Deductible -125% Aggregate Level **-\$317**

Net Premium Differential Including Aggregate Premium Adjustment **\$72,779**

AGGREGATE STOP LOSS – AGGREGATE FACTOR ANALYSIS

THE CITY OF FORT SMITH AGGREGATE STOP LOSS AGGREGATE FACTOR ANALYSIS									
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Type of Coverage	Number Enrolled	Monthly Factor	Aggregate Loss Deductible - 125% Aggregate Level		Monthly Factor	Aggregate Liability		Amount of Change
			Monthly	Annual		Monthly	Annual	
Employee Only	437	\$419.35	\$183,256	\$2,199,071	\$411.91	\$180,005	\$2,160,056	-\$39,015
Employee & Dependents	444	\$1,024.85	\$455,033	\$5,460,401	\$1,006.75	\$446,997	\$5,363,964	-\$96,437
Total	881		\$638,289	\$7,659,472		\$627,002	\$7,524,020	-\$135,452

\$200,000 Specific Stop Loss Deductible - 125% Aggregate Level									
Type of Coverage	Number Enrolled	Monthly Factor	Aggregate Loss Deductible - 125% Aggregate Level		Monthly Factor	Aggregate Liability		Amount of Change	
			Monthly	Annual		Monthly	Annual		
Employee Only	437	\$419.35	\$183,256	\$2,199,071	\$419.39	\$183,273	\$2,199,281	\$210	
Employee & Dependents	444	\$1,024.85	\$455,033	\$5,460,401	\$1,025.83	\$455,469	\$5,465,622	\$5,221	
Total	881		\$638,289	\$7,659,472		\$638,742	\$7,664,903	\$5,431	

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Darendra Ince

From: alisha.perry@sunlife.com
Sent: Friday, October 28, 2011 9:15 AM
To: Darendra Ince
Subject: City of Fort Smith

Darendra,

We are declining to quote Stop Loss coverage for this group due to uncompetitive rates. Please let us know if you have any questions.

Thank you for thinking of Sun Life.

Alisha Perry
Sales Coordinator
Sun Life Dallas Group Office
13355 Noel Road, Suite 1250
Dallas, TX 75240
972.934.3871 ext. 232
972.239.7552 (fax)
alisha.perry@sunlife.com

This e-mail message (including attachments, if any) is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, proprietary, confidential and exempt from disclosure. If you are not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender and erase this e-mail message immediately.

Darenda Ince

From: Iqbal, Natasha A [natasha.iqbal@hminsurancegroup.com]
Sent: Monday, November 07, 2011 8:45 PM
To: Darenda Ince
Cc: Lucio, Albert; DallasRegOff; GallagherQuotes
Subject: City of Ft Smith

Darenda,

Thank you for the recent submission.

Unfortunately, at my best discounting, I am still 45% to the current spec premium.

I will have to issue a DTQ.

Please let me know if you have any questions.

Thanks,
Natasha

****Effective immediately, please submit all rfp and renewal submissions to gallagherquotes@hminsurancegroup.com**

Natasha Iqbal
Marketing Underwriter
HM Insurance Group
120 Fifth Avenue, P6102
Fifth Avenue Place
Pittsburgh, PA 15222
phone (412)544-1965
toll free (800)662-0849 x41965
call (412)315-9519
fax (412)544-1311

Darendra Ince

From: Olson, D. (Debi) [Debi.Olson@us.ing.com]
Sent: Friday, October 14, 2011 10:21 AM
To: Darendra Ince
Subject: City of Fort Smith Stop Loss

Darendra,

Thank you for including ING/ReliaStar Life Insurance Company in your marketing efforts on behalf of your client, City of Fort Smith.

Regrettably, we have completed my preliminary underwriting and find that our rates are not competitive when compared to those being charged by the current carrier.

Therefore, ING must respectfully decline to quote on this group at this time.

Our rates were 147% higher than current. Darn it.

I am sorry ING could not provide you with a competitive proposal, but please keep me in mind for future marketing opportunities.

Thanks so much!

Debi L. Olson

ING Employee Benefits
Senior Sales Representative
15455 Dallas Parkway, Suite 1250
Addison, Texas 75001
Cell: 214-317-1424

ING Product Portfolio:

Life - Disability - Accident - Critical Illness - Permanent Life - Stop Loss

**A renewal presentation
for:**

City of Fort Smith

**Presented to Gallagher Benefit Services
by Kelli Merchant**

October 2011



UMR[™]

A UnitedHealthcare Company

Administrative Services

Rates effective 01/01/2012
All fees shown as per employee per month (PEPM) unless noted

<u>Administration and Access Fees</u>	<u>EEs</u>	<u>Current</u>	<u>Renewal</u>	<u>% Change</u>
Medical claims – 01/01/2012 through 12/31/2012	881	\$14.23	\$14.73	3.51%
Medical claims – 01/01/2013 through 12/31/2013	881	\$14.73	\$15.24	3.46%
Client advisor commission	881	\$1.85	\$1.85	0.00%
COBRA administration	881	\$0.95	\$0.95	0.00%
HIPAA certificates of creditable coverage	881	Included with medical administration	Included with medical administration	N/A
Stop loss interface	881	Included with medical administration	Included with medical administration	N/A
Health Reimbursement Account	881	\$3.75	\$3.75	0.00%
Employer Health Coalition - access fee	881	\$4.85	\$4.85	0.00%
Cost reduction and savings program - large bill review/fee negotiation and secondary/travel network – percent of savings		30%	30%	0.00%
Utilization and case management	881	\$2.25	\$2.32	3.11%
Maternity management	881	\$0.60	\$0.60	0.00%
Disease management	881	\$3.25	\$3.35	3.08%
Dental claims – 01/01/2012 through 12/31/2012	905	\$1.95	\$1.95	0.00%
Dental claims – 01/01/2013 through 12/31/2013	905	\$1.95	\$2.02	3.59%
Dentemax - access fee	905	\$1.10	\$1.10	0.00%
Dental client advisor commission	905	\$0.15	\$0.15	0.00%
Flexible spending administration – per participant per month	495	\$5.50	\$5.50	0.00%
Average PEPM:		\$38.11	\$38.78	1.76%
Total annual:		\$402,872	\$409,955	1.76%

Stop loss interface: A stop loss interface fee surcharge of \$1.75 PEPM applies if stop loss coverage is not placed with a UMR preferred vendor. Consult your UMR representative for a list of preferred vendors.

Additional Services

Plan Administration

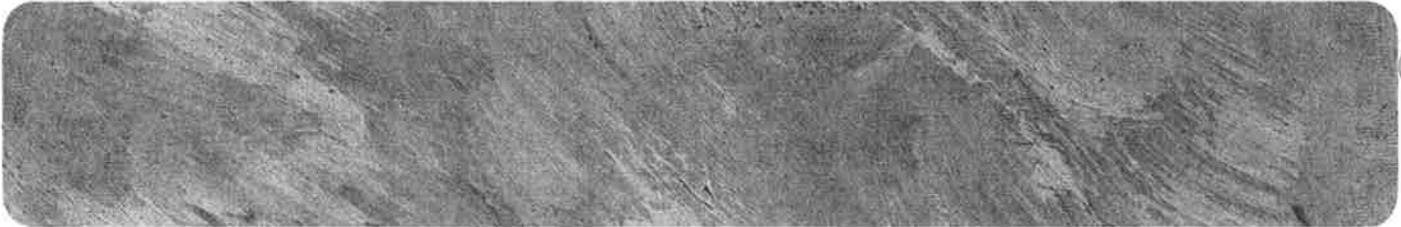
	<u>Current</u>	<u>Renewal</u>
Renewal fee	\$500.00	\$500.00
SPD printing	Cost plus postage	Cost plus postage
SPD preparation fee	No charge	No charge
SPD amendment fee	No charge	No charge
Customized ID cards - per new card set up	\$1,000	\$1,000
ID card mailing charge - employee residence	Postage charge only	Included with medical administration
New York surcharge filing and administration - annual fee	Included with medical administration	Included with medical administration
Claim reprocessing - per claim	\$25.00	\$25.00
Subrogation - percent of recoveries (contingent upon legal representation required)	25 - 33%	25 - 33%
Independent medical external reviews	N/A	Up to five included, then \$500.00 per review
Outside vendor payments – current arrangement – RxResults	No charge	No charge
Standard performance guarantee	No charge	No charge
Unbundled incentives	\$0.50	\$0.50
Electronic eligibility sent to an external vendor	No charge	No charge
Retiree billing – per retiree per month	\$6.50	\$6.50

COBRA

COBRA Administration – notification letter to new hire	\$0.15	\$0.15
COBRA – multiple lines of administration	Included with COBRA administration	Included with COBRA administration
COBRA – administration for outside carriers	Included with COBRA administration	Included with COBRA administration

Care Management

Health and wellness - Web-based clinical health risk assessment with results packet mailed to employee - per assessment	\$5.95	\$6.25
Health and wellness - paper clinical health risk assessment - per assessment	\$11.25	\$12.00
Health and wellness - lifestyle coaching	\$235.00	\$245.00
Health and wellness - quarterly wellness newsletters - per participant per quarter	\$1.60	\$1.60



Flexible Spending Accounts

Mailing statements to participants' home addresses

No charge

No charge

FSA \$0 minimum check

No charge

No charge

FSA run-in

No charge

No charge

Print FSA plan booklet and mail to client - per FSA SPD

\$1.80

\$1.80

Reporting

Ad hoc reports and analysis - per hour (10 hours included with medical administration fee)

\$100.00

\$100.00

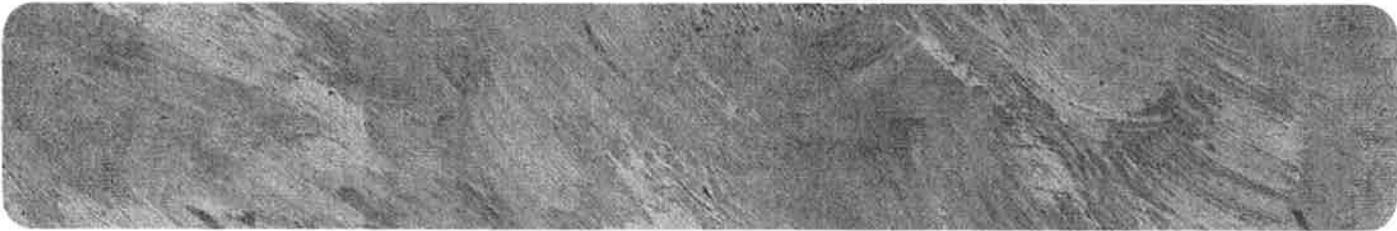
Thomson Reuters Advantage Suite reporting

Included with medical administration

Included with medical administration

Conditions

- Fees proposed require one billing, reporting, eligibility feed, stop loss and banking arrangement.
- UMR assumes all services provided will be handled according to our standard format and procedures, unless otherwise specifically addressed within this proposal. Specialized services will be priced as necessary.
- This proposal assumes the benefit plans will meet the steerage requirements of the networks proposed or will be changed to meet the requirements, including but not limited to; deductible, out of pocket, coinsurance and plan limitations. Plan design changes may impact a grandfathered health plan status. Please review any changes with your advisor.
- Fees proposed assume utilization and case management services are provided through UMR in order to access UnitedHealthcare Networks.
- UMR will offer an external review program that allows a set number of free external reviews. Once that maximum is met, customers will be charged for each subsequent external review.
- Fees proposed are subject to change if a division, subsidiary or affiliated company is added or deleted from the plan, or if the number of covered employees changes by 15 percent or more from this proposal.
- Fees proposed are based on the plan of benefits as submitted, but does not assume duplication of benefits or provisions. Fees proposed assume a standard PPO plan design with no referral administration and no primary care physician tracking. Proposal assumes that the benefit plans will meet the steerage requirements of the networks proposed or will be changed to meet the requirements, including but not limited to; deductible, out of pocket, coinsurance and plan limitations. Plan design changes may impact a grandfathered health plan status. Please review any changes with your advisor.
- This proposal is valid until the effective date and does not bind coverage or obligate UMR.
- All quoted product fees assume UMR administers the medical plan.
- To comply with the Department of Labor's (DOL) claims regulations, we encourage pre-notification of at least 60 calendar days prior to the effective date of this contract. In the event that a 60-day notice is not feasible, UMR does not guarantee, but will make every reasonable effort, to have new plan(s) programmed quickly so claims can be processed within the required DOL timelines.
- Claims reprocessing due to situations, such as retroactive benefit or eligibility changes, may require additional fees.
- UMR is not bound by any typographical errors and/or omissions contained herein.
- UMR reserves the right to adjust fees in the event of (i) any changes in federal, state or other applicable law or rules; (ii) changes in plan design required by the applicable regulatory authority (e.g. mandated benefits) or by the customer; or (iii) any taxes, surcharges, assessments or similar charges being imposed by a governmental entity on the plan or UMR.
- The Patient Protection and Affordability Care Act (PPACA) imposes certain fees and taxes on plan sponsors. For example, the "Comparative Effectiveness Fee" imposes a research fee, starting in 2012, upon all employers sponsoring a group health plan and this fee equates to a \$1.00 per participant charge per year (with an increase to \$2.00 per participant in 2013). UnitedHealthcare UMR is not responsible for these fees or taxes and has not included them in the rates and fees quoted.
- Using a non-preferred pharmacy benefits manager may require additional fees. Please refer to your UMR contact for preferred pharmacy benefits managers.

- 
- Deductible integration of prescription drug and medical claims requires daily connectivity between the pharmacy benefits manager and the plan administrator. Additional coordination fees may apply. External vendors are subject to prior approval.
 - UMR cannot support the drug data requirements for Medicare Part D subsidy submission of plans where the pharmacy claims are paid under the medical plan. We recommend these pharmacy benefits be provided by a pharmacy benefits manager.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EMPLOYEE GROUP LIFE & LONG TERM DISABILITY INSURANCE COVERAGE FOR ALL FULL-TIME CITY EMPLOYEES

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

SECTION 1: The City of Fort Smith Group Life & Long Term Disability Insurance for full-time City Employees, as reflected on the attached SCHEDULE OF BENEFITS, is hereby approved.

SECTION 2: ING, is hereby accepted as the insurance carrier to provide group life & long term disability coverage beginning January 1, 2012, is hereby approved.

SECTION 3: The City Administrator or his designee is hereby authorized to execute all documents necessary to bind coverage.

SECTION 4: All previous ordinances and resolutions in conflict with this Resolution are hereby repealed.

This Resolution adopted this _____ Day of December 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form
JSC
No publication required*

Enrollment at a Glance

A Guide to Your Plan Basics

City of Fort Smith

**Taking advantage of insurance offered at the workplace just makes sense.
It's easy, affordable and guaranteed!**

Group Life Insurance and Accidental Death and Dismemberment (AD&D) Insurance

Your employer provides you with Basic Life and Accidental Death & Dismemberment Insurance in the amount of 1 times your basic yearly earnings, rounded to the next higher \$1.00, not to exceed \$50,000.

Your employer also provides you with Basic Dependent Life Insurance:

- \$10,000 for your Dependent Spouse.
- \$10,000 on your Dependent Children from birth but less than 25 years.

Supplemental Term Life Insurance Coverage Options	
Executives and Salaried Members with annual earnings of \$55,000 or more	1, 2, 3, 4, or 5 times your basic yearly earnings, rounded to the next higher \$1.00. The amount chosen cannot exceed \$465,000. Minimum coverage amount is \$10,000.
All Other Members	1, 2, 3, 4, or 5 times your basic yearly earnings, rounded to the next higher \$1.00. The amount chosen cannot exceed \$355,000. Minimum coverage amount is \$10,000.
Your Basic and Supplemental Life coverage is portable. If you change jobs or retire before the age specified in your certificate, you can keep coverage until age 80 (may vary by state).	



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Enrollment at a Glance

A Guide to Your Plan Basics

City of Fort Smith

Taking advantage of insurance offered at the workplace just makes sense. It's easy, affordable and guaranteed!

Long Term Disability Income (LTD) coverage provides benefits to replace a portion of your lost income if you have a sickness or injury and are unable to work. LTD coverage helps assure financial support that will fill the gap between expenses and income for an extended period of disability.

Long Term Disability Income													
For You	Your employer provides a base amount of coverage to all eligible employees, which replaces up to 50% of your eligible income during disability following a waiting period. You have the opportunity to elect additional coverage.												
Benefits	<p>50% of your monthly earnings, provided by your employer</p> <ul style="list-style-type: none"> • Minimum Benefit = \$100 • Maximum Benefit = \$4,500 • Elimination Period = 90 consecutive days <p>66.76% of your monthly earnings</p> <ul style="list-style-type: none"> • Minimum Monthly Income Benefit = \$100 • Maximum Monthly Income Benefit = \$6,000 • Elimination Period = 90 consecutive days 												
Maximum Period of Payment	<table border="0"> <thead> <tr> <th>Your Age when Disability Begins</th> <th>Maximum Period of Payment</th> </tr> </thead> <tbody> <tr> <td>Less than age 66.....</td> <td>24 months</td> </tr> <tr> <td>66.....</td> <td>21 months</td> </tr> <tr> <td>67.....</td> <td>18 months</td> </tr> <tr> <td>68.....</td> <td>15 months</td> </tr> <tr> <td>69 and over.....</td> <td>12 months</td> </tr> </tbody> </table>	Your Age when Disability Begins	Maximum Period of Payment	Less than age 66.....	24 months	66.....	21 months	67.....	18 months	68.....	15 months	69 and over.....	12 months
Your Age when Disability Begins	Maximum Period of Payment												
Less than age 66.....	24 months												
66.....	21 months												
67.....	18 months												
68.....	15 months												
69 and over.....	12 months												

Long Term Disability Income	
Eligibility	All active employees working 30+ hours per week.
Coverage Available without Health Questions	This coverage is offered to you without having to answer questions related to your health if you elect it during the initial eligibility period.
Proof of Good Health	If you elect the 66.76% option more than 31 days after you are first eligible, then you must provide evidence of insurability subject to approval by ReliaStar Life.
Note that all benefits are subject to change.	



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M E M O R A N D U M

TO: Ray Gosack, Acting City Administrator

FROM: Richard B. Jones, Director of Human Resources



DATE: December 2, 2011

SUBJECT: A RESOLUTION APPROVING THE NEW CARRIER FOR GROUP LIFE INSURANCE AND GROUP LTD INSURANCE FOR CITY EMPLOYEES.

This resolution is to change our group life insurance and group long term disability insurance carrier from “The Standard” to “ING” effective January 1, 2012. The Standard has been the group life and group LTD carrier for the city since March of 2000. For the first time since The Standard was selected in 2000 another insurance carrier, ING has provided a quote that is significantly less than our current rates. The table shows a comparison of our current cost to the proposed cost.

	The Standard Current	The Standard Proposed	ING Proposed
Annual Premium	\$668,457	\$585,660	\$509,930
Projected Cost Reduction	N/A	\$82,796	\$158,526

The reason for the reduction is that life insurance rates have become favorable in the last year allowing the city to provide an equal benefit to employees at a significantly reduced rate. The rate is guaranteed for three years.

I recommend approval of this Resolution.

13 E

RESOLUTION NO. _____
RESOLUTION ADOPTING THE 2012 AUDIT PLAN

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

SECTION 1: The 2012 Audit Plan attached is hereby adopted.

Passed and Approved this _____ Day of _____, 2011.

Approved

MAYOR

ATTEST:

CITY CLERK

*Approved as to form
JSL
No publication required*



MEMORANDUM

DATE: December 2, 2011

TO: Mayor Sanders, Board of Directors, Ray Gosack

FROM: Mitzi Kimbrough, Internal Auditor *mitzi*

SUBJECT: 2012 Audit Plan

I am pleased to offer this 2012 audit plan for your approval.

Due to two major projects that were not included on the 2011 Audit Plan some of the plan areas from fiscal year 2011 were not addressed. Those two major projects included developing a pilot program of four departments to implement key performance indicators and managing the efficiency study of the Water and Sewer operations. These two projects are ongoing and will continue into 2012.

The table shown on page 4 of the attached plan details the general project schedule for 2012.

If you have any questions or would like to discuss the 2012 audit plan, please contact me at your convenience.



City of Fort Smith, Arkansas

FY 2012 Internal Audit Plan

December 2, 2011



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Overview

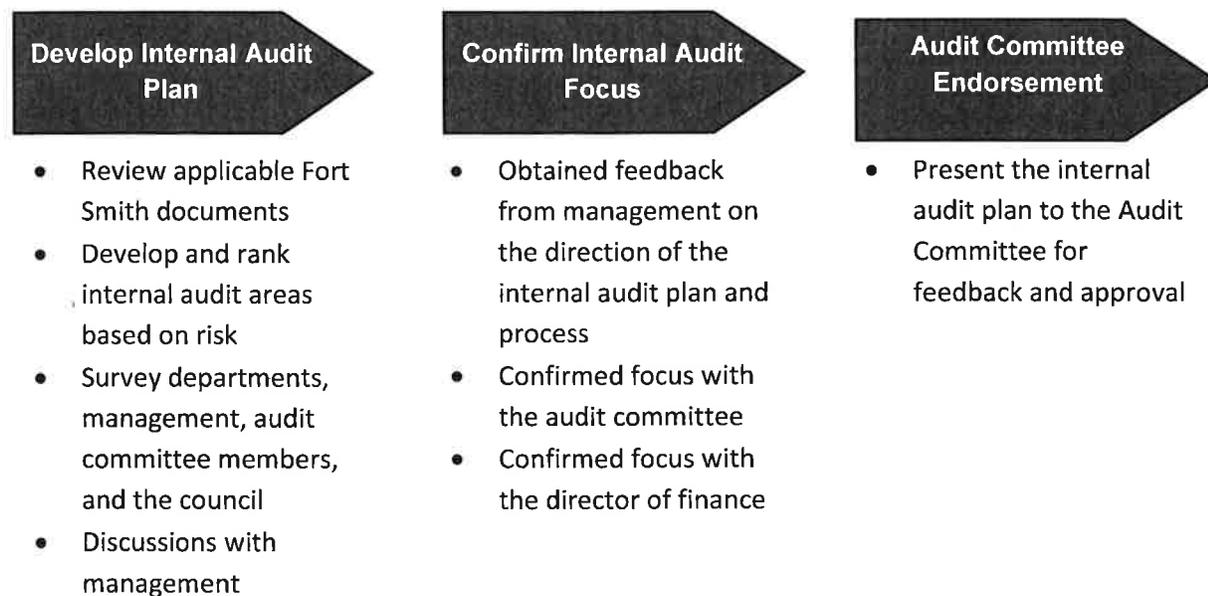
The City of Fort Smith (the City) internal audit department (IA) is pleased to present the City’s third internal audit plan. The *Internal Audit Plan* (“the Plan”) is to provide a description of the methodology for creating the plan, the responsibility of executing the plan, and the goals for the fiscal year. The information provided in the internal audit plan represents a baseline internal audit plan that will be used over the 2012 fiscal year.

Methodology

The Plan was created using a risk based approach. Generally, the risk based approach took into account several important factors in determining the significance of each program, department, contractor, or other area. Some of the factors considered in the creation of the Plan were as follows:

- Audit history
- Internal control structure
- Management oversight
- Funding sources
- Revenue and expenditure size

Due to an unexpected increase in unplanned activities, some of the plan areas from fiscal year 2011 were not addressed. In addition to the areas listed above, the fiscal year 2011 Plan served as the basis for the fiscal year 2012 plan. The development of the fiscal year 2011 plan involved a number of different activities and considerations, which are presented below. These considerations and steps were included in the current Plan.





The City examined each factor and any required supporting documents to determine the relative rankings. Combined with audit judgment, these factors were considered and ranked resulting in the enclosed Plan for fiscal years 2012.

Responsibility

The Plan is the responsibility of the City's IA function and specifically the Internal Auditor. That being said, cooperation from City departments is required for seamless operations and execution of the Plan. The Internal Auditor has the responsibility to oversee the progress of the Plan, produce effective audit reports, periodically update management as to the status of the Plan, and recommend or suggest any modifications to the Plan during the execution period. If certain events occur, the Internal Auditor will provide management and/or the Audit Committee with a proposed update to the Plan and seek management's feedback and approval of the changes. With any Plan, future uncertainty cannot be predicted with one-hundred percent accuracy.

In addition, management personnel have the responsibility to support the execution of the Plan. Without the support of the various departments, employees, and City Administration, the Plan will not be completed in a timely, efficient manner. Management personnel have the responsibility to provide documents, interview and observation time, respond to reports, and support the IA department in other similar ways.

Goals

In conjunction with the Plan, the IA function has developed a series of high-level goals to complete during the execution period of the Plan. These goals are meant to provide additional direction to the City's IA function in executing its mission.

- Complete the Plan in full
- Provide effective reports to all parties
- Timely follow-up on issued reports
- Fully implement TeamMate
- Consider creating a fraud policy

Some of the noted goals will require support for other areas outside of the IA function. As such, modifications to the goals may be necessary based on unforeseen circumstances.



Internal Audit Plan

From the various planning steps completed above, the following items were deemed to be appropriate internal audit projects for fiscal year 2012. The following table details the general project schedule for the execution period of the Plan. The table is not intended to provide a detailed breakdown of each project, but to present the overall number of projects, areas, and types of audits.

Project Number	Project Area	Type
1	Engineering – Inspector’s Procedures	Audit
2	Court – Revenue and Controls Data Analysis	Consulting
3	Parks and Recreation – Purchasing	Audit
4	Franchise Fees – Electricity	Audit
5	Ethics and Fraud Policy	Consulting
6	Petty Cash	Audit - Ongoing
7	Police – Drug Buy Money	Audit – Ongoing
8	Homestead Credit Monitoring	Audit – Ongoing
9	Overtime and Payroll	Audit – Ongoing
10	Water and Sewer Efficiency Study	Consulting
11	Selected Department Key Performance Indicator	Consulting
12	Cash Handling Policy Implementation Support	Consulting
13	Grant Management	Audit

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO
A LEASE AGREEMENT WITH FLOATING ROCK, LLC AND NOAH STEFFY FOR
OPERATION OF A BOAT RENTAL STAND AT CAROL ANN CROSS PARK

WHEREAS, Floating Rock, LLC and Noah Steffy, have been operating a boat rental stand at Carol Ann Cross Park for the past three years and requests to continue to do so;

WHEREAS, the City of Fort Smith Parks and Recreation Commission recommends the approval of the agreement with Floating Rock, LLC and Noah Steffy, to continue operation of the boat rental stand at Carol Ann Cross Park;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

Section 1: The Mayor is hereby authorized to execute an agreement with Floating Rock, LLC and Noah Steffy. The term of the lease shall be for the years 2012 through 2014.

This Resolution passed this _____ day of December, 2011.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

JSC

No publication required npr



Memo:

December 2, 2011

To: Ray Gosack, City Administrator
From: Mike Alsup, Parks and Recreation Director *Mike Alsup*
Re: Renewal of lease agreement with Floating Rock, L.L.C., Noah Steffy

The Parks and Recreation Commission recommends renewing the lease agreement with Floating Rock L.L.C., Noah Steffy, for an additional three (3) year term. Noah and his family have operated the pedal boat rental facility the last three (3) years and wish to continue. This year they added a canoe and kayaks to the boats rented, and they sell cold drinks and ice cream.

The rental facility operates from the first of May to the end of October. The days of the week and times have varied due to weather extremes. The basic hours of operation are Tuesday through Friday, noon till sunset and Saturday and Sunday from 11:00 a.m. till sunset. Rental rate is \$10 for a half hour or \$15 for an hour. The State of Arkansas boating safety laws are followed; life vests are furnished.

The City receives 15% of the after tax gross receipts. Receipts to date are \$1,409.49 for 2009; \$1035.84 for 2010; and \$934.46 for 2011. A total of \$3,379.79 has been received.

Attachment

LEASE AGREEMENT

This Lease Agreement made and entered into this ___ day of _____, 2011, by and between the City of Fort Smith, Arkansas, hereinafter referred to as the "City," and, Floating Rock, LLC and Noah Steffy, hereinafter referred to as "Lessee":

WITNESSETH:

For and in consideration of the covenants and agreement as herein set forth, the parties agree as follows:

1. The property to which this lease applies is located in Carol Ann Cross Park in the City of Fort Smith, Sebastian County, Arkansas, and is a ten (10) foot wide by twenty (20) foot long [10' x 20'] tract as shown on the attached satellite map, together with a non-exclusive right to utilize the water area of the lake at Carol Ann Cross Park.

2. The City does hereby lease and rent unto the Lessee and the Lessee does hereby take and rent from the City the above described tract and the non-exclusive right to utilize the water area of the lake for the sole purpose of operating a small, non-powered boat rental business (pedal boats) and concessions. Photographic and brochure description(s) attached.

a. The Lessee shall have the right to request to add related concessions to the boat rental stand subject, however, to the prior written approval by the City Administrator or his designated agent. Such approval shall not be unreasonably withheld. Rental transactions, sales, and record(s) will be kept with both a cash register computer and a written receipts ledger.

3. Term. Subject to the conditions and termination provisions of this lease, this lease shall authorize Lessee to operate the non-powered boat rental business and concessions on

the leased premises during the years 2012 through 2014.

4. Rental. Lessee shall pay to the City as rent for the leased property fifteen percent (15%) of the gross receipts, exclusive of taxes, derived from the operation of the said boat rental business and concessions. The rental shall be payable to the City at the City's usual business address on a monthly basis, said payments being delivered to the City by the 15th day of each calendar month for the said percentage of the gross receipts for the previous calendar month for all calendar months, or part thereof, the business is operated. If said rental payment is not paid by the 15th day of each calendar month, there shall be added a ten percent (10%) late charge.

5. The Lessee shall have the right to establish the rates to be charged customers of the boat rental stand and concessions subject, however, to the prior written approval by the City Administrator or his designated agent. Such approval shall not be unreasonably withheld. Rental transactions and record(s) will be kept both with a cash register computer and a written receipts ledger. The initial rental rate schedule is attached.

6. The Lessee shall maintain in full force and effect, commencing with the execution of this lease and continuing throughout the term hereof, public liability insurance providing at least \$1,000,000 coverage for the general public and with contracts coverage for protection of the obligations of this lease.

7. The Lessee expressly assumes full responsibility for all damages and injuries which may result to any person or property by reason of the operation of the said boat rental business and concessions and agrees and covenants to indemnify and hold harmless the City against all claims and judgment, and the legal fees and costs associated with the defense

thereof, of any kind growing out of such operation of the boat rental stand and concessions.

8. The Lessee agrees to maintain and keep in a reasonable state of repair all equipment and premises used in the operation of said boat rental business and concessions. The Lessee shall maintain the operating premises in a neat and orderly condition, including mowing and trimming, and shall keep the leased premises clean and free of litter. Lessee agrees to keep the Carol Ann Cross lake drainage structure and all shoreline cleared of trash and debris while the business is in operation.

9. Lessee agrees to be responsible for maintaining decorum and order upon the leased premises.

10. Lessee agrees to operate the said boat rental stand business according to the schedule submitted each year during the term, and said hours need to be posted for public viewing, any change in said hours of operation to be subject to the prior written approval of the City Administrator or his designated agent.

11. Lessee agrees to maintain accurate books and records with reference to the operation of said boat rental business and concessions, and, at the City's request, shall submit periodic financial reports to the City Administrator or his designated agent. The City has the right to examine Lessee's books and records at all reasonable times and places.

12. The agents of the City shall be provided reasonable access to the leased premises for any purpose related to the City's ownership of the property and in order to insure that the property is being managed in accordance with this lease agreement.

13. The Lessee shall not, without the prior written consent of the City Administrator or his designated agent, assign this lease or sublet the leased premises or any part thereof.

14. It is expressly understood and agreed by the parties that the Lessee takes the premises "as is". The City makes no warranties with reference to the premises being leased to the Lessee, and the Lessee expressly acknowledges that there are no implied warranties of fitness for the Lessee's purposes, or otherwise, by reason of the City's lease of these premises to the Lessee.

15. Subject to the prior written approval of the type of building by the City Administrator or his designated agent, the Lessee may deliver to the leased premises one portable building for the operational purposes of the permitted rental business. Any other construction of structures or placing of structures on the lease premises shall require the prior written approval of the City Administrator or his designated agent. At the termination of this lease, the portable building shall be removed by lessee; and if it is not so removed after thirty days notice to the address below, the City may cause same to be removed and destroyed.

16. Emergency Cessation of Operations. In the event the City Administrator through his designated agents determines that the operation of the rental business is being conducted in such a manner as to adversely affect the safety of the customers of the business or the general public utilizing Carol Ann Cross Park, the City Administrator shall have the authority to issue a written notice for the Lessee to cease operations immediately. The Lessee agrees to comply with any such emergency order. The notice shall specify the safety concern resulting in the issuance of the notice. The Lessee shall have the right to an immediate (within three business days) hearing with the City Administrator for the purpose of discussing the emergency notice. Any disagreement between the Lessee and the City regarding the issuance or continuation of the emergency notice shall be subject to review by the Board of Directors

of the City of Fort Smith according to the agenda rules of the City. The safety violations which might result in the issuance of an emergency order would include the accumulation of information by the City Administrator through his designated agents that customers of the boat rental business were being permitted to operate boats on the lake in violation of the State of Arkansas law regarding boat safety.

17. Lessee agrees that any failure to pay the rental due under this lease on time, or default by Lessee of the performance of any of the agreements contained herein to be kept and performed by Lessee, will serve as a basis of forfeiture of Lessee's rights under this lease agreement. Except as provided in paragraph 16, in the event of a default by Lessee of the performance of any covenant of this lease, the City shall make written demand, hand delivered or sent by United States Mail, to the Lessee that such default be cured within thirty (30) calendar days. In the event that the defect is not cured as provided in this paragraph, the City shall have all remedies available at law and may immediately proceed with same. Specifically, and without limitation on the City's remedies otherwise available, in the event that the Lessee fails to cure, according to the provisions of this paragraph, this lease shall terminate and the leased premises, together with all improvements thereon, shall forthwith revert to the City by operation of law.

18. This Agreement shall be binding upon and inure to the benefit of all respective heirs, successors and assigns of the parties hereto.

19. In the event all of the leased premises, or such part thereof as renders the leased premises unsuitable for use in the activity or business of the Lessee, become necessary or desirable for public improvements of the City, then the terms of this lease shall cease and

terminate after three (3) months notice to the Lessee.

20. Time is of the essence as to all provisions of this lease.

21. Notice. Any notice required to be given by one party of this Agreement to the other shall be considered to be effectively delivered if placed in the United States mail with adequate postage attached for delivery to:

City of Fort Smith, Arkansas
Attn: City Administrator
P.O. Box 1908
Fort Smith, Arkansas 72902-1908

Noah Steffy
Floating Rock, LLC
2405 High Street
Fort Smith, Arkansas 72904

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first set forth above.

CITY OF FORT SMITH, ARKANSAS

By: _____
Mayor

ATTEST:

City Clerk

Lessee

**MEMORANDUM**

December 1, 2011

TO: Mayor and Board of Directors**FROM:** Ray Gosack, City Administrator**SUBJECT:** Van Buren Water True Up

At the November 29th special board meeting, a motion and second were made to have discussion about the Van Buren water true up at the December 6th regular board meeting. The following information is attached to assist with this discussion:

- November 10, 2011 report from the internal auditor. This report includes a copy of the settlement agreement which provides for the true up payment.
- November 14, 2011 memo from the city administrator. This memo includes a letter from the city attorney about the 2009 true up payment.
- November 16, 2011 letter from the city administrator to Van Buren requesting payment for the 2009 true up.
- November 21, 2011 letter from Van Buren Municipal Utilities Commission responding to Fort Smith's invoice for a 2009 true up payment.
- November 22, 2011 letter from the City of Van Buren responding to Fort Smith's request for a joint meeting of the Fort Smith board, Van Buren city council, and Van Buren utilities commission.
- Summary of Van Buren's water usage and billings (without true up amounts) for 2006-2010.

Key issues which will need to be decided include whether or not to pursue a payment for the 2009 true up, and the payment terms proposed by Van Buren on page 3 of its November 21, 2011 letter. We must also consider if we're willing to risk the

tentative settlement of the 2006, 2007 and 2008 true up amounts in pursuit of a claim for the 2009 true up. The city attorney has advised that we have a low chance of succeeding on a legal claim for a 2009 true up.

If there's any questions or a need for more information, please let me know.

Ray

Attachments



BOARD INFORMATION

MEMORANDUM

DATE: November 10, 2011

TO: Mayor Sanders, Board of Directors, Ray Gosack, Kara Bushkuhl, Steve Parke, Audit Committee

FROM: Mitzi Kimbrough, Internal Auditor *mk*

SUBJECT: Van Buren True-up Calculations

The Internal Audit Department was asked by Director Philip Merry to determine why the 2009 true-up amount was not calculated in 2010 and what the city can do to prevent these kinds of happenings in the future.

The City of Fort Smith sells the City of Van Buren water under a 1984 agreement that was later amended by a settlement agreement following rate litigation. The settlement agreement includes an annual true-up calculation option that compares the actual costs of providing water to Van Buren with the amount actually paid for water for the immediately preceding year. If the costs exceed the amount paid, then the City of Van Buren owes the City of Fort Smith the difference. If the costs are less than the amount paid, then Fort Smith would reimburse Van Buren for the overpayment.

A comparison of costs for 2004 and 2005 did not result in a request for a true-up calculation by either city. The first year the two cities did not reach a mutual agreement on an amount due was 2006. Subsequently, the 2007 and 2008 true-up calculations were made, but no agreement on the amounts due were mutually agreed upon for those years. The City of Van Buren made some payments on the amount they believed was due for the 2006 true-up; however, the City of Fort Smith finance department did not deposit these payments because they believed that would be legal acceptance of the amount due for the 2006, which Fort Smith had not agreed to.

During the first quarter of 2009, Fort Smith revenues were much lower than had been expected and then City Administrator Dennis Kelly, determined, along with other cost

saving measures, not to hire replacements for employees that were not in critical positions. In March, 2010 the financial analyst for the city resigned his position. The financial analyst prepares the annual true-up calculation for 2009 beginning in approximately July, of 2010. Since the financial analyst resigned before July, 2010 the true-up process for 2009 was not begun.

I spoke with Dennis Kelly on the phone in October, 2011 and he was aware of the dispute with Van Buren over the true-up calculation. He also said that he had developed a relationship with Mayor Freeman of Van Buren during 2009 and 2010 and that they had briefly mentioned that they should begin discussions about the true-up amounts in early 2011. Dennis Kelly also stated that he and Kara Bushkuhl had discussed the true-up and that he was planning to work on it after the elections in November of 2010. Kelly was discharged of his duties in November of 2010. Based on my research, I do not believe that Kara Bushkuhl or Dennis Kelly were aware of any deadlines regarding the true-up.

During 2011 the City Administrator, Ray Gosack, lifted the freeze on the financial analyst position and a financial analyst has been hired and is currently shown in the 2011 budget as reporting directly to the Director of Utilities. Prior to 2011, the financial analyst reported to the assistant director of finance. The financial analyst position was transferred to the Water and Sewer utilities because the responsibilities of the job include maintaining the water rate model and the true-up calculations. When the position was established under finance the employee was going to be used city-wide for rate models such as sanitation and other areas; however, as time elapsed the financial analyst only worked on the water rate model and the true-up calculations. Since the employee was working so closely with the water and sewer department, the decision was made to move the employee to the Kelly Highway location and report to the Director of Utilities.

Burns & McDonnell were hired during 2010 to verify the true-ups for 2006 through 2008 and assist the city with 2009 and 2010 true-ups. Representatives of the City of Van Buren have been involved with the calculations of the true-ups which total approximately \$581,000 for 2006 through 2008. I have not calculated or audited any of the true-up amounts and do not attest to their accuracy.

The true-up calculation was established by the Supplement to Final Settlement and Release Agreement passed by Resolution No. R-262-02 which is attached. The agreement states that within sixty days of the completion of the Fort Smith's audited CAFR for the year 2004 and subsequent years through 2021, Fort Smith will provide Van Buren with a comparison of actual and projected revenues and expenses. The comparison was not given to Van Buren within sixty days of the completion of the 2009 CAFR; therefore, the 2009 true-up amount may or may not be collectible. Jerry Canfield has been asked for guidance on this matter. Per administration, the true-up amount for 2009 has been calculated as approximately \$250,000 plus and the true-up amount for

2010 resulted in \$35,000 being due to Van Buren. I have not verified this amount and do not attest to its accuracy.

What can the city do to prevent these kinds of happenings in the future? Cross training where possible is the best preventative measure. Moreover, when cross training is not an option, job descriptions and procedure outlines including **deadlines** should be readily available to the department head.

R-262-02

City of Fort Smith
Copy

SUPPLEMENT TO FINAL SETTLEMENT AND RELEASE AGREEMENT

This SUPPLEMENT TO FINAL SETTLEMENT AND RELEASE AGREEMENT

("Supplement") is made and entered into by and between the City of Van Buren, Arkansas, and the Van Buren Water and Sewer Commission (collectively referred to as "Van Buren"), and the City of Fort Smith, Arkansas ("Fort Smith") on this 18th day of October, 2002. Van Buren and Fort Smith will be referred to collectively in this Supplement as "the parties."

WHEREAS, Van Buren and Fort Smith entered into a Final Settlement and Release Agreement on December 19, 2001, to settle a lawsuit between them alleging that Fort Smith breached the parties' 1983 Agreement regarding the impoundment of water on Lee Creek in Crawford County and the furnishing of water from the Fort Smith impoundments to Van Buren ("the 1983 Agreement");

WHEREAS, the parties agreed in their settlement to submit to binding arbitration the determination of a method for computing the rate under Paragraph 3, Subparagraph Second, of the 1983 Agreement that Van Buren shall pay for water purchased from Fort Smith for the years 2004 through 2021;

WHEREAS, the parties desire to define the elements of the Rate Model that shall be used to determine the rate under Paragraph 3, Subparagraph Second, of the 1983 Agreement that Van Buren shall pay for water purchased from Fort Smith for the years 2004 through 2021, and to define the circumstances and the manner in which that Rate Model may be adjusted during that

time period;

WHEREAS, this Supplement does hereby incorporate by reference the parties' Final Settlement and Release Agreement executed on December 19, 2001, and augment that agreement by the addition of the mutual promises and agreements contained in this Supplement;

WHEREAS, the parties acknowledge that full, valid, and binding consideration exists for the execution of this Supplement and that such consideration includes conformance to the unique contract provisions regarding water rates and other matters in the 1983 Agreement and the mutual promises contained herein;

NOW THEREFORE, in consideration of the mutual terms, conditions, and agreements contained herein, the parties acknowledge and agree as follows:

1. Regarding the issue submitted to arbitration, Van Buren and Fort Smith agree that the "Rate Model" (identified below) shall be utilized to determine water rates and charges imposed by Fort Smith on all of its classes of customers (subject to paragraph 7 below) including the water rates and charges that Van Buren shall pay for water purchased from Fort Smith beginning with the year 2004, including the adjustments directed by the Arbitrators' Award of September 20, 2002, and the parties' agreement as requested by the Arbitrators' Award regarding the following issues raised by Van Buren and presented to the Arbitrators for decision:

1. Regarding Fort Smith's "indirect costs" of operation, those costs directly linked to water service shall be included in the costs charged to Van Buren as currently reflected in the Rate Model and no portion of the following Fort Smith general, overhead "indirect costs" shall be charged to Van Buren: Budget Account 4100 (Mayor); Budget Account 4101 (Board of Directors); Budget Account 4102 (City

Administrator); Budget Account 4103 (Dev/Engineer); Budget Account 4105 (City Clerk); Budget Account 4106 (Planning and Zoning); Budget Account 4204 (City Attorney); Budget Account 4405 (Internal Audit);

2. Operation and maintenance and capital related costs for transmission system facilities located south of the Arkansas River may be included in the costs charged to Van Buren in the Rate Model provided "transmission system facilities" shall only include water lines 16" and greater in diameter now in service, new water lines 24" and greater in diameter and placed into service after the date of this Supplement and the existing 12" lines and other lines identified in yellow on the attached map marked as Exhibit 1 and incorporated herein; and,
3. No portion of pumping and storage facilities other than those located at treatment plants shall be allocated to the costs utilized to determine the rates and charges to Van Buren.

The Rate Model shall be based on the Award attached hereto, the foregoing agreements and the following AWWA methodologies incorporated into the Rate Model:

1. Cash basis of determining revenue requirements;
2. Forward looking test years;
3. Use of utility basis of cost allocation and allocation of costs except as may be modified by the Award herein. It is agreed by the parties that the term "utility basis of cost allocation" means allocation of capital costs to cost functions on the basis of net book value with any appropriate adjustments, and allocation of operation and maintenance expense to cost functions.

4. Commodity - demand basis of cost allocation.

The Rate Model is identified by the attached electronic format and schedules of inputs and outputs.

2. The Rate Model shall be audited regarding water rates and charges by Mr. Chris Woodcock and his firm, Woodcock & Associates, Inc., for accuracy, consistency and compliance with AWWA Manual M-1 (Fifth Edition), the implementation of the September 20, 2002, Award herein, and this Supplement; provided, the audit shall not include an examination of the engineering and operation assumptions and cost allocations incorporated into the Rate Model except as impacted by any Award and the agreements stated herein. Woodcock & Associates, Inc. may consult with such persons deemed appropriate in conducting the audit. Although this audit is a part of the arbitration process, it may be conducted by Mr. Woodcock and his firm as they would perform normal consulting services. Any change or adjustment proposed from the audit shall be incorporated into the Rate Model unless a party objects to such change or adjustment and that objection is sustained by the other two Arbitrators. The cost of the audit shall be borne equally by the parties.

3. The parties agree that an Unaccounted for Water Study ("Study") will be accomplished according to the protocol attached as Exhibit 2 at a cost shared equally by the parties. The preliminary result of the Study will be provided to the parties by January 1, 2004. Either party may comment on the Study in writing by February 20, 2004. The final result of the Study shall be stated in writing by March 15, 2004. The final result shall be incorporated into the Rate Model unless any written objection of a party is sustained by the Arbitrators. The unaccounted for water approved factor resulting from the Study shall continue to be used in the

Rate Model until Fort Smith has completed a subsequent unaccounted for water study according to the foregoing protocol for a subsequent twelve (12) month period. The preliminary unaccounted for water factor for the year 2004 to be used in the Rate Model shall be 9.7 % as used and applied in the Arthur Young study of 1986. The finally determined 2004 unaccounted for water factor will be used in the year 2004 "true up" as provided for in paragraph 4.A.1. below.

4. The parties agree that during the period of the years 2004 through 2021, the Rate Model or its inputs may be changed so as to produce an adjusted rate that Van Buren shall pay for water purchased from Fort Smith in only the following two manners:

A. Utilizing the Rate Model and without performing an independent cost of service analysis, the data inputs and allocation formulae (and resulting rate and charges for Van Buren) may be adjusted by Fort Smith under either of the two following circumstances:

1. Within sixty (60) days of the completion of Fort Smith's audited CAFR for the year 2004 or any subsequent year through 2021 ("the reported year"), Fort Smith will provide Van Buren with a comparison of actual and projected annual revenues, other income, O & M expenses, capital expenditures, capital additions and retirements to plant, fund transfers, and billed water volumes, and other projected factors (including Fort Smith's then current CIP) in the Rate Model. The projected values shown in this comparison shall be those recognized as data inputs to that Rate Model application used as the basis for the water rates in effect during the reported year. The actual values corresponding to each of these projected values shall be shown for purposes of comparison. At the reasonable request of Van Buren representatives, Fort Smith will provide timely responses, explanations, and supporting information regarding any reported values.

Van Buren will also have the right of access to Fort Smith's records to perform at Van Buren's expense an independent audit of any or all the information provided. Within sixty (60) days of its receipt of this comparison, Van Buren may elect to have Fort Smith prepare a "true up" of the Rate Model in which it will substitute actual values for the projected values recognized in deriving the rate in effect during the reported year. Fort Smith may accomplish the "true up" regardless of the Van Buren election. The resulting allocation of costs of service and rates and charges applicable to Van Buren will be applied to actual Van Buren billed sales volume and compared with actual billings for the period to derive the adjusted charges applicable to the reported year. The adjustment may apply only to Van Buren without applying to all classes of customers. The parties will negotiate in good faith regarding any differences concerning the "true up." Any dispute which the parties cannot resolve will be subject to arbitration according to the procedures set forth in the parties' Arbitration Agreement of December 19, 2001 ("Arbitration Agreement"). Upon completion of the resolution of the "true up" for the reported year, the appropriate adjustment (either positive or negative) for the reported year shall be applied (either as an additional charge or a credit against charges) in the immediately following annual period (1/12 of the adjustment applied to each calendar month's bill). Any costs associated with the calculation of the adjusted charges (i.e., the costs of entering the actual values presented in Fort Smith's annual comparison of actual and projected data input values into the Rate Model, using the Rate Model to calculate adjusted rates and charges for the reported year, and calculating the amount of added charges or credits due) shall be payable by the party financially benefitting from the adjustment.

2. Fort Smith, at its expense, so long as it does not change the methodologies identified in paragraph 1 above, may amend the data inputs and allocation formulae in the Rate Model to reflect then current information; provided then current information shall be in the form of Fort Smith officially approved studies or budgets. For example, and not as a limitation on the types of change which might be made, Fort Smith may adjust the Fort Smith capital improvement program (CIP) expenditures utilized in the Rate Model to reflect modifications Fort Smith has made in the CIP or to reflect more accurate information regarding cost of individual elements of the CIP. Upon determination of information which Fort Smith desires to propose as a basis for amending the information in the Rate Model so as to produce a future rate for water purchased by Van Buren, Fort Smith shall provide a complete copy of the Rate Model application as adjusted and identify in writing the adjusted information and the basis therefore and the proposed resulting rates and charges to Van Buren at least sixty (60) days prior to implementing the new rate. Van Buren may object, in part or in whole, to the inclusion of the new information and the proposed new rate within the sixty (60) day period. The parties will negotiate in good faith a resolution of the issue. If the issue is not resolved by the parties within ninety (90) days of the effective date of the new rate, either party may submit the matter for determination according to the arbitration procedures set forth in the parties' Arbitration Agreement. Any disputed portion of the proposed additional rate (but not the previous rate) will be escrowed, with interest, during the period of dispute resolution and paid to the prevailing party at the conclusion of the proceeding. No charge shall be imposed on Van Buren under any version of the Rate Model as authorized in this paragraph 4.A.2. unless rates as then determined for all classes of customers shall be adopted

simultaneously by Fort Smith.

B. At any time Fort Smith proposes to change the Rate Model by changing any of the procedures, methodologies or pricing structures identified in paragraph 1 above, the change shall require Fort Smith to conduct a new cost of service analysis. In such event Fort Smith shall provide Van Buren with a written statement of the cause it believes warrants such a change; provided, however, such statement shall not limit the analysis and shall not be a basis of challenge of any rate resulting from the analysis. Any cost of service analysis shall be performed utilizing the latest American Water Works Association approved methodologies and shall give full force and effect to the 1983 Agreement as interpreted by the Award and agreements herein. Any cost of service analysis shall be performed by a professional rate consultant mutually acceptable to both Fort Smith and Van Buren. In such event, Fort Smith shall propose in writing to Van Buren a professional rate consultant. Van Buren shall accept or reject Fort Smith's proposal within thirty (30) days of receipt of the Fort Smith proposal. If Van Buren rejects the Fort Smith proposal, Van Buren shall propose a substitute professional rate consultant. The parties shall negotiate in good faith to reach a mutually acceptable professional rate consultant. If the dispute is not resolved within ninety (90) days, any party may cause the issue to be submitted for determination by arbitration according to the procedures set forth in the parties' Arbitration Agreement. The award of the arbitrators shall result in the selection of a professional rate consultant of national reputation and familiarity with the methodologies approved by the American Water Works Association, and familiarity with wastewater rate issues and any wastewater standards to which Fort Smith is contractually bound with any wastewater user of the Fort Smith system. The cost of service analysis shall determine, as to Van Buren, a rate that Van

Buren shall pay for water purchased from Fort Smith according to paragraph 3, subparagraph second, of the 1983 Agreement. Van Buren shall have the right to periodically inquire of the rate consultant and to review all then existing work papers and data compilations. No charge shall be imposed on Van Buren under any version of the Rate Model as authorized in this paragraph 4.B. unless rates and charges as then determined for all classes of customers shall be adopted simultaneously by Fort Smith.

5. The rate model resulting from an additional cost of service analysis shall be subject to change according to the procedures of paragraph 2A above.

6. In any subsequent arbitration proceeding conducted pursuant to this Supplement, the Arbitrators shall award the cost of arbitration, limited to Arbitrator expenses and arbitration hearing expenses, but not including the parties' witness and legal expenses and fees, to the party the arbitrators determine to be the prevailing party.

7. There is no intention of Van Buren and Fort Smith to obligate Fort Smith to determine rates and charges for users of the Fort Smith water system other than Van Buren according to the agreements and determinations herein. There is no intention of Van Buren and Fort Smith to bestow beneficiary status on any other water system user with reference to the agreements and determinations herein. As noted above, the agreements and determinations contained herein are based on the unique provisions of the 1983 Agreement. Fort Smith has the right to determine rates and charges for users of the water system other than Van Buren, and to make required changes in the Rate Model consistent therewith, without conformance to the provisions of this Supplement so long as Fort Smith does not adversely affect the rates and

charges of Van Buren in doing so.

IN WITNESS WHEREOF, each of the parties has caused this Supplement to be
duly executed.

City of Van Buren, Arkansas

By: [Signature]
Mayor

Attest: [Signature]
City Clerk

Date: 11/20/02

Van Buren Water and Sewer Commission

By: [Signature]
Chairman

Attest: [Signature]
Secretary

Date: 11/23/02

City of Fort Smith, Arkansas

By: [Signature]
Mayor

Attest: [Signature]
City Clerk

Date: Nov. 7, 2002

Protocol for Unaccounted-for Water Study – Exhibit 2

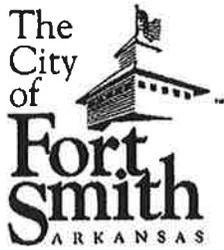
The unaccounted-for water study shall be supervised by an independent, qualified firm selected by Fort Smith and approved by Van Buren or Arbitrator Chris Woodcock. The selected firm shall provide the scope of services for the study which shall reasonably incorporate the following:

1. Review Fort Smith's meter replacement and maintenance program.
2. Secure accurate measures of the total water produced and conveyed to the water transmission/ distribution system, including, without limitation, water conveyed to the transmission/distribution system at the Waldron-Midland facilities site. For this purpose, all production meters and measurement meters shall be calibrated to reasonably ensure that they are providing accurate measures of the total volume of water produced and entering the transmission/distribution systems. Any meters found to be providing significantly inaccurate measures must be repaired or replaced and calibrated so that accurate measurements can be reasonably assured. None of the foregoing language shall diminish the obligation of the selected firm to comport to the professional standards and to apply such standards recognized in the industry for such study.
3. Determine the consumption of any customers who are served between the treatment plant and the point of production metering and add that consumption to the production volumes registered on the meters. If these volumes are significant (i.e., more than one percent of total volume billed), these meters also shall be calibrated and repaired or replaced, if necessary, to assure the accurate measurement of such consumption.
4. Measure production using newly calibrated and accurate meters for a study period of at least twelve consecutive months starting as soon as possible and no later than November 1,

2002.

5. Tabulate and summarize the metered water usage and other relevant billing information for the period studied in a manner that permits the rates of charge in effect for the period to be applied to calculate total resulting charges. The consultant shall compare the calculated charges to the total revenues actually recovered in the ordinary course for the corresponding period. The consultant may adjust the total revenues in the event the period under study includes extraordinary, nonrecurring circumstances rendering the actual revenue recovery unreliable as a predictor of future events. If the total calculated charges are significantly different than the total revenues (adjusted for abnormal factors) actually recovered, then this information shall be recognized to adjust billed volume totals in the study.

By comparing accurate measures of total production and water conveyed to the transmission/distribution system at the Waldron-Midland facilities site with properly reconciled and adjusted (if necessary) metered volumes of water over the same period of time, a reliable measure of water production that is not reflected in the volume of water metered and sold may be derived. That data then shall be applied to the Rate Model in the same manner as the data was applied in the Arthur Young study of 1986.



MEMORANDUM

November 14, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Van Buren Water Supply Agreement True Up

Our water supply agreement with Van Buren has a "true up" provision which affects the amounts Van Buren pays for water. The true up provision (paragraph 4 beginning on page 5 - attached to internal auditor's memo) was added in 2002 as part of a settlement following a water rate dispute. The provision gives Van Buren assurance that Fort Smith doesn't set water rates in a way that generates more revenue than it costs to supply Van Buren with water. It also allows Fort Smith to recover costs if rates are set too low.

Fort Smith follows the procedures outlined in the water rate manual published by the American Water Works Assn. This manual is widely accepted as the rule book for determining equitable water rates. Water rates are generally set by determining the costs of operating the utility and dividing those costs by the estimated amount of water to be sold. The actual rate-setting methods are much more complex than this in order to arrive at rates that are fair and equitable for all customer categories (residential, commercial, industrial, wholesale).

When water rates are set, assumptions about future operating costs and consumption levels have to be made. Actual results differ from these assumptions since many factors, such as weather, affect actual costs and consumption levels. The true up provision in the Van Buren contract is intended to result in Van Buren paying for the actual cost of supplying it with water. Because these costs can't be determined until months after the water has been consumed, the true up may result in a credit owed to Van Buren or in an additional payment owed by Van Buren. As the water is consumed, Van Buren pays for it using the rates adopted by Fort Smith. Van Buren has always paid its regular monthly bills for water supplied by Fort Smith. The only unpaid amounts have been the true up amounts.

The true up amounts for 2006, 2007, 2008 and 2009 were in dispute. Earlier this year, we had our new water rate consultant, Burns & McDonnell, review the true up calculations. The revised calculations were presented to Van Buren, and Van Buren concurred with the amounts for 2006, 2007, and 2008.

Van Buren disputed that a payment wasn't owed for 2009 because Fort Smith hadn't followed the requirements of the settlement agreement for the 2009 true up calculation. The agreement requires Fort Smith to supply Van Buren with our audit and certain data within 60 days of completion of the audit. Fort Smith didn't meet this requirement for the 2009 true up. The

requirement wasn't met because of a vacancy in the rate analyst's position and direction from the city administrator to the finance staff in mid 2010 to not pursue the true up amounts. Attached is a letter from the city attorney which explains the contractual obligation and the consequences for failure to perform as specified in the agreement. We did calculate the 2009 amount earlier this year, and it is \$253,706.

The 2010 true up calculation hasn't been in dispute. The amount for 2010 is a \$30,884 credit to Van Buren.

Van Buren has requested that it be given 36 months to pay the true up amounts for 2006, 2007, and 2008. They have also suggested that Fort Smith cash the checks totaling \$161,000 which Fort Smith possesses without raising any settlement claims to that amount. Given the total amount owed for these three years, \$581,174, the request seems reasonable. If the board concurs with providing a period of time for the payments, the staff will enter into discussions with Van Buren about a schedule for payments. The schedule will include immediate payment of the \$161,000 for which Van Buren previously wrote checks. The discussions would likely include the 2010 true up credit owed to Van Buren. Any agreement would require approval by the board of directors.

I realize that resolution of the water true up payments has taken much longer than anyone desires. However, it was important that we follow the requirements of the agreement. Had the true up provision not been in place, Fort Smith wouldn't be receiving additional water service payments totaling approximately \$550,000 for 2006-2010.

VAN BUREN WATER TRUE UP

<u>YEAR</u>	<u>AMOUNT</u>
2006	\$327,226
2007	\$129,227
2008	\$124,721
2010	\$ 30,884

2010 is a true up credit owed to Van Buren

Attachments

cc: Steve Parke, Director of Utilities
Kara Bushkuhl, Director of Finance
Kevin Sandy, Utility Rate Analyst

Ray

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
ROBERT R. BRIGGS, P.A. †
C. MICHAEL DAILY, P.A. † ●
L. MATTHEW DAVIS, P.A. †
COLBY T. ROE

† Also Licensed in Oklahoma
● Also Licensed in Wyoming & North Dakota
○ Certified Mediator

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

WRITER'S E-MAIL ADDRESS
JCanfield@DailyWoods.com

JAMES E. WEST
DALE CARLTON
PHILLIPE NORVELL †

OF COUNSEL

HARRY P. DAILY (1886-1965)
JOHN P. WOODS (1886-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

November 14, 2011

Mr. Ray Gosack
City Administrator
City of Fort Smith
623 Garrison Avenue, 3rd Floor
Fort Smith, AR 72901

Re: Potential Year 2009 Water Cost "true up" with City of Van Buren Pursuant to Paragraph 4.A.1. of the Supplement to Final Settlement and Release Agreement with Van Buren

Dear Mr. Gosack:

At your request, we have reviewed the 2002 Supplement to Final Settlement and Release Agreement ("Agreement") with the City of Van Buren. In particular, we have reviewed the provisions of paragraph 4 of that Agreement.

Paragraph 4 deals with two methods by which the rate model or its inputs may be changed so as to produce an adjusted rate that Van Buren will pay for water purchased from Fort Smith. Pursuant to the parties' agreement, and without performing an independent cost of services analysis, the rates to be paid by Van Buren may be adjusted in only the two described manners. Pertinent here, a potential rate adjustment may be based on a comparison of projected values used with reference to a contract year to the actual values pertinent during the subject year as reflected by Fort Smith's audited CAFR.

The Agreement requires that, within sixty days of completion of Fort Smith's audited CAFR for the year 2004 and subsequent years through 2021, Fort Smith will provide to Van Buren information regarding a comparison of the actual annual factors of the rate model as compared to those same factors projected prior to the year. Based on the information provided, Van Buren has a period of sixty days in which to request a "true up" of the rate model substituting the actual values for the projected values. Fort Smith may accomplish the "true up" "regardless of the Van Buren election."

We have been advised that, for the year 2009, Fort Smith did not within sixty days of the completion of Fort Smith's audited CAFR provide the required information to Van Buren.

Based on the factual information of the preceding paragraph, it is our opinion that Van Buren could successfully contend that Fort Smith has waived the potential of a true up for the year 2009 and is

estopped from accomplishing the "true up" for 2009.

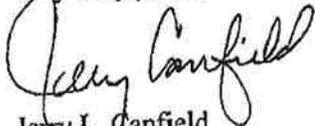
We express the foregoing opinion in spite of our established practice of viewing disputed fact situations and principles of law in the light most favorable to the City so that the City's actions can be taken by its policy makers and not dictated by our legal opinions. In this situation, the ability of Fort Smith to adjust the rates established by the rate model for the year 2009 can take place only pursuant to the procedures of paragraph 4.A. of the Agreement. If the procedures of 4.A. are not followed, the rate established by the rate model is applicable to water purchased by Van Buren in the year 2009. As the facts we have been asked to assume indicate, Fort Smith did not invoke the provisions of paragraph 4.A. by providing the information necessary to accomplish a true up within sixty days of completion of Fort Smith's 2009 audited CAFR.

We have formed our above stated opinion irrespective of the fact that the Agreement provision is "mandatory." That is, the contract requires Fort Smith to present the information within sixty days from completion of the audited CAFR. As the provision is mandatory, could it not be argued that Van Buren could enforce the provision after the fact and, thus, Fort Smith should be allowed to accomplish the providing of the information after the fact? After consideration, we do not believe that the mandatory language of the provision could be utilized by Fort Smith to make the argument raised by the preceding question.

Our opinion is based on principles of contractual waiver and estoppel provided for in Arkansas law. Waiver and estoppel defenses to contract claims are well established in Arkansas law and are covered by the Arkansas Model Jury Instructions ("AMI"). AMI 2436 provides that a party has waived a right under a contract if that party knew that the contract right existed and the right was voluntarily and intentionally abandoned. With reference to waiver, Fort Smith might argue that, in spite of its knowledge of the contract provision, the provision was not abandoned but that, by mistake, it was not timely implemented. Nevertheless, the defense of estoppel is applicable. A party having a contract right may be estopped from raising that contract right if the party knew of the right, reasonably should have expected that the other party was relying on its acting or not acting with reference to providing information, that the other party was ignorant of the facts necessary to implement the contract provision and that the other party relied in good faith on silence or failure to act. AMI 2438. We believe that Van Buren could legitimately present an estoppel defense based on Fort Smith's not providing, within the time period provided for by the Agreement, information on which the true up could have been accomplished.

Thank you for your attention in this matter.

Very truly yours,



Jerry L. Canfield
JLC/cmm



November 16, 2011

Mr. C.E. Dougan, Chairman
Van Buren Municipal Utilities Commission
2806 Bryan Road
Van Buren, Arkansas 72956

Dear Mr. Dougan:

During the November 15, 2011 meeting of the Fort Smith Board of Directors, the board directed me to send Van Buren an invoice for the 2009 water true up. The true up provision is provided for in the supplement to final settlement and release agreement between Van Buren and Fort Smith dated October 18, 2002. Our calculations for 2009 show the true up amount to be \$253,706 owed by Van Buren to Fort Smith. Please consider this letter as an invoice for the 2009 water true up payment in the amount of \$253,706.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack".

Ray Gosack
City Administrator

E-mail: rgosack@fortsmithar.gov

cc: Mayor and Board of Directors
The Honorable Bob Freeman
Steve Parke, Director of Utilities
Kara Bushkuhl, Director of Finance

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430

Board Info
Steve Paulty, Utilities
Kara Bush-Kuhl, Finance

VAN BUREN MUNICIPAL UTILITIES

Commission:
C.E. Dougan
John Barnwell
J.W. Floyd
Jim Williamson
Todd Young

"Providing Water, Sewer, and Sanitation Services"
2806 Bryan Road / P.O. Drawer 1269
Van Buren, Arkansas 72957
479-474-5067 / Fax 479-471-8969

Attorney
Paul Gant
Treasurer
Bryant Larcade
Secretary
Kathy Geppert

November 21, 2011

Mr. Ray Gosack
City Administrator, City of Fort Smith, Arkansas
P. O. Box 1908
Fort Smith, AR 72902

Dear Mr. Gosack;

I am in receipt of your letter dated November 16, 2011 regarding the water true up calculation for 2009. I have watched the re-broadcast of the November 14th Fort Smith board meeting. The Board's perception appears to be narrowly focused on only the 2009 true up. As a result, Van Buren is cast in a very disparaging light. The issues encompass more than just 2009 and I am of the opinion that your Board desires and deserves some explanation regarding Van Buren's position.

There seemed to be numerous questions concerning specific time frames within the Agreement applicable to the true up process. As you know, these time frames are critical given that budgets may need to be adjusted and Van Buren may have to implement a rate increase in order to pay the true up amount due during the next annual twelve month period. It was anticipated the time frames contained within the Agreement would typically conclude sometime in October to provide sufficient time to make adjustment to budgets and to pass a rate ordinance before payment would begin at the first of the next annual period.

There was also a lot of discussion concerning the \$161,000 remitted to Fort Smith by Van Buren and that not cashing the checks remitted was necessary to avoid satisfying in full additional amounts that might be owed by Van Buren. I assume you were acting on the advice of counsel but to imply that Van Buren was remitting this amount as payment in full for 2006 is simply a misstatement of facts. I communicated to you that Van Buren had calculated an amount of \$397,000 which we agreed may be owed to Fort Smith for 2006. We knew we owed at least \$161,000 because of increased treatment cost. I communicated that Van Buren would begin immediately remitting monthly 1/12 of this amount to Fort Smith. The difference of \$236,000 would be maintained in a cash reserve pending final resolution of the issues being discussed.

Beginning in July 2005 to present, Van Buren has informed Fort Smith of what it believes to be legitimate issues with the rate modeling process. Repeated errors together with the inconsistency in results have diminished our confidence in Fort Smith's ability to produce accurate information. This combined with an honest disagreement between the parties as to the reallocation of cost in the true up process encompass most of the issues. All of the issues have been thoroughly discussed and are well documented. However, some of the issues raised remain unresolved to this date. Following is a chronology of key events which will explain Van Buren's frustration with the true up process and our position regarding the amount Fort Smith believes is owed.

October 22, 2007 Van Buren is informed that it owes an additional amount of \$480,774 for 2006. Van Buren is unable to verify the accuracy of this number. Subsequently, we discover the original comparative data provided is wrong. We calculate an amount of \$397,000 may be owed based on the revised information provided.

September 4, 2008 Van Buren is informed that it owes an additional amount of \$205,190.90 for 2007. Van Buren never received an electronic copy of Tyler Mitchell's calculations for the 2007 true up. As a result we were unable to audit the true up model and the data used to arrive at the \$205,190.90 or to verify that the data used was in fact the cost data provided earlier.

August 28, 2009 Van Buren receives the comparative cost data for 2008 and an electronic file containing the rate model. We were never able to reconcile the cost data to the electronic file. We concluded that the electronic file did not contain the true up data. Other than these documents Van Buren does not show that it received any billing or notification for additional amounts that might be owed for 2008.

October 21, 2010 Fort Smith is informed that Van Buren did not receive the 2009 true up data.¹¹

November 17, 2010 The City Wire published that Van Buren owed Fort Smith in excess of \$1.2 million, \$455,479 for 2006, \$205,191 for 2007 and \$539,453. These amounts were published again June 24, 2011.

September 3, 2011 it is reported in the Times Record that the more than \$1 million owed to Fort Smith by Van Buren is now \$581,174 and that the 2009 and 2010 amounts are still being calculated. The question that begs to be asked is what is the reason for the difference in amounts published? Would the difference been discovered had Van Buren not questioned the amounts Fort Smith presented as being owed?

The consensus in the November board meeting was to send Van Buren a bill, giving Van Buren the opportunity to do the right thing. One could assert that Fort Smith should be given the same opportunity. Van Buren simply request that Fort Smith accept responsibility for it's culpability in this matter.

The above listed events should demonstrate that the rate modeling process, especially the annual true up, has not worked as intended. Mr. Canfield correctly reminded the Board that Fort Smith is in control of the process. The rate model, data, data entry, calculations and accuracy of the information produced all belong to Fort Smith. Van Buren should be able to rely on the data provided and the result produced. As evidenced by the above referenced news reports this has not been the case.

The Agreement stipulates that any dispute between the parties during the true up process that cannot be resolved will be subject to arbitration. While I am of the opinion that Van Buren could present a good argument for not paying any amount, we do not feel this is appropriate or necessary. There comes a time when it is appropriate to agree to disagree and move on. I was of the opinion that representatives of Fort Smith and Van Buren had reached that point and agreement.

I would ask that it be communicated to the Fort Smith Board of Directors that Van Buren's agreement to pay any amount was intended to settle all amounts in question for the years in question. The Board should be aware that Van Buren's review of the cost incurred for the years 2006 through 2009 indicates that Van Buren's obligation is significantly less than the \$581,000. However, this amount was viewed by Van Buren as a reasonable and fair compromise given all that has transpired.

To avoid further confusion I will repeat Van Buren's proposal contained in an e-mail memo to Mr. Steve Parke dated October 18, 2011. This e-mail memo was in response to his letter dated September 14, 2011 and reads as follows:

The Van Buren Utilities Commission has authorized payment in the amount of \$581,173 for water purchased from Fort Smith which will satisfy in full all amounts owed for the years 2006 through 2009. Van Buren City Council met last night and voted to increase Van Buren's water rates to facilitate payment of this amount.

I would propose the following:

Fort Smith will cash the checks from Van Buren it presently has in hand totaling \$161,000 or return the checks to Van Buren and we will issue a new check for an identical amount. Van Buren proposes to pay the remaining balance of \$420,173 in equal installments of \$11,671.47 with the first payment to be remitted January 2012 and each month thereafter until paid in full.

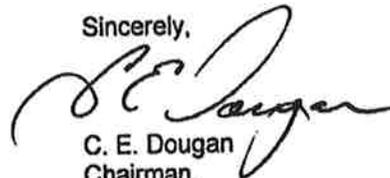
Unless Fort Smith and Van Buren otherwise agree, Van Buren will pay any amounts due to Fort Smith resulting from true up calculations for the year 2010 and subsequent years in twelve equal monthly installments in addition to the monthly amount shown above.

Should the true up calculation for 2010 or any subsequent year result in an amount due to Van Buren, we would request that the amount be first credited to any balance owed by Van Buren to Fort Smith for prior years true up calculations. Van Buren will not adjust the monthly amount being paid to Fort Smith resulting from any credit but would use the credit amount to decrease the time necessary for satisfying in full amounts owed to Fort Smith.

Fort Smith, with Van Buren's concurrence, has retained the services of Burns and McDonnell to review and make revisions to the rate model. Also, the Rate Analyst position has been filled. Although I have not seen Mr. Sandy's work, he seems very capable. My communication with you and Mr. Parke has always been received courteously and professionally. Even though we have disagreed there has been a mutual respect for each others position. I believe we both view the above as being positive. I am confident that we will be able to continue to work through issues that arise as we fulfill our responsibility to our respective cities.

I trust you will forward this correspondence to your Mayor, City Board, and other interested parties.

Sincerely,



C. E. Dougan
Chairman,
Van Buren Municipal Utilities Commission

Cc: The Honorable Bob Freeman
Steve Parke, Director of Utilities
Gary Smith, Manager, Van Buren Utilities

¹ Ref. letter dated 4/14/2008

¹ E-mail memo dated 10/21/2010

BOARD INFO

City of Van Buren, Arkansas

1003 Broadway • Van Buren, Arkansas 72956

cc: Steve Forke, Utilities
Kang Bushley, Finance
Jeff Dingman, Admin.

November 22, 2011

Mayor Sandy Sanders
City of Fort Smith
P. O. Box 1908
Fort Smith, AR 72902

Dear Mayor Sanders,

I am enclosing a copy of the Van Buren Municipal Utilities response to Mr. Gosack's letter dated November 16, 2011. I am requesting that you share this letter with the City of Fort Smith Board of Directors.

I also discussed during our City Council meeting last night the request for a joint meeting of the Van Buren City Council, the Van Buren Utilities Commission, and the Fort Smith Board of Directors. We are of the opinion that the proposed meeting would not be constructive with such a large group, however, if after reading the enclosed response, you, Mr. Gosack, or any of the Directors have questions, I along with Mr. C.E. Dougan, Chairman of the Utilities Commission, will be glad to meet and address those questions.

Please feel free to contact me at 479-474-1541.

Sincerely,



Robert D. Freeman
Mayor

Enclosure

PROGRESS IS



OUR PROJECT

VAN BUREN CCF AND AMOUNT PAID FOR YEARS 2006-2010

	CCF	AMOUNT PAID
2006	2,530,390	\$3,228,703.66
2007	2,540,434	\$3,308,734.25
2008	2,568,825	\$3,605,481.81
2009	2,552,907	\$3,583,674.15
2010	2,804,067	\$3,927,763.34
TOTAL	12,996,623	\$17,654,357.21

CCF = 748 gallons

Average daily usage for the 5-year period is 5.3 million gallons

File- Van Buren Water Contract Board Info
Steve Paulty, Utilities
Kara Bush-Kuhl, Finance

VAN BUREN MUNICIPAL UTILITIES

Commission:
C.E. Dougan
John Barnwell
J.W. Floyd
Jim Williamson
Todd Young

“Providing Water, Sewer, and Sanitation Services”
2806 Bryan Road / P.O. Drawer 1269
Van Buren, Arkansas 72957
479-474-5067 / Fax 479-471-8969

Attorney
Paul Gant
Treasurer
Bryant Larcade
Secretary
Kathy Geppert

November 21, 2011

Mr. Ray Gosack
City Administrator, City of Fort Smith, Arkansas
P. O. Box 1908
Fort Smith, AR 72902

Dear Mr. Gosack;

I am in receipt of your letter dated November 16, 2011 regarding the water true up calculation for 2009. I have watched the re-broadcast of the November 14th Fort Smith board meeting. The Board's perception appears to be narrowly focused on only the 2009 true up. As a result, Van Buren is cast in a very disparaging light. The issues encompass more than just 2009 and I am of the opinion that your Board desires and deserves some explanation regarding Van Buren's position.

There seemed to be numerous questions concerning specific time frames within the Agreement applicable to the true up process. As you know, these time frames are critical given that budgets may need to be adjusted and Van Buren may have to implement a rate increase in order to pay the true up amount due during the next annual twelve month period. It was anticipated the time frames contained within the Agreement would typically conclude sometime in October to provide sufficient time to make adjustment to budgets and to pass a rate ordinance before payment would begin at the first of the next annual period.

There was also a lot of discussion concerning the \$161,000 remitted to Fort Smith by Van Buren and that not cashing the checks remitted was necessary to avoid satisfying in full additional amounts that might be owed by Van Buren. I assume you were acting on the advice of counsel but to imply that Van Buren was remitting this amount as payment in full for 2006 is simply a misstatement of facts. I communicated to you that Van Buren had calculated an amount of \$397,000 which we agreed may be owed to Fort Smith for 2006. We knew we owed at least \$161,000 because of increased treatment cost. I communicated that Van Buren would begin immediately remitting monthly 1/12 of this amount to Fort Smith. The difference of \$236,000 would be maintained in a cash reserve pending final resolution of the issues being discussed.

Beginning in July 2005 to present, Van Buren has informed Fort Smith of what it believes to be legitimate issues with the rate modeling process. Repeated errors together with the inconsistency in results have diminished our confidence in Fort Smith's ability to produce accurate information. This combined with an honest disagreement between the parties as to the reallocation of cost in the true up process encompass most of the issues. All of the issues have been thoroughly discussed and are well documented. However, some of the issues raised remain unresolved to this date. Following is a chronology of key events which will explain Van Buren's frustration with the true up process and our position regarding the amount Fort Smith believes is owed.

October 22, 2007 Van Buren is informed that it owes an additional amount of \$480,774 for 2006. Van Buren is unable to verify the accuracy of this number. Subsequently, we discover the original comparative data provided is wrong. We calculate an amount of \$397,000 may be owed based on the revised information provided.

September 4, 2008 Van Buren is informed that it owes an additional amount of \$205,190.90 for 2007. Van Buren never received an electronic copy of Tyler Mitchell's calculations for the 2007 true up. As a result we were unable to audit the true up model and the data used to arrive at the \$205,190.90 or to verify that the data used was in fact the cost data provided earlier.

August 28, 2009 Van Buren receives the comparative cost data for 2008 and an electronic file containing the rate model. We were never able to reconcile the cost data to the electronic file. We concluded that the electronic file did not contain the true up data. Other than these documents Van Buren does not show that it received any billing or notification for additional amounts that might be owed for 2008.

October 21, 2010 Fort Smith is informed that Van Buren did not receive the 2009 true up data.ⁱⁱ

November 17, 2010 The City Wire published that Van Buren owed Fort Smith in excess of \$1.2 million, \$455,470 for 2006, \$205,191 for 2007 and \$539,453. These amounts were published again June 24, 2011.

September 3, 2011 it is reported in the Times Record that the more than \$1 million owed to Fort Smith by Van Buren is now \$581,174 and that the 2009 and 2010 amounts are still being calculated. The question that begs to be asked is what is the reason for the difference in amounts published? Would the difference been discovered had Van Buren not questioned the amounts Fort Smith presented as being owed?

The consensus in the November board meeting was to send Van Buren a bill, giving Van Buren the opportunity to do the right thing. One could assert that Fort Smith should be given the same opportunity. Van Buren simply request that Fort Smith accept responsibility for it's culpability in this matter.

The above listed events should demonstrate that the rate modeling process, especially the annual true up, has not worked as intended. Mr. Canfield correctly reminded the Board that Fort Smith is in control of the process. The rate model, data, data entry, calculations and accuracy of the information produced all belong to Fort Smith. Van Buren should be able to rely on the data provided and the result produced. As evidenced by the above referenced news reports this has not been the case.

The Agreement stipulates that any dispute between the parties during the true up process that cannot be resolved will be subject to arbitration. While I am of the opinion that Van Buren could present a good argument for not paying any amount, we do not feel this is appropriate or necessary. There comes a time when it is appropriate to agree to disagree and move on. I was of the opinion that representatives of Fort Smith and Van Buren had reached that point and agreement.

I would ask that it be communicated to the Fort Smith Board of Directors that Van Buren's agreement to pay any amount was intended to settle all amounts in question for the years in question. The Board should be aware that Van Buren's review of the cost incurred for the years 2006 through 2009 indicates that Van Buren's obligation is significantly less than the \$581,000. However, this amount was viewed by Van Buren as a reasonable and fair compromise given all that has transpired.

To avoid further confusion I will repeat Van Buren's proposal contained in an e-mail memo to Mr. Steve Parke dated October 18, 2011. This e-mail memo was in response to his letter dated September 14, 2011 and reads as follows:

The Van Buren Utilities Commission has authorized payment in the amount of \$581,173 for water purchased from Fort Smith which will satisfy in full all amounts owed for the years 2006 through 2009. Van Buren City Council met last night and voted to increase Van Buren's water rates to facilitate payment of this amount.

I would propose the following:

Fort Smith will cash the checks from Van Buren it presently has in hand totaling \$161,000 or return the checks to Van Buren and we will issue a new check for an identical amount. Van Buren proposes to pay the remaining balance of \$420,173 in equal installments of \$11,671.47 with the first payment to be remitted January 2012 and each month thereafter until paid in full.

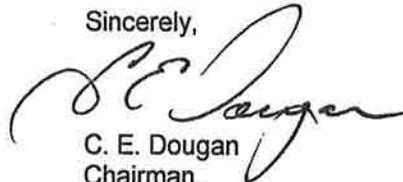
Unless Fort Smith and Van Buren otherwise agree, Van Buren will pay any amounts due to Fort Smith resulting from true up calculations for the year 2010 and subsequent years in twelve equal monthly installments in addition to the monthly amount shown above.

Should the true up calculation for 2010 or any subsequent year result in an amount due to Van Buren, we would request that the amount be first credited to any balance owed by Van Buren to Fort Smith for prior years true up calculations. Van Buren will not adjust the monthly amount being paid to Fort Smith resulting from any credit but would use the credit amount to decrease the time necessary for satisfying in full amounts owed to Fort Smith.

Fort Smith, with Van Buren's concurrence, has retained the services of Burns and McDonnell to review and make revisions to the rate model. Also, the Rate Analyst position has been filled. Although I have not seen Mr. Sandy's work, he seems very capable. My communication with you and Mr. Parke has always been received courteously and professionally. Even though we have disagreed there has been a mutual respect for each others position. I believe we both view the above as being positive. I am confident that we will be able to continue to work through issues that arise as we fulfill our responsibility to our respective cities.

I trust you will forward this correspondence to your Mayor, City Board, and other interested parties.

Sincerely,



C. E. Dougan
Chairman,
Van Buren Municipal Utilities Commission

Cc: The Honorable Bob Freeman
Steve Parke, Director of Utilities
Gary Smith, Manager, Van Buren Utilities

¹ Ref. letter dated 4/14/2008

¹ E-mail memo dated 10/21/2010