



AGENDA

**FORT SMITH BOARD OF DIRECTORS
REGULAR MEETING**

JANUARY 3, 2012 ~ 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 DECEMBER 20, 2011 REGULAR MEETING

ITEMS OF BUSINESS:

1. Presentation: Recognition regarding City of Fort Smith's honorable mention for the "Arkansas Business City of Distinction Award" for Main Street Preservation
2. Items regarding special election
 - A. Ordinance calling a special election in the City of Fort Smith, Arkansas on the questions of issuing bonds under Amendment No. 62 to the Constitution of the State of Arkansas for the purpose refinancing and financing the cost of capital improvements; levying a three-fourths of one percent (0.75%) sales and use tax for the purpose of retiring such bonds; and prescribing other matters pertaining thereto
 - B. Ordinance providing for the levy of a one-fourth of one percent (0.25%) sales and use tax within the City of Fort Smith, Arkansas for a period of ten (10) years; and prescribing other matters pertaining thereto

- C. Ordinance calling a special election in the City of Fort Smith, Arkansas on the question of levying a one-fourth of a one percent (0.25%) sales and use tax within the City of Fort Smith, Arkansas for a period of ten (10) years; and prescribing other matters pertaining thereto
3. Ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code regulating animals, establishing mandatory registration, spay and neuter regulations, and a hobbyist permit for dogs and cats ~ *First reading at the March 15, 2011 regular meeting / Tabled for 6 months at the April 5, 2011 regular meeting / Tabled for 90 days at the October 4, 2011 regular meeting ~ ** Second reading ***
 4. Ordinance amending Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code regulating animals ~ *First reading at the March 15, 2011 regular meeting / Tabled for 6 months at the April 5, 2011 regular meeting / Tabled for 90 days at the October 4, 2011 regular meeting ~ ** Second reading ***
 5. Ordinance amending Chapter 4, Article I of the Fort Smith Municipal Code to establish an Animal Services Advisory Board ~ *Requested at the December 20, 2011 study session ~*
 6. Ordinance authorizing the Mayor to execute agreements for certain services for inhabitants of the city of Fort Smith
 7. Consent Agenda
 - A. Resolution accepting the offer of and authorizing the special assignment of clean up liens to the Fort Smith Housing Authority for city liens encumbering 1013 North 6th Street, Fort Smith, Arkansas
 - B. Resolution approving a settlement agreement with James Fork Water
 - C. Resolution to accept the bids and authorize a contract for the construction of traffic signal improvements, Project No. 11-09-A (\$778,364.17 / *Engineering Department / Budgeted – Sales Tax Fund*)
 - D. Resolution accepting bids for the purchase of real property and authorizing the Mayor to execute deeds conveying real property interests ~ *3751 Park Avenue ~ (\$20,501.00)*
 - E. Resolution authorizing an engineering services agreement for the design of a project in the 2012 Sales Tax Program (\$83,848.00 / *Engineering Department / Budgeted – Sales Tax Fund*)
 - F. Resolution authorizing the execution of a memorandum of understanding concerning mobile data support between the City of Fort Smith, Arkansas and the City of Greenwood, Arkansas

G. Resolution authorizing Change Order Number One with Forsgren Inc. for the Zero Street Outfall Sewer Improvements Phase II (\$31,012.50 / Utilities Department / Budgeted – Sales Tax Bonds)

8. Van Buren Water True-Up ~ Requested at the December 20, 2011 regular 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

Arkansas Business
CITY
Distinction
2011

MAIN STREET PRESERVATION | HONORABLE MENTION
OVER 20,000

NEW DEVELOPMENTS REVIVE DOWNTOWN

For many cities and towns, Main Street is, well, Main Street. In Fort Smith, Main Street is Garrison Avenue, and Garrison Avenue represents the heart of the city's historic downtown — literally, where the new South meets the old West.

In recent years, several new development projects have infused new life into downtown. The transformation of the area into one in which residents are attracted to live, work and play has earned Fort Smith honorable-mention recognition as a 2011 *Arkansas Business City of Distinction* for Main Street preservation.

"Downtown is once again reclaiming its role as a gathering place for residents of the region, a place for quality live entertainment, a variety of culinary and shopping experiences, and a place for families to learn about our past and to simply have fun," said Tracy Winchell, communications manager for the city of Fort Smith. "Downtown revivals require people, and people spur downtown revival. In Fort Smith, the Main Street concept is working."

Perhaps the most tangible evidence of that can be seen crossing the Arkansas River into the city from Oklahoma. Riverfront Park hosts numerous large events drawing tens of thousands, and the city now has a popular Farmers Market along the river that features local food, live music, breakfast and plenty of social interaction. A large, vintage Ferris wheel located at the Park at West End provides a nice bookend to a bustling riverfront.

Through public and private ventures, more than \$15 million has been invested in downtown in the past two years. The Fort Smith Convention Center has attracted well over 10,000 visitors downtown in that time frame, providing an



estimated economic impact of \$20 million. More than 2,000 jobs have been recruited downtown, and 18 new residential lofts have been added with another 14 units planned for the next year.

An estimated \$6 million worth of new projects are in varying stages of development as well.

Several major events have found homes downtown, such as the annual Fourth of July fireworks celebration, the Old Fort Days Rodeo parade, the Old Fort Riverfront Blues Festival and a regional jazz festival. Artists such as Ted Nugent and Delbert McClinton have played private venues along Garrison, which Winchell said has developed a solid reputation as an entertainment district.

"The rehabilitation of Garrison Avenue and new construction along the Arkansas River in recent years are creating a new riff on a classic icon for Fort Smith," Winchell said. ■

ORDINANCE NO. _____

AN ORDINANCE CALLING A SPECIAL ELECTION IN THE CITY OF FORT SMITH, ARKANSAS ON THE QUESTIONS OF ISSUING BONDS UNDER AMENDMENT NO. 62 TO THE CONSTITUTION OF THE STATE OF ARKANSAS FOR THE PURPOSE OF REFINANCING AND FINANCING THE COST OF CAPITAL IMPROVEMENTS; LEVYING A THREE-FOURTHS OF ONE PERCENT (0.75%) SALES AND USE TAX FOR THE PURPOSE OF RETIRING SUCH BONDS; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas (the "City") has determined that it would be in the best interests of the City to (a) finance all or a portion of the costs of extensions, betterments and improvements to the City's wastewater system, including particularly, without limitation, wet weather sewer improvements, and any facility, land and equipment acquisition therefor (the "Wastewater Improvements"), (b) finance all or a portion of the costs of extensions, betterments and improvements to the City's water system, including particularly, without limitation, water transmission improvements, water storage and pump stations, and any land and equipment acquisition therefor (the "Water Improvements"), and (c) finance all or a portion of the costs of firefighting facilities and apparatus, including particularly, without limitation, apparatus replacements, a new fire station and improvements to existing fire stations and any land acquisition, parking, equipment, furnishings and utility improvements therefor (the "Firefighting Improvements"); and

WHEREAS, the City has outstanding its Sales and Use Tax Refunding and Improvement Bonds, Series 2006 (the "Series 2006 Bonds") and its Sales and Use Tax Bonds, Series 2008 (the "Series 2008 Bonds"); and

WHEREAS, the Series 2006 Bonds and the Series 2008 Bonds (collectively, the "2006 Voter Approved Bonds") were approved by the voters at a special election held May 23, 2006 to finance various capital improvements, and are secured by and payable from collections of two (2) 0.5% City-wide sales and use taxes levied pursuant to Ordinance No. 18-06 of the City adopted February 21, 2006 (the "2006 Taxes"); and

WHEREAS, the City has outstanding its Sales and Use Tax and Water and Sewer Revenue Bonds, Series 2009 (the "2009 Voter Approved Bonds") and which were approved by the voters at a special election held June 9, 2009 to finance wastewater system improvements, and are secured by and payable from collections of two (2) 0.5% City-wide sales and use taxes levied pursuant to Ordinance No. 24-09 of the City adopted April 7, 2009 (the "2009 Taxes") and revenues of the City's water and sewer system; and

WHEREAS, the 2006 Taxes will expire when the 2006 Voter Approved Bonds have been paid or provision is made therefor; and

WHEREAS, the 2009 Taxes are scheduled to take effect when the 2006 Taxes expire; and

WHEREAS, the 2009 Taxes will not take effect if the 2009 Voter Approved Bonds are paid in full or provision is made therefor prior to the effective date of the 2009 Taxes; and

WHEREAS, the Board of Directors has determined that it is essential that the outstanding 2006 Voter Approved Bonds and outstanding 2009 Voter Approved Bonds (collectively, the "Outstanding Voter Approved Bonds") be refunded in order to allow the Wastewater Improvements, the Water Improvements and the Firefighting Improvements (collectively, the "Improvements") to be financed without a tax increase; and

WHEREAS, the City can make provision for the payment of the outstanding Voter Approved Bonds by issuing refunding bonds; and

WHEREAS, the Board of Directors proposes to finance all or a portion of the costs of the Improvements and refunding the Outstanding Voter Approved Bonds (the "Refunding") by the issuance of capital improvement bonds (the "Bonds") under the authority of Amendment No. 62 to the Constitution of the State of Arkansas ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), allocated as follows: \$71,070,000 in maximum principal amount for the Wastewater Improvements; \$28,120,000 in maximum principal amount for the Water Improvements; \$9,110,000 in maximum principal amount for the Firefighting Improvements; and \$55,380,000 in maximum principal amount for the refunding of the Outstanding Voter Approved Bonds; and

WHEREAS, the City can pay the principal of and interest on the Bonds from the proceeds of a City-wide three-fourths of one percent (0.75%) sales and use tax to be levied under the authority of the Authorizing Legislation that will replace the 2006 Taxes and the 2009 Taxes; and

WHEREAS, the purpose of this Ordinance is to submit to the electors of the City the questions of issuing the Bonds for the Improvements and the Refunding under Amendment 62 and the Authorizing Legislation at a special election to be called for that purpose and to levy a replacement sales and use tax at the rate of three-fourths of one percent (0.75%) on the receipts from the sales at retail within the City of all items which are subject to taxation under the Arkansas Gross Receipts Act of 1941, as amended (A.C.A. §§26-52-101, et seq.), and the receipts from storing, using, distributing or consuming within the City tangible personal property under the Arkansas Compensating Tax Act of 1949, as amended (A.C.A. §§26-53-101, et seq.) (collectively, the "2012 Tax" or the "Sales and Use Tax");

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

Section 1. There be, and there is hereby called, a special election to be held on March 13, 2012, at which election there shall be submitted to the electors of the City the questions of issuing the Bonds under Amendment 62 and the Authorizing Legislation to pay all or a portion of the costs of accomplishing the Refunding and the Improvements in the maximum principal amounts described above, to be payable from collections of the Sales and Use Tax remaining after the State of Arkansas deducts its administrative charges and required rebates.

Section 2. In order to provide for the payment of the principal of and interest on the Bonds and all obligations of the City in connection therewith, there is hereby levied the Sales and Use Tax at the rate of three-fourths of one percent (0.75%). The levy of the Sales and Use Tax shall not become effective until the special election called in Section 1 above has been held and the issuance of the Bonds for one or more of the purposes is approved by the voters; provided, however, that no Bonds will be issued unless the issuance of the Bonds for the Refunding is approved. The effective date of the 2012 Tax will be the day following the date the 2006 Taxes and the 2009 Taxes expire or terminate. The Sales and Use Tax shall be levied and collected on the gross receipts, gross proceeds or sales price in the maximum amount allowed from time to time by Arkansas law, subject to rebates and limitations as from time to time required by Arkansas statutes for certain single transactions.

Section 3. The questions of issuing the Bonds shall be placed on the ballot for the election in substantially the following form:

The bonds described below that are approved may be combined into a single issue or may be issued in series from time to time. If the bonds for one or more of the purposes are approved and one of such purposes is the Refunding Bonds, there will be levied a replacement 0.75% sales and use tax, the net collections of which remaining after the State of Arkansas deducts its administrative charges and required rebates, will be used solely to retire the bonds and obligations of the City with respect thereto. The 0.75% sales and use tax will replace (a) the City's two (2) existing 0.5% sales and use taxes levied under Ordinance No. 18-06 in 2006 for the sole purpose of retiring bonds and (b) the City's two (2) 0.5% sales and use taxes levied under Ordinance No. 24-09 in 2009, but which are not yet effective, for the sole purpose of retiring bonds. The effective date of the 0.75% sales and use tax will be the day following the date the 2006 and 2009 sales and use taxes expire or terminate. The aggregate rate of taxation will be 0.75% even if bonds for more than one purpose are approved. No bonds will be issued for any purpose unless the Refunding Bonds are also approved.

REFUNDING BONDS AND 0.75% SALES AND USE TAX

An issue of bonds of the City of Fort Smith in the maximum principal amount of \$55,380,000 for the purpose of refunding the City's outstanding Sales and Use Tax Refunding and Improvement Bonds, Series 2006, Sales and Use Tax Bonds, Series 2008 and Sales and Use Tax and Water and Sewer Revenue Bonds, Series 2009, and, in order to pay the bonds, the levy and pledge of a local sales and use tax at the rate of 0.75% within the City.

FOR _____
AGAINST _____

WASTEWATER IMPROVEMENT BONDS
AND 0.75% SALES AND USE TAX

An issue of bonds of the City of Fort Smith in the maximum principal amount of \$71,070,000 to finance all or a portion of the costs of extensions, betterments and improvements to the City's wastewater system, including particularly, without limitation, wet weather sewer improvements, and any facility, land or equipment acquisition therefor, and, in order to pay the bonds, the levy and pledge of a local sales and use tax at the rate of 0.75% within the City.

FOR _____
AGAINST _____

WATER IMPROVEMENT BONDS
AND 0.75% SALES AND USE TAX

An issue of bonds of the City of Fort Smith in the maximum principal amount of \$28,120,000 to finance all or a portion of the costs of extensions, betterments and improvements to the City's water system, including particularly, without limitation, water transmission improvements, water storage and pump stations, and any land or equipment acquisition therefor, and, in order to pay the bonds, the levy and pledge of a local sales and use tax at the rate of 0.75% within the City.

FOR _____
AGAINST _____

**FIREFIGHTING IMPROVEMENT BONDS
AND 0.75% SALES AND USE TAX**

An issue of bonds of the City of Fort Smith in the maximum principal amount of \$9,110,000 to finance all or a portion of the costs of firefighting facilities and apparatus, including particularly, without limitation, apparatus replacements, a new fire station, and improvements to existing fire stations and any land acquisition, parking, equipment, furnishings and utility improvements therefor, and, in order to pay the bonds, the levy and pledge of a local sales and use tax at the rate of 0.75% within the City.

FOR _____
AGAINST _____

Section 4. The election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for municipal elections unless otherwise provided in the Authorizing Legislation and only qualified voters of the City shall have the right to vote at the election.

Section 5. The results of the election shall be proclaimed by the Mayor, and his Proclamation shall be published one time in a newspaper having a general circulation in the City, which Proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the courts within thirty days after the date of publication.

Section 6. A copy of this Ordinance shall be filed with the Sebastian County Clerk at least 60 days prior to the date of the special election. A copy of this Ordinance shall be given to the Sebastian County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A certified copy of this Ordinance shall also be provided to the Commissioner of Revenues of the State of Arkansas as soon as practical.

Section 7. The Mayor and City Clerk, for and on behalf of the City, be and they are hereby authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the issuance of the Bonds is approved by the electors, to cause the Sales and Use Tax to be collected in accordance with the Authorizing Legislation, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

Section 8. If the Bonds for the Refunding are approved by the voters and if such Bonds are issued, the 2006 Taxes and the 2009 Taxes shall be abolished at the proper time so that the 2006 Taxes, the 2009 Taxes and the 2012 Taxes are not in effect at the same time. Collections of the 2006 Taxes received after the Bonds are issued shall be used, if necessary or appropriate, to provide for the payment of the Bonds.

Section 9. The provisions of this Ordinance are hereby declared to be separable and if any provision shall for any reason be held illegal or invalid, such holding shall not affect the validity of the remainder of this Ordinance.

Section 10. All ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED: _____, 2012.

APPROVED:

ATTEST:

Mayor

City Clerk

(SEAL)

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE LEVY OF A ONE-FOURTH OF ONE PERCENT (0.25%) SALES AND USE TAX WITHIN THE CITY OF FORT SMITH, ARKANSAS FOR A PERIOD OF TEN (10) YEARS; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the Board of Directors of the City of Fort Smith, Arkansas (the "City") has determined that the City is in need of an additional source of revenue for fire department and park and recreation purposes; and

WHEREAS, Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") provides for the levy of a city-wide sales and use tax or taxes at the rate of 0.125%, 0.25%, 0.5%, 0.75% or 1%, or any combination thereof; and

WHEREAS, the City is proposing to levy a sales and use tax at the rate of one-fourth of one percent (0.25%) under the Authorizing Legislation;

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

Section 1. Under the authority of the Authorizing Legislation, there is hereby levied a one-fourth of one percent (0.25%) tax on the gross receipts from the sale at retail within the City of all items which are subject to the Arkansas Gross Receipts Act of 1941, as amended (A.C.A. "26-52-101, et. seq.), and the imposition of an excise (or use) tax on the storage, use, distribution or other consumption within the City of tangible personable property subject to the Arkansas Compensating Tax Act of 1949, as amended (A.C.A. "26-53-101, et. seq.), at a rate of one-fourth of one percent (0.25%) of the sale price of the property or, in the case of leases or rentals, of the lease or rental price (collectively, the "Sales and Use Tax"). The Sales and Use Tax will be levied and collected on the gross receipts, gross proceeds or sales price for each single transaction in the maximum amount allowed from time to time by Arkansas law, subject to rebates and limitations as required for certain single transactions as from time to time required by Arkansas statutes.

Section 2. The Sales and Use Tax shall be levied for a period of ten (10) years. The levy of the Sales and Use Tax shall commence on October 1, 2012.

Section 3. The Sales and Use Tax shall be levied, and the net collections received after deduction of the administrative charges of the State of Arkansas and required rebates ("Net Collections"), shall be used by the City as follows: 50% of the Net Collections for park and recreation purposes and 50% of the Net Collections for fire department purposes.

Section 4. All ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This Ordinance shall not take effect until an election is held on the question of levying the Sales and Use Tax, at which election a majority of the electors voting on the question shall have approved the levy of the Sales and Use Tax.

PASSED: _____, 2012.

APPROVED:

ATTEST:

City Clerk

Mayor

(SEAL)

ORDINANCE NO. _____

AN ORDINANCE CALLING A SPECIAL ELECTION IN THE CITY OF FORT SMITH, ARKANSAS ON THE QUESTION OF LEVYING A ONE-FOURTH OF ONE PERCENT (0.25%) SALES AND USE TAX WITHIN THE CITY OF FORT SMITH, ARKANSAS FOR A PERIOD OF TEN (10) YEARS; AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the Board of Directors of the City of Forth Smith, Arkansas (the "City") has passed on January ___, 2012, Ordinance No. _____ providing for the levy of a one-fourth of one percent (0.25%) sales and use tax within the City (the "Sales and Use Tax") for a period of ten (10) years that will commence on October 1, 2012; and

WHEREAS, the purpose of this Ordinance is to call a special election on the question of the levy of the Sales and Use Tax;

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

Section 1. There is hereby called a special election, to be held on March 13, 2012, at which election there shall be submitted to the electors of the City the question of the levy of the Sales and Use Tax.

Section 2. The question of levying the Sales and Use Tax shall be placed on the ballot for the election in substantially the following form:

0.25% SALES AND USE TAX

Adoption of a one-fourth of one percent (0.25%) local sales and use tax within the City of Fort Smith, Arkansas for a period of ten (10) years, commencing October 1, 2012, the net collections of which after deduction of the administrative charges of the State of Arkansas and required rebates, to be used by the City as follows: 50% of the Net Collections for park and recreation purposes and 50% of the Net Collections for fire department purposes.

FOR

AGAINST

Section 3. The election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for municipal elections and only qualified voters of the City shall have the right to vote at the election.

Section 4. The results of the election shall be proclaimed by the Mayor, and his Proclamation shall be published one time in a newspaper published in the City and having a general circulation therein, which Proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the courts within thirty days after the date of publication.

Section 5. A copy of this Ordinance shall be filed with the Sebastian County Clerk at least 60 days prior to the election date. A copy of this Ordinance shall also be given to the Sebastian County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A certified copy of this Ordinance shall also be provided to the Commissioner of Revenues of the State of Arkansas as soon as practical.

Section 6. The Mayor and City Clerk, for and on behalf of the City, be, and they are hereby authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the levy of the Sales and Use Tax is approved by the electors, to cause the Sales and Use Tax to be collected in accordance with the Authorizing Legislation, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

PASSED: _____, 2012.

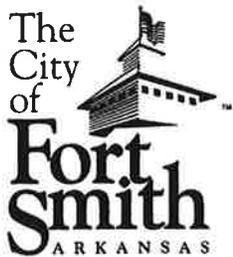
APPROVED:

ATTEST:

City Clerk

Mayor

(SEAL)



MEMORANDUM

December 30, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Sales Tax Election

Attached are 3 ordinances regarding the March 13th sales tax election. These were prepared based on the board's discussion at the December 13th study session. The ordinances, which present 5 questions to voters, rely on an existing 1% sales tax. Each ordinance accomplishes the following:

- A) The first ordinance contains 4 ballot questions regarding sales tax bonds. The first item, refinancing our existing sales tax bonds, must be approved in order for any of the other items to pass. Below is a summary of the ballot items and the amount of bonds for each item. The new bonds would be supported by a 3/4% sales tax.

<i>PROJECT/PURPOSE</i>	<i>PROJECT COST</i>	<i>DEBT SERVICE RESERVE</i>	<i>BOND ISSUANCE COSTS</i>	<i>TOTAL</i>
Refinancing of Existing Sales Tax Bonds	\$52,000,000	\$2,600,000	\$780,000	\$55,380,000
Fire Service Improvements	\$8,551,000	\$430,735	\$128,265	\$9,110,000
Wet Weather Sanitary Sewer Improvements	\$66,730,000	\$3,339,050	\$1,000,950	\$71,070,000
Water Transmission System Improvements	\$26,400,000	\$1,324,000	\$396,000	\$28,120,000
TOTAL	\$153,681,000	\$7,693,785	\$2,305,215	\$163,680,000

- B) The second ordinance levies a 1/4% sales tax to be used equally for the fire dept. and for parks and

recreation, subject to voter approval. A list of proposed expenditures is attached. The tax, if approved, would become effective October 1, 2012 and continue for 10 years.

- C) The third ordinance refers the 1/4% sales tax ordinance to voters for approval.

POSSIBLE OUTCOMES TO SALES TAX RATE

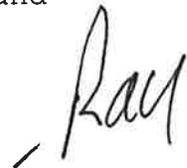
The following are the possible outcomes to the sales tax rate.

- ▶ If voters approve both the refinancing of the existing bonds and ordinance C, the sales tax rate will remain unchanged. This is true regardless of how many projects financed with bonds are approved.
- ▶ If voters approve the refinancing of the existing bonds and defeat ordinance C, the sales tax rate will decrease by 1/4%.
- ▶ If voters defeat the refinancing of the existing bonds and approve ordinance C, the sales tax rate will increase by 1/4%. This is because the existing 1% sales tax will still be pledged to pay the existing bonds until they're retired in 2014. The increase in the sales tax rate results by the approval of ordinance C without the approval of refinancing the existing bonds.
- ▶ If voters defeat both the refinancing of the existing bonds and ordinance C, the sales tax rate will remain unchanged. This is because the existing 1% sales tax will still be pledged to pay the existing bonds until they're retired in 2014.

CONCLUSION

These ordinances will give voters the opportunity to approve a variety of projects necessary for Fort Smith's progress without increasing the sales tax rate. The projects will enhance public safety, address infrastructure needed to support growth and protect the environment, and provide for numerous parks and recreation projects which the community has requested.

Attachments

A handwritten signature in black ink, appearing to read "Ray", is located in the bottom right corner of the page.

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
1/8% FOR FIRE SERVICES						
Revenue	600,000	2,436,000	2,472,540	2,509,628	2,547,273	2,585,482
Purposes						
Station 11 Operations		287,500	1,150,000	1,173,000	1,196,460	1,220,389
Firefighter Equipment		190,000				
Aerial Apparatus Staffing	139,000	555,000	566,100	577,422	588,970	600,750
Command Staffing	51,000	204,000	208,080	212,242	216,486	220,816
Training		50,000	50,000	50,000	50,000	50,000
Training Center Construction	400,000	750,000				
Apparatus Replacement		400,000	450,000	450,000	475,000	475,000
TOTAL - FIRE	590,000	2,436,500	2,424,180	2,462,664	2,526,917	2,566,955
ENDING BALANCE	10,000	(500)	48,360	46,964	20,356	18,526

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
1/8% FOR PARKS SERVICES						
Revenue	600,000	2,436,000	2,472,540	2,509,628	2,547,273	2,585,482
Purposes						
Aquatic Center	550,000	2,175,000	1,275,000		78,030	79,591
Aquatic Center Operations			75,000	76,500		
Ben Geren Park Ballfields			625,000	625,000		
Chaffee Crossing Ballfields			250,000	800,000	550,000	
Parks Maintenance O & M Budget	50,000	250,000	250,000	300,000	500,000	700,000
Trails				575,000	625,000	600,000
Misc. Park Improvements					275,000	
Fort Smith Park Playground					100,000	
Creekmore Park Tennis Courts					250,000	
Creekmore Park Land Acq. & Parking						250,000
Tilles Park Tennis					20,000	
Soccer Fields & Park Along Riverfront Dr.						800,000
Neighborhood Park Construction				125,000	150,000	150,000
TOTAL - PARKS	600,000	2,425,000	2,475,000	2,501,500	2,548,030	2,579,591
ENDING BALANCE	0	11,000	(2,460)	8,128	(757)	5,891

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE I, OF THE FORT SMITH
MUNICIPAL CODE REGULATING ANIMALS, ESTABLISHING MANDATORY
REGISTRATION, SPAY AND NEUTER REGULATIONS, AND A HOBBYIST PERMIT
FOR DOGS AND CATS

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

Chapter 4, Article I, of the Fort Smith Municipal Code is amended to add Section 4-11 to read as follows:

Sec. 4-11. Annual Registration for Dogs and Cats; Mandatory Spay / Neuter for Dogs and Cats; Hobbyist Permit for Dogs and Cats

(a) *Annual registration for dogs and cats.* Any person owning, keeping, harboring or having custody of a dog or cat six months old or older within the city limits for more than thirty (30) consecutive days in a twelve month period is required to obtain a license tag for such dog or cat by registering it with the license-collecting agent of the city, to be designated by the City Administrator. For each neutered male or spayed female over six months of age, the levied fee shall be in the amount of five (\$5) dollars, annually, or a license valid for the life of the animal can be purchased in the amount of ten (\$10) dollars. An owner shall have thirty (30) days from the date a license expires to obtain a new license without penalty. Anyone failing to obtain a license within said thirty (30) days shall be required to pay an additional fee of ten (\$10) dollars.

(1) When initially registering a dog or cat, the owner shall provide documented proof of current rabies vaccination as well as documented proof that the animal has been spayed or neutered. Regardless of whether a license is obtained for an annual or a lifetime basis, every owner shall provide proof annually to the license-collecting agent of the city of the animal's then current rabies vaccination. Failure to maintain current rabies vaccination records with the city shall render the registration invalid.

(2) Every person owning, keeping, harboring or having custody of a dog or cat subject to the registration requirement is required to see that the animal's license tag is valid and is securely fastened to the dog or cat by collar or harness at all times.

(3) Working police dogs, police dogs in training, registered service dogs, and service dogs in training with applicable credentials shall qualify for exemption from the annual registration fee by including on the license application the name and phone number of the responsible law enforcement agency and, in the case of service dogs, the individual registration number of the animal.

(4) City residents who are sixty-five (65) years of age or older can register up to two (2) pets without cost.

(b) *Spaying and neutering requirements.* With the exception of those individuals listed below, any person owning, keeping, harboring, or having custody of any dog or cat six months of age or older is required to have said animal spayed or neutered unless said person holds a hobbyist permit issued by the license-collecting agent of the city:

(1) Persons who own, keep, harbor, or have custody of registered service dogs, search and rescue dogs or working police dogs;

(2) Individuals who are non-residents of the city and reside temporarily therein for a period not to exceed thirty (30) consecutive days within a twelve month period;

(3) Animal shelters, kennels, pet shops and veterinary hospitals;

(4) Persons who own, keep, harbor or have custody of a dog or cat and who are in possession of a certification signed by a licensed veterinarian stating that the animal is unfit to be spayed or neutered because the procedure would endanger the life of the animal.

(5) City residents with a combined annual household income below the United States Health and Human Services Poverty Guidelines may apply for financial assistance to comply with the spaying and/or neutering requirements.

(c) *Hobbyist permit.* Applicants must apply for a hobbyist permit with the license-collecting agent of the city if the dog or cat will remain intact. A citation will only be issued under this section if the owner is in violation of any other provision of this chapter. A hobbyist may not allow his or her animals to produce more than one total litter annually regardless of the number of unsterilized animals owned. A second litter delivered within the city within a twelve month period shall invalidate the hobbyist's permit for twelve months.

(1) *Levy and amount of permit.* There is hereby levied and there shall be collected an annual permit fee in the amount hereinafter provided on each dog or cat owned or kept within the city for the purposes of breeding, competing, or hunting. Said permit fee shall be paid to the license-collecting agent of the city, along with a twenty-five (\$25) dollar non-refundable application fee. For each unneutered male or unspayed female over six months of age, the levied fee shall be in the amount of twenty-five (\$25) dollars annually.

(2) *Issuance of permit and tag.* The license-collecting agent of the city shall issue a hobbyist permit after the required documentation listed below has been provided:

(A) Hobbyist permit application is filed with the license-collecting agent of the city, stating the purpose for which the dog or cat is to be utilized, e.g., hunting, breeding, or show.

(B) Documentation for breeding purposes confirming that each applicable animal is registered with the AKC, UKC, CFA, or TICA as a purebred; proof that the hobbyist has held membership within the preceding twelve months in a national, regional or local kennel club; provides a signed copy of the Code of Ethics for the breed club to which the hobbyist belongs; and, provides documentation of all necessary health clearances for breeding specific type of breed and health records for litter.

(C) For show dogs or dogs participating in sporting competitions, documentation confirming that each applicable animal has competed in at least one dog show or sporting competition sanctioned by a national or regional registry within the preceding twelve months; and that the hobbyist has held membership within the preceding twelve months in a national, regional or local kennel club.

(D) For hunting purposes, a hobbyist must provide documentation showing he or she holds a current state hunting license with the Arkansas Game and Fish Commission.

(3) A new permit shall be obtained each year by every hobbyist and a new fee paid. An owner shall have thirty (30) days from the date the permit expires to obtain a new permit without penalty. Any hobbyist failing to obtain a permit within such period shall be required to pay an additional fee of \$10.00.

(4) Revocation of Permit. A permit may be revoked if the animal services division determines that any of the following conditions exist:

(A) The hobbyist has been convicted of or has plead guilty or *nolo contendere* to the criminal offense of cruelty to animals; or

(B) The hobbyist has failed to comply with any of the conditions of the permit; or

(C) The hobbyist has violated any of the provisions of this Chapter twice in one permit year.

(5) Nothing in this section shall be construed to apply to any dog or cat under the age of six months or to dogs or cats brought to the city on a temporary basis for the sole purpose of show or exhibition.

(d) This ordinance shall go into effect on January 1, 2012. Application for and issuance of licenses shall be by ward in the following prescribed manner:

(1) Residents living in Ward 1 shall license dogs and cats during the first quarter of the calendar year (January 1 to March 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

- (2) Residents living in Ward 2 shall license dogs and cats during the second quarter of the calendar year (April 1 to June 30) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.
- (3) Residents living in Ward 3 shall license dogs and cats during the third quarter of the calendar year (July 1 to September 30) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.
- (4) Residents living in Ward 4 shall license dogs and cats during the fourth quarter of the calendar year (October 1 to December 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

This Ordinance adopted this ____ day of _____, 2011.

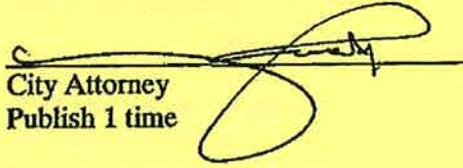
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
Publish 1 time



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police 

Subject: Animal Ordinances

Date: December 27, 2011

Two ordinances will be presented to the Board of Directors for their consideration at the January 3rd, 2012 regular meeting. Both ordinances were read for the first time at the March 15, 2011 regular meeting under the following captions:

Ordinance amending Chapter 4, Article I, of the Fort Smith Municipal Code regulating animals, establishing mandatory registration, spay and neuter regulations, and hobbyist permit for dogs and cats.

and

Ordinance amending Chapter 4, Article I, Section 4-1 of the Fort Smith Municipal Code regulating animals.

Both ordinances were tabled by Directors at the April 5, 2011 meeting for six months. At the October 4th, 2011 regular meeting, Directors tabled both ordinances for ninety (90) days.

Since that meeting, members of the Animal Services Task Force established by the Board of Directors through Resolution R-122-11 have completed their work.

OPTIONS

The Board of Directors may exercise any of the following options concerning either or both of these ordinances. They may read the ordinances the second time; table the ordinances for a designated period of time to retain them for future consideration; table them indefinitely to withdraw them; or make a motion to read them for the first time.

Article I. In General

Sec. 4-11. Annual Registration for Dogs and Cats; Mandatory Spay / Neuter for Dogs and Cats; Hobbyist Permit for Dogs and Cats

(a) Annual registration for dogs and cats. Any person owning, keeping, harboring or having custody of a dog or cat six months old or older within the city limits for more than thirty (30) consecutive days in a twelve month period is required to obtain a license tag for such dog or cat by registering it with the license-collecting agent of the city, to be designated by the City Administrator. For each neutered male or spayed female over six months of age, the levied fee shall be in the amount of five (\$5) dollars, annually, or a license valid for the life of the animal can be purchased in the amount of ten (\$10) dollars. An owner shall have thirty (30) days from the date a license expires to obtain a new license without penalty. Anyone failing to obtain a license within said thirty (30) days shall be required to pay an additional fee of ten (\$10) dollars.

(1) When initially registering a dog or cat, the owner shall produce documented proof of current rabies vaccination as well as documented proof that the animal has been spayed or neutered. Regardless of whether a license is obtained for an annual or a lifetime bases, every owner shall provide proof annually of the then current rabies vaccination to the license-collecting agent of the city. Failure to maintain current rabies vaccination records with the city shall render the registration invalid.

(2) Every person owning, keeping, harboring or having custody of a dog or cat subject to the registration requirement is required to see that the animal's license tag is valid and is securely fastened to the dog or cat by collar or harness at all times.

(3) Working police dogs, police dogs in training, registered service dogs, and service dogs in training with applicable credentials shall qualify for exemption from the annual registration fee by including on the license application the name and phone number of the responsible law enforcement agency and, in the case of service dogs, the individual registration number of the animal.

(4) City residents who are sixty-five (65) years of age or older can register up to two (2) pets without cost.

(b) Spaying and neutering requirements. With the exception of those individuals listed below, any person owning, keeping, harboring, or having custody of any dog or cat six months of age or older is required to have said animal spayed or neutered unless said person holds a hobbyist permit issued by the license-collecting agent of the city:

(1) Persons who own, keep, harbor, or have custody of registered service dogs, search and rescue dogs or working police dogs;

(2) Individuals who are non-residents of the city and reside temporarily therein for a period not to exceed thirty (30) consecutive days within a twelve month period;

(3) Animal shelters, kennels, pet shops and veterinary hospitals;

(4) Persons who own, keep, harbor or have custody of a dog or cat and who are in possession of a certification signed by a licensed veterinarian stating that the animal is unfit to be spayed or neutered because the procedure would endanger the life of the animal;

(5) City residents with a combined annual household income below the United States Health and Human Services Poverty Guidelines may apply for financial assistance to comply with the spaying and/or neutering requirements.

(c) Hobbyist permit. Applicants must apply for a hobbyist permit with the license-collecting agent of the city if the dog or cat will remain intact. A citation will only be issued under this section if the owner is in violation of any other provision of this chapter. A hobbyist may not allow his or her animals to produce more than one total litter annually regardless of the number of unsterilized animals owned. A second litter delivered within the city within a twelve month period shall invalidate the hobbyist's permit for twelve months.

(1) Levy and amount of permit. There is hereby levied and there shall be collected an annual permit fee in the amount hereinafter provided on each dog or cat owned or kept within the city for the purposes of breeding, competing, or hunting. Said permit fee shall be paid to the license-collecting agent of the city, along with a twenty-five (\$25) dollar non-refundable application fee. For each unneutered male or unspayed female over six months of age, the levied fee shall be in the amount of twenty-five (\$25) dollars annually.

(2) Issuance of permit and tag. The license-collecting agent of the city shall issue a permit after the required documentation listed below has been provided:

(A) Hobbyist permit application is filed with the license-collecting agent of the city, stating the purpose for which the dog or cat is to be utilized, e.g., hunting, breeding, or show.

(B) Documentation for breeding purposes confirming that each applicable animal is registered with the AKC, UKC, CFA, or TICA as a purebred; proof that the hobbyist has held membership within the preceding twelve months in a national, regional or local kennel club; provides a signed copy of the Code of Ethics for the breed club to which the hobbyist belongs; and, provides documentation of all necessary health clearances for breeding specific type of breed and health records for litter.

(C) For show dogs or dogs participating in sporting competitions, documentation confirming that each applicable animal has competed in at least one dog show or sporting competition sanctioned by a national or regional registry within the past twelve months; and that the hobbyist has held membership within the preceding twelve months in a national, regional or local kennel club.

(D) For hunting purposes, a hobbyist must provide documentation showing she or he holds a current state hunting license with the Arkansas Game and Fish Commission.

(3) A new permit shall be obtained each year by every hobbyist and a new fee paid. An owner shall have thirty (30) days from the date the permit expires to obtain a new permit without penalty. Any hobbyist failing to obtain a permit within such period shall be required to pay an additional fee of \$10.00.

(4) Revocation of Permit. A permit may be revoked if the animal services division determines that any of the following conditions exist:

(A) The hobbyist has been convicted of or has plead guilty or *nolo contendere* to the criminal offense of cruelty to animals; or

(B) The hobbyist has failed to comply with any of the conditions of the permit; or

(C) The hobbyist has violated any of the provisions of this Chapter twice in one permit year.

(5) Nothing in this section shall be construed to apply to any dog or cat under the age of six months or to dogs or cats brought to the city on a temporary basis for the sole purpose of show or exhibition.

(d) This ordinance shall go into effect on January 1, 2012. Application for and issuance of licenses shall be by ward in the following prescribed manner:

(1) Residents living in Ward 1 shall license dogs and cats during the first quarter of the calendar year (January 1 to March 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

(2) Residents living in Ward 2 shall license dogs and cats during the second quarter of the calendar year (April 1 to June 30) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

-
- (3) Residents living in Ward 3 shall license dogs and cats during the third quarter of the calendar year (July 1 to September 30) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.
 - (4) Residents living in Ward 4 shall license dogs and cats during the fourth quarter of the calendar year (October 1 to December 31) or within thirty (30) days of acquiring a dog or cat after the licensing period has expired.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE I, SECTION 4-1 OF THE FORT SMITH MUNICIPAL CODE REGULATING ANIMALS

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

Chapter 4, Article I, Section 4-1, of the Fort Smith Municipal Code is amended to read as follows:

Sec. 4-1. Definitions.

The following words and phrases shall, for the purpose of this chapter, have the following meanings:

Animal shall mean any animal which may be affected by rabies.

Animal warden shall mean the person who shall be, from time to time, duly authorized by the board of directors as the agent of the city for the purpose of providing the services and fulfilling the responsibilities of the animal warden as herein set out.

Cat shall mean animals of all ages, both female and male, which are members of the feline or cat family.

City pound shall mean the place specified by the City of Fort Smith Board of Directors for the impounding of dogs and other animals.

Dangerous dog means any dog which displays or has a tendency, disposition or propensity to:

(1) Bare its teeth or approach in a menacing manner a person or domestic animal that is not provoking the dog, or

(2) Attack, chase, charge or bite a person or domestic animal in a menacing manner, or attempt to do so.

Dog shall mean animals of all ages, both female and male, which are members of the canine or dog family.

Has been bitten shall mean that a person has been seized with teeth or jaws by an animal, so that the skin of the person or things seized has been nipped or gripped, or has been wounded or pierced and includes contact of saliva with any break or abrasion of the skin.

Hobbyist means a person whose unsterilized dogs or cats are registered with the

American Kennel Club (AKC), United Kennel Club (UKC), Cat Fanciers' Association (CFA), The International Cat Association (TICA) or similar group, and who competes or shows their animals at least annually. 'Hobbyist' also means a person who holds a current Arkansas hunting license and uses his or her dogs to hunt at least annually.

Licensed veterinarian shall mean a practitioner of veterinary medicine who holds a valid license to practice his or her profession.

Muzzle, when required, shall mean an apparatus of appropriate material with sufficient strength to restrain the dog from biting; provided, that no such muzzle employed shall be made from any material or maintained on the dog in any manner so as to cut or injure the dog.

Neuter shall mean to render a male dog or male cat unable to reproduce.

Owner shall mean every person having a right of property in a dog or other animal or who keeps or harbors a dog or other animal, or has it in his or her care, or acts as its custodian, or knowingly permits a dog or other animal to remain on or about any premises occupied by him or her, provided that this term shall not apply to veterinarians, pet shops or kennel owners temporarily maintaining on their premises animals owned by others.

Pen shall mean an enclosure for domestic animals meeting the following requirements:

(1) The minimum pen size shall be four (4) feet by six (6) feet or twenty-four (24) square feet for one dog under fifty (50) lbs. For dogs over fifty (50) lbs., the minimum pen size shall be five (5) feet by ten (10) feet or fifty (50) square feet.

(2) In all pens, each dog housed therein shall have room to stand, lie down, turn around and sit normally away from its own waste; this requires a minimum of four (4) feet by six (6) feet. A pen five (5) feet by ten (10) feet shall hold no more than one (1) large, or two (2) medium, or three (3) small breed dogs.

(3) All pens shall be a minimum of six (6) feet in height.

(4) All pens shall be surrounded on all sides and top by chainlink fencing of at least no. 9 gauge, with steel ties, maximum two and one-half-inch mesh, with concrete or similar flooring or with side fencing buried eighteen (18) inches into the ground, and with gates padlocked.

Run at large shall mean the state of freedom of any dog not confined on the premises of the owner within an enclosure, house or other building, trolley system or temporary tether, or not restrained on the premises of the owner by a leash sufficiently strong to prevent the dog from escaping and restricting the dog to the premises, or not confined by leash or confined within an automobile when away from the premises of the owner. In relation to unspayed female dogs while in season, "run at large" shall further be defined as the state of freedom of any such dog not confined inside an enclosure of such a substantial construction so as to prevent such dog from attracting other dogs to the near vicinity of the confined dog.

Trolley system is a method to confine a dog by tethering the dog to a cable that is not less

than ten feet in length and elevated four to seven feet off the ground in a manner that allows the tether to move freely along the length of the cable.

Spay shall mean to remove the ovaries of a female dog or female cat in order to render the animal unable to reproduce.

Vaccination shall mean the injection, subcutaneously or otherwise, of canine antirabic vaccine, as approved by the United States Department of Agriculture or the state veterinarian and administered by a licensed veterinarian.

Vaccination certificate shall mean a written or printed certificate showing on its face that the owner described thereon has received an inoculation or antirabic vaccine in an amount sufficient to produce immunity in the described animal and bearing the signature of a licensed veterinarian.

Vicious animal shall mean any animal which:

(1) When unprovoked, approaches in a manner of attack any person upon the streets, sidewalks, or any other public ground or place;

(2) Has a known propensity, tendency or disposition to attack, without provocation, human beings or domestic animals;

(3) Without provocation, bites or attacks a human being or domestic animal on public or private property;

(4) Is owned or harbored primarily or in part for the purpose of animal fighting or is an animal trained for animal fighting.

Notwithstanding the above definition, no animal shall be declared vicious if the person attacked or bitten by the animal was teasing, tormenting, abusing, or assaulting the animal, or was committing or attempting to commit a crime. Furthermore, no animal shall be declared vicious if a domestic animal which was bitten or attacked by that animal was teasing, tormenting, abusing, or assaulting the animal. Additionally, no animal shall be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault by another human being or animal.

Vicious dog means any dog which has:

- (1) Caused a life-threatening injury, broken bone, multiple sutures, or any injury requiring medical attention to a person or domestic animal, without provocation, on public or private property; or
- (2) Killed a domestic animal, without provocation, on public or private property; or
- (3) Is owned or harbored primarily or in part for the purpose of dog fighting or is a dog trained for fighting.

This Ordinance adopted this ____ day of _____, 2011.

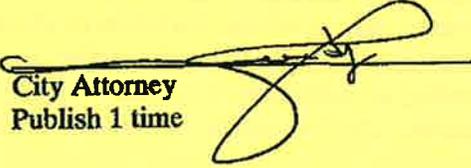
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney
Publish 1 time



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police *KL*

Subject: Animal Ordinances

Date: December 27, 2011

Two ordinances will be presented to the Board of Directors for their consideration at the January 3rd, 2012 regular meeting. Both ordinances were read for the first time at the March 15, 2011 regular meeting under the following captions:

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and

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Both ordinances were tabled by Directors at the April 5, 2011 meeting for six months. At the October 4th, 2011 regular meeting, Directors tabled both ordinances for ninety (90) days.

Since that meeting, members of the Animal Services Task Force established by the Board of Directors through Resolution R-122-11 have completed their work.

OPTIONS

The Board of Directors may exercise any of the following options concerning either or both of these ordinances. They may read the ordinances the second time; table the ordinances for a designated period of time to retain them for future consideration; table them indefinitely to withdraw them; or make a motion to read them for the first time.

Article I. In General
Sec. 4-1. Definitions.

The following words and phrases shall, for the purpose of this chapter, have the following meanings:

Animal shall mean any animal which may be affected by rabies.

Animal warden shall mean the person who shall be, from time to time, duly authorized by the board of directors as the agent of the city for the purpose of providing the services and fulfilling the responsibilities of the animal warden as herein set out.

Cat shall mean animals of all ages, both female and male, which are members of the feline, or cat family.

City pound shall mean the place specified by the City of Fort Smith Board of Directors and operated by the animal warden for the impounding of dogs and other animals.

Dangerous dog means any dog which displays or has a tendency, disposition or propensity to:

- (1) Bare its teeth or approach in a menacing manner a person or domestic animal that is not provoking the dog, or
- (2) Attack, chase, charge or bite a person or domestic animal in a menacing manner, or attempt to do so.

Dog shall mean animals of all ages, both female and male, which are members of the canine or dog family.

Has been bitten shall mean that a person has been seized with teeth or jaws by an animal, so that the skin of the person or things seized has been nipped or gripped, or has been wounded or pierced and includes contact of saliva with any break or abrasion of the skin.

Hobbyist means a person whose unsterilized dogs or cats are registered with the American Kennel Club (AKC), United Kennel Club (UKC), Cat Fanciers' Association (CFA), The International Cat Association (TICA) or similar group, and who competes or shows their animals at least annually. 'Hobbyist' is also a person who holds a current Arkansas hunting license and uses his or her dogs to hunt at least annually.

Licensed veterinarian shall mean a practitioner of veterinary medicine who holds a valid license to practice his profession.

Muzzle, when required, shall mean an apparatus of appropriate material with sufficient strength to restrain the dog from biting; provided, that no such muzzle employed shall be made from any material or maintained on the dog in any manner so as to cut or injure the dog.

Neuter shall mean to render a male dog or male cat unable to reproduce.

Owner shall mean every person having a right of property in a dog or other animal or who keeps or harbors a dog or other animal, or has it in his or her care, or acts as its custodian, or knowingly permits a dog or other animal to remain on or about any premises occupied by him or her, provided that this term should not apply to veterinarians, pet shops or kennel owners temporarily maintaining on their premises animals owned by others.

Pen shall mean an enclosure for domestic animals meeting the following requirements:

(1) The minimum pen size shall be four (4) feet by six (6) feet or twenty-four (24) square feet for one dog under fifty (50) lbs. For dogs over fifty (50) lbs., the minimum pen size shall be five (5) feet by ten (10) feet or fifty (50) square feet.

(2) In all pens, each dog housed therein shall have room to stand, lie down, turn around and sit normally away from its own waste; this requires a minimum of four (4) feet by six (6) feet. A pen five (5) feet by ten (10) feet shall hold no more than one (1) large, or two (2) medium, or three (3) small breed dogs.

(3) All pens shall be a minimum of six (6) feet in height.

(4) All pens shall be surrounded on all sides and top by chainlink fencing of at least no. 9 gauge, with steel ties, maximum two and one-half-inch mesh, with concrete or similar flooring or with side fencing buried eighteen (18) inches into the ground, and with gates padlocked.

Run at large shall mean the state of freedom of any dog not confined on the premises of the owner within an enclosure, house or other building, trolley system or temporary tether, or not restrained on the premises of the owner by a leash sufficiently strong to prevent the dog from escaping and restricting the dog to the premises, or not confined by leash or confined within an automobile when away from the premises of the owner. In relation to unspayed female dogs while in season, "run at large" shall further be defined as the state of freedom of any such dog not confined inside an enclosure of such a substantial construction so as to prevent such dog from attracting other dogs to the near vicinity of the confined dog.

Trolley system is a method to confine a dog by tethering the dog to a cable that is not less than ten feet in length and elevated four to seven feet off the ground in a manner that allows the tether to move freely along the length of the cable.

Spay shall mean to remove the ovaries of a female dog or female cat in order to render the animal unable to reproduce.

Vaccination shall mean the injection, subcutaneously or otherwise, of canine antirabic vaccine, as approved by the United States Department of Agriculture or the state veterinarian and administered by a licensed veterinarian.

Vaccination certificate shall mean a written or printed certificate showing on its face that the owner described thereon has received an inoculation or antirabic vaccine in an amount sufficient to produce immunity in the described animal and bearing the signature of a licensed veterinarian.

Vicious animal shall mean any animal which:

(1) When unprovoked, approaches in a manner of attack any person upon the streets, sidewalks, or any other public ground or place;

(2) Has a known propensity, tendency or disposition to attack, without provocation, human beings or domestic animals;

(3) Without provocation, bites or attacks a human being or domestic animal on public or private property;

(4) Is owned or harbored primarily or in part for the purpose of animal fighting or is an animal trained for animal fighting.

Notwithstanding the above definition, no animal shall be declared vicious if the person attacked or bitten by the animal was teasing, tormenting, abusing, or assaulting the animal, or was committing or attempting to commit a crime. Furthermore, no animal shall be declared vicious if a domestic animal which was bitten or attacked by that animal was teasing, tormenting, abusing, or assaulting the animal. Additionally, no animal shall be declared vicious if the animal was protecting or defending a human being within the immediate vicinity of the animal from an unjustified attack or assault by another human being or animal.

Vicious dog means any dog which has:

(1) Caused a life-threatening injury, broken bone, multiple sutures, or any injury requiring medical attention to a person or domestic animal, without provocation, on public or private property; or

(2) Killed a domestic animal, without provocation, on public or private property; or

(3) Is owned or harbored primarily or in part for the purpose of dog fighting or is a dog trained for fighting.

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE I, OF THE FORT SMITH
MUNICIPAL CODE TO ESTABLISH AN ANIMAL SERVICES ADVISORY BOARD

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

Chapter 4, Article I, Section 4-13, Section 4-14, Section 4-15, Section 4-19, and Section
4-22 of the Fort Smith Municipal Code is amended to read as follows:

Section 4-13.

The Animal Services Advisory Board shall be composed of nine (9) members. Two (2) members shall be licensed veterinarians; one (1) member shall be an owner, operator or employee of a business related to the production, sale, distribution or care of animals or livestock; two (2) members shall be board members of separate nonprofit animal interest groups whose primary interest is the health and welfare of animals; and four (4) members who shall not have any affiliation or connection with a specific business or entity.

Section 4-14.

Members shall be appointed by the Board of Directors.

Section 4-15.

The Animal Services Advisory Board members shall be initially appointed as follows: two (2) licensed veterinarians shall be appointed for a term of two (2) years; one (1) owner, operator or employee of a business related to the production, sale, distribution or care of animals or livestock shall be appointed for a term of one (1) year; two (2) board members of separate nonprofit animal interest groups shall be appointed for a term of one (1) year; two (2) citizen members shall be appointed for a term of three (3) years; and two (2) citizen members shall be appointed for a term of two (2) years. Thereafter, all terms shall be three years in length.

Section 4-19.

The Animal Services advisory board shall annually select a chairperson from its own membership.

Section 4-22.

The Animal Services Advisory Board shall work in an advisory capacity to the Mayor and the Board of Directors in regards to topics that concern the care and safety of animals within the corporate limits of the City, and shall endeavor to stimulate and encourage communication with all members of the community to ensure that the programs, goals and objectives of the City relative to the care and safety of animals are consistent with community needs and desires. The Animal Services Advisory Board shall submit an annual report including, but not limited to, statistics on enforcement, animal euthanasia, public education, and access to low cost spay/neuter services. However, the Animal Services Advisory Board will not be responsible for the day to day operations of the Animal Control Division of the Fort Smith Police Department.

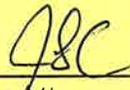
This Ordinance adopted this ___ day of _____, 2012.

APPROVED: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



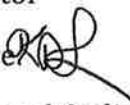
City Attorney
Publish 1 time



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator
From: Kevin Lindsey, Chief of Police 
Subject: Animal Services Advisory Board Ordinance Amendment
Date: December 28, 2011

The established Animal Services Task Force presented their report to the Board of Directors at the December 13, 2011 Study Session. The Animal Services Advisory Board was created by Ordinance 21-11, enacted by the Board of Directors at their March 15, 2011 regular meeting. The Board has directed Animal Services Advisory Board members, which will be appointed by Directors, to review recommendations promulgated by the Animal Services Task Force and to provide recommendations to the Board of Directors.

Recommendations from the Animal Services Task Force include changes to the composition and duties of the Animal Services Advisory Board. Staff has incorporated recommended changes into a new ordinance. The recommended changes specifically address the composition of the Animal Services Advisory Board, reflected in Section 4-13, by increasing the number of licensed veterinarians from one (1) to two (2) and by adding a requirement that two (2) members be board members of separate nonprofit animal interest groups. These changes also required amendments to Section 4-15, which addresses the term lengths of various members of the Animal Services Advisory Board. Additionally, the Animal Services Task Force recommended removal of language establishing the facilitation of requests for financial assistance for low cost spaying and neutering. Staff removed this language from Section 4-22.

The recommended changes have been reviewed and approved by Assistant City Attorney Rick Wade, as well as Sgt. Greg Copeland, supervisor of Animal Control Division of the Fort Smith Police Department. The recommended changes will facilitate guidance to persons appointed to the Animal Services Advisory Board. Staff recommends incorporating these changes into the ordinance. Upon passage of this Ordinance Amendment, staff will begin soliciting applications.

"Pride and Progress"

ORDINANCE NO. 21-11

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE I, OF THE FORT SMITH MUNICIPAL CODE TO ESTABLISH AN ANIMAL SERVICES ADVISORY BOARD

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

Chapter 4, Article I, of the Fort Smith Municipal Code is amended to add Section 4-12, Section 4-13, Section 4-14, Section 4-15, Section 4-16, Section 4-17, Section 4-18, Section 4-19, Section 4-20, Section 4-21, and Section 4-22 to read as follows:

Section 4-12.

There is hereby established in and for the City an Animal Services Advisory Board.

Section 4-13.

The Animal Services Advisory Board shall be composed of nine (9) members. ~~At least one (1) member~~ Two (2) members shall be ~~a~~ licensed veterinarians; ~~at least one (1) member~~ shall be an owner, operator or employee of a business related to the production, sale, distribution or care of animals or livestock; ~~and, seven (7)~~ two (2) members shall be board members of separate nonprofit animal interest groups whose membership is comprised primarily of residents of the City, and whose primary interest is the health and welfare of animals; and four (4) members who ~~shall be residents of the City of Fort Smith, but need~~ not have any affiliation or connection with a specific business or entity.

Section 4-14.

~~Pursuant to ACA § 14-48-117, the m~~Members shall be ~~nominated by the City Administrator and~~ appointed by the Board of Directors.

Section 4-15.

The Animal Services Advisory Board members shall be initially appointed as follows: ~~one (1)~~ two (2) licensed veterinarians shall be appointed for a term of two (2) years; one (1) owner, operator or employee of a business related to the production, sale, distribution or care of animals or livestock shall be appointed for a term of one (1) year; two (2) board members of separate nonprofit animal interest groups shall be appointed for a term of one (1) year; two (2) citizen members shall be appointed for a term of three (3) years; and two (2) citizen members shall be appointed for a term of two (2) years; ~~and three (3) members shall be appointed for a term of one (1) year.~~ Thereafter, all terms shall be three years in length.

Section 4-16.

Any member of the Animal Services Advisory Board may be removed by the Board of Directors for cause or absence from more than two (2) consecutive meetings.

Section 4-17.

Any vacancy occurring in the membership of the Animal Services Advisory Board during a term shall be filled for the unexpired portion of the term.

Section 4-18.

The members of the Animal Services Advisory Board shall serve without compensation.

Section 4-19.

The Animal Services advisory board shall annually select a chairperson from its own membership.

Section 4-20.

The animal services Advisory Board shall establish such rules and regulations as are needed to govern its meetings and affairs.

Section 4-21.

The Animal Services Advisory Board shall maintain minutes of its meetings and official transactions in records maintained in a place designated by the City Administrator.

Section 4-22.

The Animal Services Advisory Board shall work in an advisory capacity to the Mayor and the Board of Directors in regards to topics that concern the care and safety of animals within the corporate limits of the City, and shall endeavor to stimulate and encourage communication with all members of the community to ensure that the programs, goals and objectives of the City relative to the care and safety of animals are consistent with community needs and desires. ~~The Animal Services Advisory Board will also facilitate requests for financial assistance for low cost spaying and neutering.~~ The Animal Services Advisory Board shall submit an annual report including, but not limited to, statistics on enforcement, animal euthanasia, public education, and access to low cost spay/neuter services. However, the animal services advisory board will not be responsible for the day to day operations of the Animal Control Division of the Fort Smith Police Department.

This Ordinance adopted this ___ day of _____, 20142.

APPROVED: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

6

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AGREEMENTS FOR CERTAIN SERVICES FOR INHABITANTS OF THE CITY OF FORT SMITH

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

SECTION 1: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Museum of History** providing for the payment by the City to the Fort Smith Museum of History up to a maximum of **\$2,523** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 2: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Heritage Foundation** providing up to a maximum of **\$5,178** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 3: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Symphony** providing up to a maximum of **\$10,728** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 4: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Regional Art Museum** providing up to a maximum of **\$10,728** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 5: The Mayor is hereby authorized to execute

*Approved as to form
JL
No publication required*

that certain agreement with the **Fort Smith Chorale** providing payment up to a maximum of **\$4,512** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 6: The Mayor is hereby authorized to execute that certain agreement with the **Second Street Live** in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of **\$8,064** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 7: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Little Theater** in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of **\$4,734** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 8: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Boys and Girls Clubs** providing for the payment by the City to the Fort Smith Boys and Girls Clubs in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the Fort Smith Boys and Girls Clubs facilities up to a maximum of **\$21,384** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of programs for educational and recreational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 9: The Mayor is hereby authorized to execute that certain agreement with the **Girls Incorporated** providing for the payment by the City to Girls Incorporated in the amount of

actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of Girls, Inc. facilities up to a maximum of **\$10,728** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of programs for educational and recreational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 10: The Mayor is hereby authorized to execute that certain agreement with the **Lincoln Youth Center** providing for the payment by the city to the Lincoln Youth Center in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of **\$12,504** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of programs for educational and recreational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 11: The Mayor is hereby authorized to execute that certain agreement with the **The First Tee** providing for the payment by the city to The First Tee in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of **\$8,952** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of programs for educational and recreational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 12: The Mayor is hereby authorized to execute that certain agreement with the **Gregory Kistler Treatment Center for Children** providing for the payment by the City to the Gregory Kistler Treatment Center for Children in the amount of the actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the Gregory Kistler Treatment Center for Children up to maximum of **\$1,662** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for physically impaired individuals and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 13: The Mayor is hereby authorized to execute that certain agreement with **ARC for the River Valley** providing for the payment by the City to ARC for the River Valley up to

maximum of \$2,292 during calendar year 2012 for services which services include the providing of programs for educational and recreational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 14: The Mayor is hereby authorized to execute that certain agreement with the **Next Step Day Room** providing for the payment of \$7,558 during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for rehabilitation and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 15: The Mayor is hereby authorized to execute that certain agreement with **Lincoln Childcare, Inc.** providing for the payment by the City to Lincoln Childcare, Inc. in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of \$5,725 during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 16: The Mayor is hereby authorized to execute that certain agreement with **Girls Shelter**, providing for the payment by the City to Girls Shelter in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of \$3,589 during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 17: The Mayor is hereby authorized to execute that certain agreement with **Reynolds Cancer Support House** providing for the payment by the City to Reynolds Cancer Support House in the amount up to maximum of \$1,662 during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 18: The Mayor is hereby authorized to execute that certain agreement with the **Crisis Intervention Center**, providing for the payment by the City to the Crisis Intervention Center, in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of facilities up to a maximum of **\$10,861** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 19: The Mayor is hereby authorized to execute that certain agreement with the **Alzheimer's Association**, providing for the payment by the City to the Alzheimer's Association, in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation up to a maximum of **\$1,937** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 20: The Mayor is hereby authorized to execute that certain agreement with the **Community Services Clearinghouse**, providing for the payment by the City to the Community Services Clearinghouse, of **\$8,819** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 21: The Mayor is hereby authorized to execute that certain agreement with the **River Valley Regional Food Bank**, providing for the payment by the City to the River Valley Regional Food Bank, in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of **\$10,861** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 22: The Mayor is hereby authorized to execute that certain agreement with the **Western Arkansas Ballet** in the amount of actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the facilities up to a maximum of **\$6,999** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 23: The Mayor is hereby authorized to execute that certain agreement with the **Fort Smith Museum of History** providing for the payment by the City to the Fort Smith Museum of History in the amount of the actual utility expenses (water, sewer, sanitation, gas and electric expense) incurred in the operation of the Fort Smith Museum of History up to a maximum of **\$20,000** during calendar year 2012 for services provided to the City and its inhabitants, which services include the providing of facilities and programs for cultural and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 24: The Mayor is hereby authorized to execute that certain agreement with **SRCA, Inc. Social Services** providing for the direct payment by the City to SRCA, Inc. Social Services of **\$171,363** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for nutritional purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 25: The Mayor is hereby authorized to execute that certain agreement with the **Area Agency on Aging** providing for the payment by the City to the Area Agency on Aging of **\$50,000** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for health and human service purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 26: The Mayor is hereby authorized to execute that certain agreement with the **Project Compassion** providing for the payment of **\$7,500** during calendar year 2012 for services provided the City and its inhabitants, which services include the providing of facilities and programs for rehabilitation

and educational purposes to enhance and provide for the health and welfare of the inhabitants of the City during the year 2012.

SECTION 27: It is hereby declared and determined by the Board of Directors that the subject matters of the agreements authorized by Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26 above deal with providing services in an exceptional situation where competitive bidding procedures are not feasible so that such competitive bidding procedures are hereby waived with reference to such agreements.

SECTION 28: The authorizations set forth in Sections 1-26 above are deemed and declared to be severable. Any invalidity of one or more of the separate sections shall not affect the validity of the other sections of this Ordinance.

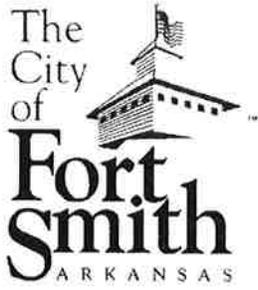
PASSED AND APPROVED this 3 day of January, 2012.

APPROVED:

Mayor

ATTEST:

City Clerk



MEMORANDUM

December 29, 2011

TO: Ray Gosack, City Administrator

FROM : Christy Deuster, Administrative Coordinator-Finance Department 

SUBJECT: Outside Agency Review Panel Recommendations

The following funding recommendations have been made by the Outside Agency Review Panel from funds allocated in the adopted 2012 Budget:

Arts & Humanities

Fort Smith Museum of History	\$2,523
Fort Smith Regional Art Museum	\$10,728
The Fort Smith Symphony	\$10,728
Fort Smith Chorale	\$4,512
Fort Smith Heritage Foundation	\$5,178
Second Street Live	\$8,064
Fort Smith Little Theater	\$4,734
Western Arkansas Ballet	\$6,999
Total Arts & Humanities	<u>\$53,466</u>

Recreation

Fort Smith Boys and Girls Clubs	\$21,384
Girls, Inc.	\$10,728
Lincoln Youth Center	\$12,504
The First Tee	\$8,952
ARC for the River Valley	\$2,292
Total Recreation	<u>\$55,860</u>

Social & Community Services

Girls Shelter	\$3,589
Next Step Day Room	\$7,558
Alzheimer's Association	\$1,937
Crisis Intervention Center	\$10,861
Community Services Clearinghouse	\$8,819
Gregory Kistler Treatment Center	\$1,662
Lincoln Childcare Center	\$5,725
River Valley Regional Food Bank	\$10,861
Reynolds Cancer Support House	\$1,662
Total Social & Community Services	<u>\$52,674</u>

Grand Total All Categories **\$162,000**

The total allocated from the General Fund for outside agency funding is \$162,000.

Ray Gosack
December 29, 2011
Page 3

In addition, the following agencies were approved for funding from a portion of the county sales tax for the year 2012:

Area Agency on Aging	\$50,000
SRCA, Inc. Social Services	\$171,363
Project Compassion	\$7,500
 Total Funded-Portion of County Sales Tax	 <u>\$228,863</u>

Also included in the ordinance is the \$20,000 for utility payments for the Fort Smith Museum of History (Section 23) as part of the longstanding agreement the city of Fort Smith has with the Museum. These funds are separate from the outside agency funding allocation amount.

Prior to disbursing to these organizations, the City attorney has advised that an agreement be executed with each organization which states the services to be provided in 2012. These agreements require each organization's books and records to be open to the public and allow review of financial statements and records by the City as necessary during the year.

Attached for the Board of Directors consideration is an ordinance authorizing the Mayor to execute agreements with each of the organizations. A copy of a blank agreement is also attached. Upon execution by the Mayor, on the City's behalf, each organization will execute their agreement.

If you have any questions or require further information, please let me know.

Attachments

pc: Kara Bushkuhl

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2012, by and between the City of Fort Smith, Arkansas ("City"), and _____, a city wide, non-sectarian, incorporated, community organization ("The Community Organization"),

WITNESSETH:

WHEREAS, The Community Organization has possession and control of physical facilities suitable for providing to the City's residents certain services, as enumerated in paragraph one (1) below, which services fulfill a governmental function to provide for the health, safety, and welfare of the City's inhabitants; and

WHEREAS, the parties desire to provide a program of such services and facilities for the City's inhabitants;

NOW, THEREFORE, it is agreed by the parties that in exchange for the mutual covenants and agreements set forth below;

1. The Community Organization will provide to the City and its inhabitants, for the year 2012, a service which will provide facilities and programs as identified in its 2012 Budget application package on file in the City Clerk's office.

2. In consideration for the providing of the services described in the preceding paragraph, the City agrees to pay The Community Organization the sum of _____ in installments as follows: (Disbursement Terms). The Community Organization shall provide to the City a six month Use of Funds Summary and a yearend Use of Funds Summary accounting how funds received were spent to benefit the City and its inhabitants.

3. It is agreed by The Community Organization that the City shall have the right, at all reasonable times, to inspect the facilities and programs being provided by The Community Organization under this Agreement, and shall have the right, at all reasonable times, to inspect the financial and other records of The Community Organization. After inspection or investigation, the City shall have the right to notify The Community Organization, in writing, of any deficiencies in the program and/or facilities provided under this Agreement, and, if such deficiencies are not cured within thirty (30) calendar days from the date of such written notice, the City shall have the absolute right to terminate this Agreement. To assist the City in monitoring its activities, The Community Organization shall, on a quarterly or more frequent basis, provide to the City Administrator, or his/her designated agent, a report of The Community Organization's financial and service activities during the period preceding such report.

4. Furthermore, the City shall have the right to cancel this Agreement upon the happening of any of the following:

- a. Any substantial damage to or destruction of The Community Organization's facilities within the City by fire, wind, or other casualty; or
- b. A determination by the Board of Directors that the services provided hereunder are no longer needed as a governmental function, or, otherwise, a determination by the Board of Directors that the City, for whatever reason, no

longer desires to have such services provided by The Community Organization;
or

c. A determination by the Board of Directors that The Community Organization, its employees, or agents, in the providing of the services hereunder, have violated the City's policy against discrimination on the basis of age, sex, religion, race, national origin, political affiliation, handicap, veteran status, or have violated the City's policy in favor of a drug-free work place.

In addition to any of the other rights of cancellation stated herein, either party shall have the right to cancel this Agreement because of the breach by the other party of that party's obligations hereunder, such cancellation to be effective as of the date of the breach. Failure by either party immediately to declare the contract canceled by reason of a particular breach shall not preclude a party from raising that breach subsequently as a reason for cancellation. Should the Agreement be canceled, for any reason, The Community Organization understands and agrees that the City shall immediately cease paying any further monies under this Agreement, and agrees additionally The Community Organization will refund to the City, on a pro-rated basis, monies paid by the City for services not rendered by The Community Organization.

5. The Community Organization shall indemnify and hold harmless the City, its officers, boards, commissions, employees, and agents, against and from any and all claims (including, but not limited to, any based on 42 U.S.C. subsection 1983), demands, causes of action, actions, suits, proceedings, damages (including, but not limited to, damages to City property), cost of liabilities (including the City's cost with respect to its employees and cost of defending any and all such actions and proceedings described herein), arising out of or pertaining to the providing of services hereunder by The Community Organization.

6. It is agreed by the parties that there will be no assignment or transfer of this Agreement, nor of any interest in this Agreement.

7. The parties to this Agreement agree that it is not a contract of employment, but is, instead, a contract to fulfill a specific governmental purpose. Accordingly, in the performance of this Agreement, The Community Organization shall be considered an independent agent, and neither it nor its employees or agents shall be considered employees or agents of the City.

8. Because The Community Organization will be receiving monies from the City under this Agreement, The Community Organization understands that its records and meetings may become subject to the provisions of the Arkansas Freedom of Information Act.

9. It is understood and agreed by the parties that, if any part, term, or provision of this Agreement is held by The courts to be illegal or in conflict with any law of Arkansas, the entire Agreement shall be null and void.

10. This Agreement shall not be specifically enforceable in equity, by either party; nor shall any injunction be applied for or issued at the instigation of either party in case of dispute or alleged breach of this Agreement.

11. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement

shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.

12. This Agreement is executed on the City's behalf by its officials as set forth below pursuant to Ordinance No. _____ adopted on _____.

13. This Agreement is executed on behalf of The Community Organization by its authorized representatives set forth below pursuant to authorization contained in a resolution of the board of directors of The Community Organization, dated the _____ day of _____, _____.

IN WITNESS WHEREOF, the parties have set their hands and seals this 3rd day of January, 2012.

City of Fort Smith

By: _____
Mayor

Attest:

City Clerk

Name of Community Organization

By: _____
President

Attest: _____
Secretary

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE OFFER OF AND AUTHORIZING THE SPECIAL ASSIGNMENT OF CLEAN UP LIENS TO THE FORT SMITH HOUSING AUTHORITY FOR CITY LIENS ENCUMBERING 1013 NORTH 6TH STREET, FORT SMITH, ARKANSAS

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

SECTION 1: The offer of the Fort Smith Housing Authority for the purchase of a special assignment of clean up liens encumbering 1013 North 6th Street, Fort Smith, Arkansas for a total payment of \$2,500.00 is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, a special assignment to the Fort Smith Housing Authority for City clean up liens encumbering 1013 North 6th Street, Fort Smith, Arkansas.

SECTION 3: The City Administrator and City Clerk are hereby authorized to any action necessary to effectuate the assignment of City clean up liens encumbering 1013 North 6th Street, Fort Smith, Arkansas for a total payment of \$2,500.00.

This Resolution adopted this _____ day of January, 2012.

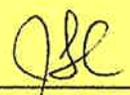
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:



No Publication Required

Memo



To: Ray Gosack, City Administrator
From: Jeff Dingman, Deputy City Administrator
Date: 12/29/2011
Re: Property at 1013 N. 6th St

Presented for the Board's consideration at its January 3, 2012 regular meeting is a Resolution accepting the offer of and authorizing the special assignment of clean up liens at 1013 North 6th Street to the Fort Smith Housing Authority.

The property at 1013 N. 6th Street carries \$11,442 in city clean up liens, which includes nearly \$9,000 the city spent in demolition costs to remove a structure in 2009. Also against the property are ad valorem taxes in the amount of \$636.25 for 2009, 2010, and 2011.

As indicated in the attached documentation, the property's owner is deceased, and the heirs either cannot be found or are unresponsive. The property is ripe for submitting through the certification process for a tax sale by the Commissioner of State Lands.

There is virtually no chance that the city will recover its clean up liens against this property, as the liens far outweigh the property value of the vacant lot. The Fort Smith Housing Authority has interest in pursuing ownership of this particular property in order to build a new single family home. The FSHA built a new home at 1019 N. 6th, and is acquiring the property at 1005 N. 6th for a total of three reclaimed lots with new single family homes if they are successful in acquiring 1013 N. 6th. The FSHA has offered the city \$2,500 if the city will transfer its interest in such clean-up liens to the FSHA, which will then pursue foreclosure of the property with the intent of building a single family home on the lot, thereby returning the lot to the property tax rolls in a positive way.

The proposed resolution makes a special assignment of the clean up liens to the FSHA. The city attorney has advised that the city is authorized to make such special assignment in exchange for the payment of \$2,500. This is without warranty, and the FSHA will be responsible for satisfying the ad valorem tax obligation due to the Sebastian County Tax Collector.

Please contact me if you have questions regarding this agenda item.

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

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
RBriggs@DailyWoods.com

JAMES E. WEST
DALE CARLTON
PHILLIP E. NORVELL, †

OF COUNSEL

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

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

December 27, 2011

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

Re: Offer from the Fort Smith Housing Authority to Purchase a Special Assignment of City
Clean Up Liens Encumbering 1013 North 6th Street, Fort Smith, Arkansas

Dear Mr. Gosack:

We have reviewed the December 12, 2011, letter from counsel for Fort Smith Housing Authority ("FSHA"), had several telephone discussions with said counsel and reviewed real property records for the subject real property. The City has performed clean up and/or demolition work on the subject property beginning in 2009. Pursuant to Arkansas law, the City has certified clean up liens it obtained from the subject property to the Sebastian County Tax Collector in an amount now totaling \$11,442.44, inclusive of penalties. We understand that the City currently holds clean up liens from work and/or demolition on the subject property for 2011 in the amount of \$667.56, which have not been certified to the Sebastian County Tax Collector for collection.

We have reviewed the Sebastian County tax records and discovered that ad valorem taxes have not been paid on the subject property for 2009, 2010 or 2011. The total amounts now due to the county for ad valorem taxes, exclusive of the City clean up liens, totals \$636.25.

We have been advised that Alice M. Lauderdale, the record title owner of the subject property, is deceased. The Fort Smith Housing Authority has attempted to contact her heirs, but to no avail. It appears that since the heirs have not paid the ad valorem taxes on the subject property that they are abandoning the same. In the fairly near future, Sebastian County Tax Collector will certify the subject property to the Commissioner of State Lands for the purpose of conducting a tax sale on the subject property. We have been advised that the value of the subject property is likely far less than the current amount of tax liability. That being the case, the likely scenario is that the Commissioner of State Lands will not sell the subject property at auction in an amount to pay for all of the outstanding tax obligations. Instead, the procedure we see frequently is that the Commissioner of State Lands will negotiate a sale with a purchaser at a substantially reduced price. In that event, the City's clean up liens will likely be extinguished. It is possible, if not

likely, that the City will not recover all, or even a part of, its outstanding clean up lien value.

The offer from the FSHA to purchase a special assignment of the outstanding clean up liens from the City in the amount of \$2,500.00 will at least enable the City to recover that amount. In addition, we are advised that the FSHA will undertake the cost of commencing a foreclosure action on the assigned liens for the purpose of obtaining title to the subject property for its intended use. As part of the foreclosure process, the FSHA will be responsible with satisfying the ad valorem tax obligation due to the Sebastian County Tax Collector outside of the City's clean up liens.

It is our opinion that the Board of Directors of the City of Fort Smith are authorized to accept the offer for the assignment of a special assignment of the clean up liens encumbering 1013 North 6th Street, Fort Smith, Arkansas, in exchange for payment of \$2,500.00 from the FSHA. Such an assignment will expressly be without any warranty as the title or other warranty to the FSHA.

Attached is a Resolution for the Board of Directors' consideration and an Assignment, which once executed, would effectuate the assignment of clean up liens.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert R. Briggs
tdp

JONES, JACKSON & MOLL, PLC

ATTORNEYS AT LAW
401 North 7th Street
Post Office Box 2023
Fort Smith, Arkansas 72902-2023

ROBERT L. JONES, JR. (1922-2004)
RANDOLPH C. JACKSON*
MARK A. MOLL
J. RANDALL MCGINNIS
KATHRYN A. STOCKS*
MICHAEL T. NEWMAN**
JOSHUA T. CARSON

TELEPHONE (479) 782-7203
FACSIMILE (479) 782-9460

December 12, 2011

Sender's e-mail
kstocks@jjmlaw.com

*Licensed in Oklahoma
**Licensed in Oklahoma,
and Missouri

Mr. Ray Gosack
City of Fort Smith
623 Garrison Avenue
Fort Smith, AR 72901

Re: ~~403~~ North 6th Street, Fort Smith, Arkansas
1013

Dear Mr. Gosack:

I represent the Fort Smith Housing Authority (FSHA[®]). FSHA hereby offers to purchase from the City of Fort Smith, Arkansas, all of its outstanding cleanup liens for a total purchase price of \$2,500.00, the liens on the above referenced property. FSHA understands the transfer of said liens shall be by special assignment, with the City making no warranty as to the quality of title to the liens.

FSHA has attempted to reach an agreement with the heirs of the deceased owner of the property, but they have not received any response. We understand that the ad valorem taxes have not been paid on the subject property for 2009, 2010 or 2011. FSHA understands it will have to pay these taxes as well. In the near future, the same will be certified to the Commissioner of State Lands for sale at auction. FSHA believes that the value of the subject property is well below the amount of the current liens and tax obligation. The property is well situated for FSHA's operation and will be used to build low income housing and the property will then be placed back on the tax rolls.

I understand this matter needs to be presented to the Fort Smith Board of Directors and would ask that if it is indeed placed on the agenda for their consideration, that I be advised of the same in order to consider whether someone on behalf of FSHA should make an appearance before the Board.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Kathryn A. Stocks

KAS/cef

c: Mr. Robert R. Briggs
Mr. Ken Pyle

ASSIGNMENT

This Assignment is executed on the ____ day of January, 2012, by the City of Fort Smith, Arkansas, an Arkansas municipal corporation ("Assignor") in favor of the Fort Smith Housing Authority, an Arkansas _____ ("Assignee").

RECITALS

WHEREAS, the Assignor and Assignee have entered into an agreement between them (the "Agreement"), providing for, among other things, the transfer of all of Assignor's right, title and interest to certain clean up liens identified as the Assignor's account # M-089227-001, M-089227-002 and 089227-003 and recorded as Certificate of Record 2011F-09700, 2011F-11556 and 2011F-15774, respectively, copies of which are attached hereto and incorporated herein in Exhibits "A," "B" and "C," respectively (the "clean up liens") to Assignee.

WHEREAS, in consideration for Assignor making the assignment described herein, Assignee shall pay to the Assignor the total amount of \$2,500.00.

WHEREAS, the parties agree that this Assignment is without warranty of title or any other warranty, express or implied.

NOW, THEREFORE, for good and valuable consideration in the form of mutual and separate obligations, covenants and representations between Assignee and Assignor provided herein and the receipt and sufficiency of which is hereby acknowledged by Assignor, Assignor does hereby convey, grant, bargain, sell, transfer, set over, assign, release, deliver and confirm unto Assignee, its successors and assigns forever, all of Assignor's right, title and interest in and to the following clean up liens:

M-089227-001, dated June 22, 2011, recorded as Certificate of Record 2011F-09700;
M-089227-002, dated August 4, 2011, recorded as Certificate of Record 2011F-11556;
and,
M-089227-003, dated September 30, 2011, recorded as Certificate of Record 2011F-15774.

Assignor hereby covenants to Assignee, its successors and assigns, to do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, assignments, transfers, conveyances, powers of attorney and assurances that may be reasonably requested by the assignee for the assigning, transferring, conveying, delivering,

assuring and confirming to the Assignee, its successors or assigns, or for aiding and existing in reducing to possession the clean up liens.

IN WITNESS WHEREOF, the Assignor causes Assignment to be assigned as of the date first above written.

Assignor:

City of Fort Smith, Arkansas,
an Arkansas municipal corporation

By: _____
Sandy Sanders, Mayor

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF SEBASTIAN)

On this _____ day of January, 2012, the undersigned Notary Public within and for the County and State aforesaid, duly commissioned and acting, appeared in person, Sandy Sanders, in his capacity as Mayor of the City of Fort Smith, Arkansas, well known to me to be the person whose name is subscribed to the foregoing instrument and that he acknowledged that he executed the same under authority of duly adopted Resolution by the Board of Directors of the City of Fort Smith, Arkansas, and for the purposes therein contained.

Witness my hand and official seal this ____ day of January, 2012.

Notary Public

My Commission Expires:



* 2011F-09700 2 *

2011F-09700

Certificate of Record
FORT SMITH DISTRICT
SEBASTIAN COUNTY, ARKANSAS
SARAH BROOKS, CO CLERK & RECORDER
07/06/2011 04:26:27PM
Fee: 20.00 Pages: 2

M-089227

NOTICE OF LIEN

Comes now the City of Fort Smith, Arkansas, a municipal corporation of the first class organized and existing under the laws of the State of Arkansas, 623 Garrison Avenue, PO Box 1908, Fort Smith, Arkansas, 72902, and pursuant to the provisions of Arkansas Code Ann. #14-54-901, et seq. and #14-56-203, Ordinances Nos. 2910, 3105, 89-85, and 60-87 of the Ordinances of the City of Fort Smith, and other provisions of the laws of the State of Arkansas and the Ordinances of the City of Fort Smith, states that it has a lien in the amount of \$ 227.02 for the cost of cleanup work and/or demolition work performed on 05/27/11 on the following property located in Sebastian County, Arkansas, Fort Smith District, to wit:

Lot 9 Blk 3 Griffith & Nix

Owner: Alice M Lauderdale

A copy of the Notice is being sent by certified mail to the property owner of record. You are further notified that within 120 months (10 years) after the said work has been done this lien will be enforced and collected by the City by filing an action in the Chancery Court of Sebastian County, Arkansas, pursuant to the laws pertaining to the enforcement of liens.

Dated this 22 day of June, 2011

City of Fort Smith, Arkansas
623 Garrison Avenue
PO Box 1908
Fort Smith, AR 72902

By: Sherri Gard
Sherri Gard, City Clerk

VERIFICATION

STATE OF ARKANSAS)
) ss.
County of Sebastian)

I, Sherri Gard, being of lawful age and after being first duly sworn, state on oath that I have read the foregoing instrument and the facts and matters therein set out are true and correct to the best of my knowledge, information, and belief.

Sherri Gard
Sherri Gard, City Clerk

Subscribed and sworn to before me on this 22 day of June, 2011

My Commission Expires:



KIMBERLY A. WAGNER
Sebastian County
My Commission Expires
April 27, 2014

Kimberly A. Wagner
Notary Public

EXHIBIT "A"



* 2 0 1 1 F - 1 1 5 5 6 2 *

2011F-11556

Certificate of Record

FORT SMITH DISTRICT

SEBASTIAN COUNTY, ARKANSAS

SHARON BROOKS, CO CLERK & RECORDER

08/11/2011

01:19:14PM

Fee: 20.00

Pages: 2

M-089227-002

NOTICE OF LIEN

Comes now the City of Fort Smith, Arkansas, a municipal corporation of the first class organized and existing under the laws of the State of Arkansas, 623 Garrison Avenue, PO Box 1908, Fort Smith, Arkansas, 72902, and pursuant to the provisions of Arkansas Code Ann. #14-54-901, et seq. and #14-56-203, Ordinances Nos. 2910, 3105, 89-85, and 60-87 of the Ordinances of the City of Fort Smith, and other provisions of the laws of the State of Arkansas and the Ordinances of the City of Fort Smith, states that it has a lien in the amount of \$231.02 for the cost of cleanup work and/or demolition work performed on 07/07/11 on the following property located in Sebastian County, Arkansas, Fort Smith District, to wit:

Lot 9 blk 3 Griffith & Nix

Owner: Alice M Lauderdale

A copy of the Notice is being sent by certified mail to the property owner of record. You are further notified that within 120 months (10 years) after the said work has been done this lien will be enforced and collected by the City by filing an action in the Chancery Court of Sebastian County, Arkansas, pursuant to the laws pertaining to the enforcement of liens.

Dated this 4 day of Aug, 2011

City of Fort Smith, Arkansas
623 Garrison Avenue
PO Box 1908
Fort Smith, AR 72902

By: Sherrri Gard
Sherrri Gard, City Clerk

VERIFICATION

STATE OF ARKANSAS)
) ss.
County of Sebastian)

I, Sherri Gard, being of lawful age and after being first duly sworn, state on oath that I have read the foregoing instrument and the facts and matters therein set out are true and correct to the best of my knowledge, information, and belief.

Sherrri Gard
Sherrri Gard, City Clerk

Subscribed and sworn to before me on this 4 day of Aug, 2011

My Commission Expires  KIMBERLY A. WAGNER
Sebastian County
My Commission Expires
April 27, 2014

Kimberly A. Wagner
Notary Public

EXHIBIT "B"

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING EXECUTION OF SETTLEMENT AGREEMENT PERTAINING TO FINANCIAL REVIEW COMMITTEE REPORT DATED MARCH 8, 2011

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, his signature being attested by the City Clerk, the attached Settlement Agreement pertaining to the Financial Review Committee Report dated March 8, 2011, with James Fork Regional Water District.

SECTION 2: The City Administrator and the City Attorney are hereby authorized to take any and all necessary actions to effectuate the settlement agreement authorized by Section 1 above, including the dismissal of litigation filed in the Circuit Court of Sebastian County as Case No. CIV-2011-2007-G, the discontinuance of the invocation of arbitration proceedings pursuant to the Settlement and Release Agreement of March 14, 2005, and the continued request that USDA/Rural Development make a new appointment to the Financial Review Committee created by the Settlement and Release Agreement of March 14, 2005.

THIS RESOLUTION ADOPTED this ____ day of January, 2012.

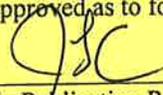
APPROVED:

Mayor

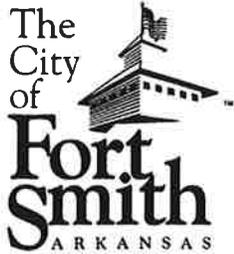
ATTEST:

City Clerk

Approved as to form:



No Publication Required



MEMORANDUM

December 29, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: James Fork Water Litigation

Several months ago, James Fork Regional Water District filed litigation against Fort Smith about payments owed by Fort Smith to James Fork Water. Jerry Canfield and I met recently with James Fork Water representatives, and were able to arrive at a tentative settlement which we're recommending to the board.

The payment obligation arises from Fort Smith's acquisition of a portion of James Fork Water's system in 2006. The payment amounts were determined by a financial review committee consisting of representatives of Fort Smith and James Fork Water, and a neutral representative from the USDA Rural Development.

The principal issue being disputed was how a \$200,000 credit to Fort Smith was to be applied to future payments owed by Fort Smith to James Fork Water. If the issue went to court and Fort Smith lost, we would lose \$200,000 over the next 5 years. The recommended settlement will stretch this credit from being applied over the next 5 years to being applied over the next 10 years. The net present value (assuming a 3% discount rate) of the \$200,000 over the 5-year period of 2011-2015 is \$183,188. The net present value of the \$200,000 over the 10-year period of 2011-2020 is \$170,604.

In essence, we give up approximately \$12,500 in today's dollars to avoid the legal expenses of going to trial (which will likely be far greater than \$12,500) and the risk of losing the entire \$200,000 credit. The settlement is a very reasonable compromise in order to avoid these expenses and risks.

Attached is a resolution which approves the settlement agreement. The staff recommends approval.

Ray

SETTLEMENT AGREEMENT PERTAINING TO FINANCIAL REVIEW
COMMITTEE REPORT DATED MARCH 8, 2011

This Settlement Agreement (“Agreement”) is made and entered into by and between the City of Fort Smith, Arkansas (“Fort Smith”) and the South Sebastian County Water Users Association, now know as the James Fork Regional Water District (“James Fork”) on this _____ day of December, 2011. Fort Smith and James Fork will be referred to collectively in this Agreement as “the parties”.

RECITALS

1. The parties entered into a Settlement and Release Agreement on March 14, 2005, which calls for a financial review of the operations of James Fork by a Financial Review Committee (“FRC”) in order to determine the amount of any subsidy payment by Fort Smith to James Fork following the first sixty months after the Sale Date as defined in that agreement.
2. The FRC issued its report on March 8, 2011, setting the payment required to be made by Fort Smith to James Fork at \$22,213.98 monthly for the first year of Period 1 as defined in the Settlement and Release Agreement, § 3(h)(ii) (“Period 1”).
3. A dispute has arisen concerning the finality of the FRC’s Report, and litigation ensued under the style of *James Fork Regional Water District, Plaintiff, v. City of Fort Smith, Arkansas, Defendant*, in the Circuit Court of Sebastian County, Arkansas, Greenwood District, Case No. CV-2011-272-G.
4. The parties have reached an agreement as to a means to resolve this dispute.

TERMS AND CONDITIONS

1. The parties hereby reaffirm and incorporate all terms, conditions and provisions of the Settlement and Release Agreement between the parties dated March 14, 2005.
2. The monthly payment fixed in the FRC Report of March 8, 2011, is \$22,213.98 for each month during the first year of Period 1. Fort Smith

asserts the FRC failed to properly credit against the monthly payments a pro rata share of the \$200,000.00 payment made by Fort Smith pursuant to paragraph 3(f)(i) of the March 14, 2005, Settlement and Release Agreement (“\$200,000.00 payment”). Fort Smith has refused to pay the entirety of the \$22,213.98 amount on a monthly basis during 2011. Through the date of this agreement, Fort Smith has paid \$226,567.80. The sum of those payments are \$39,999.96 less than the payment obligation determined by the FRC.

3. The parties agree the \$200,000.00 payment will be credited to Fort Smith as follows. In Period 1, Fort Smith will receive a monthly credit in the amount of \$1,666.67 against the actual monthly payment obligation determined by FRC. This cumulates to a \$100,000.00 credit over Period 1. A similar credit of \$1,666.67 per month, cumulating to \$100,000.00 over the five (5) years of Period 2, will be provided against any monthly payments determined by the FRC for Period 2 as defined in the Settlement and Release Agreement, § 3(h)(ii) (“Period 2”). These credits shall be applied to the actual payment obligation determined by the FRC, which actual payment obligations shall be no greater than the net collections applicable to each annual period of Period 1 and Period 2.

4. As a result of the change in the parties’ treatment of this credit, the first page of Attachment E (1) to the FRC report of March 8, 2011, titled “Projected Operations and Debt Serv. 2011-2015 Presented by James Fork Rep 12/28/10” will be restated as follows: the lines which read “Less credit per ¶ 3(h)(v)(D)” and “Total payments for 5-years from 2011-2015” are removed; the Annual payment amount is changed to \$369,786.24; and the Monthly payments amount is changed to \$30,815.52.

5. In 2011 to date, Fort Smith has paid \$39,999.96 (12 x \$3,333.33) less than the amount determined by the FRC to be owed to James Fork. Upon execution of this Agreement, Fort Smith shall pay the sum of \$19,999.96 to James Fork. James Fork agrees to accept said sum in complete and full satisfaction of any and all claims were made or which could have been made by James Fork with reference to the 2011 payments.

6. The monthly payment amount which is determined by the FRC to be due to James Fork in 2012, based on any adjustment resulting from review of the “net collections” by the FRC, shall be reduced by the sum of \$1,666.67 per month. That credit of \$1,666.67 shall be applied to each

monthly payment, if any, remaining and due to James Fork from Fort Smith during Periods 1 and 2.

7. The parties agree to file a stipulation of dismissal of the pending Circuit Court action, dismissing without prejudice all claims and causes of action in the lawsuit, including claims for attorneys fees, on or before five (5) days after execution of this Agreement by both parties. The stipulation shall provide that each party shall bear its own costs and attorneys fees.

8. The parties agree that all terms, conditions and provisions of this Agreement shall be binding on them, their present and future departments, agencies, boards, commissions, officers, directors, representatives, employees, agents, and governing bodies, and any successors and assigns of any of the aforementioned entities and persons.

9. This Agreement shall be interpreted in accordance with, and governed by, the laws of the State of Arkansas, which laws shall prevail in the event of any conflict of law. This Agreement shall not be construed against either party on the basis of a contention that such party prepared an initial or other draft of the Agreement.

10. No term, condition or provision of this Agreement may be modified or waived except by an instrument in writing duly signed by or on behalf of both parties.

11. The parties agree and acknowledge that they have voluntarily entered into this Agreement after consulting with counsel of their choice. Having consulted with their own counsel, the parties acknowledge that they understand the terms set forth in this Agreement. The parties further agree and acknowledge that no representations have been made by the other party in connection with this Agreement except those representations expressly stated herein, and the parties hereby disclaim any reliance on any such other representations.

13. Each person executing this Agreement on behalf of a party represents that he or she is authorized to bind that party to the terms and conditions stated herein.

14. In the event that the validity of this Agreement, in whole or in part, is challenged by any other person or entity in a judicial proceeding, the parties

agree to cooperate in the defense of the Agreement through their own representatives and counsel, and each party to this Agreement shall bear its own costs incurred in such defense.

15. Any notice required to be given by one party to 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, AR 72902-1908

James Fork Regional Water District
Attn: Manager
P.O. Box 1180
Greenwood, AR 72936

with copies to their respective attorneys:

Jerry Canfield, Esq.
Daily & Woods P.L.L.C.
P.O. Box 1446
Fort Smith, AR 72902

Peter G. Kumpe, Esq.
Williams & Anderson PLC
111 Center St., 22nd Floor
Little Rock, AR 72201

:

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed pursuant to Resolution R-____-12 adopted by the Board of Directors of the City of Fort Smith, Arkansas, and pursuant to the Resolution of the _____ day of December, 2011, adopted by the Board of Directors of James Fork.

City of Fort Smith, Arkansas

James Fork Regional Water District

By: _____
Mayor

Attest: _____
City Clerk

Attest: _____

RESOLUTION _____

**A RESOLUTION TO ACCEPT THE BIDS AND AUTHORIZE
CONTRACT FOR THE CONSTRUCTION OF
TRAFFIC SIGNAL IMPROVEMENTS
PROJECT NO. 11-09-A**

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

SECTION 1: The bid of All Service Electric, Inc., received December 20, 2011, for the construction of Traffic Signal Improvements, Project No. 11-09-A, in the amount of \$778,364.17 be accepted.

SECTION 2: The Mayor is authorized to execute a contract with All Service Electric, Inc., subject to the terms set forth in Section 1 above.

SECTION 3: Payment for construction authorized by Section 1 is hereby authorized from the Sales Tax Fund (1105).

This resolution adopted this _____ day of January, 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

JSC

- No Publication Required
 Publish ____ Times

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

FROM: Stan Snodgrass, P.E., Director of Engineering 

DATE: December 27, 2011

SUBJECT: Traffic Signal Improvements
Project No. 11-09-A

The above subject project includes the upgrading of traffic signals at intersections along Zero Street (Hwy 255) and North 11th Street (Hwy 64) as shown on the map. The upgrade on Zero Street will provide for operational improvements, signal coordination, and timing to improve traffic flow. Improvements will be made at five intersections along Zero Street, including the complete replacement of all traffic signal equipment and poles at the intersection of Zero Street and Highway 271. This project also includes the complete replacement of all outdated traffic signal equipment and poles at the North 11th Street intersections with North "A" Street and North "B" Street.

Construction plans and specifications were prepared by Traffic Engineering Consultants, Inc., of Oklahoma City, OK. An advertisement was published and bids were received on December 20, 2011. Six contractors requested plans and specifications and four bids were received which are summarized as follows:

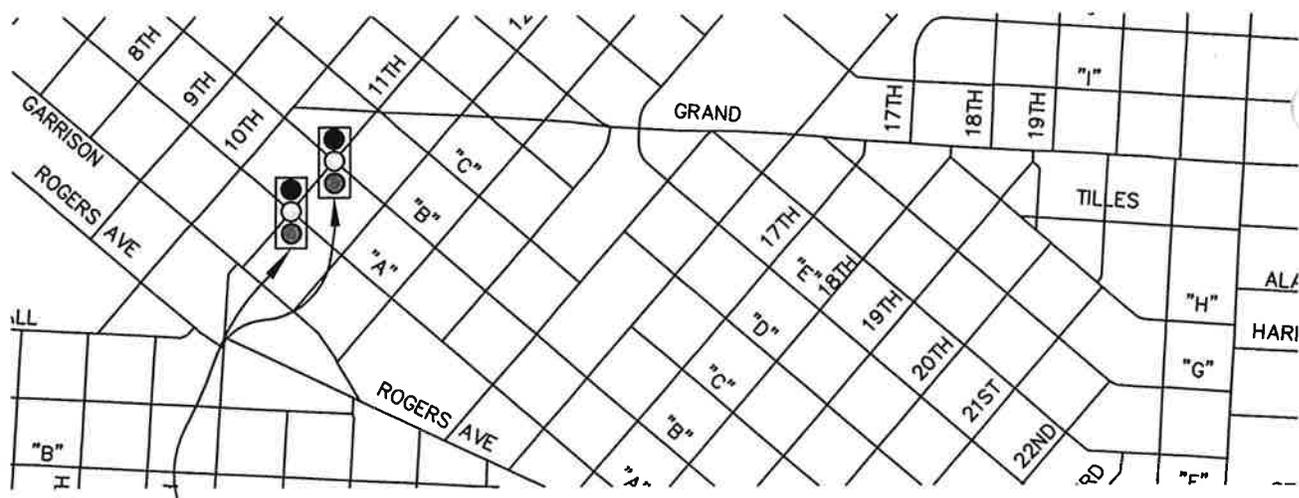
CONTRACTOR	AMOUNT	CONTRACTOR	AMOUNT
1. All Service Electric, Inc. Hot Springs, AR	\$778,364.17	3. Township Builders, Inc. Little Rock, AR	\$864,011.00
2. Traffic Signals, Inc. Edmond, OK	\$837,161.65	4. Traffic & Lighting Oklahoma City, OK	\$865,193.15
Engineer's Estimate		\$750,000.00	

The difference between submitted bids was reasonably close, and the low bid was within 4% of the Engineer's Estimate. Therefore, I recommend that the lowest bid be accepted and that the construction contract be awarded to All Service Electric, Inc. The estimated notice to proceed date for this contract is February 15, 2012. Based on the contract duration of 180 days, the estimated completion date would be August 13, 2012.

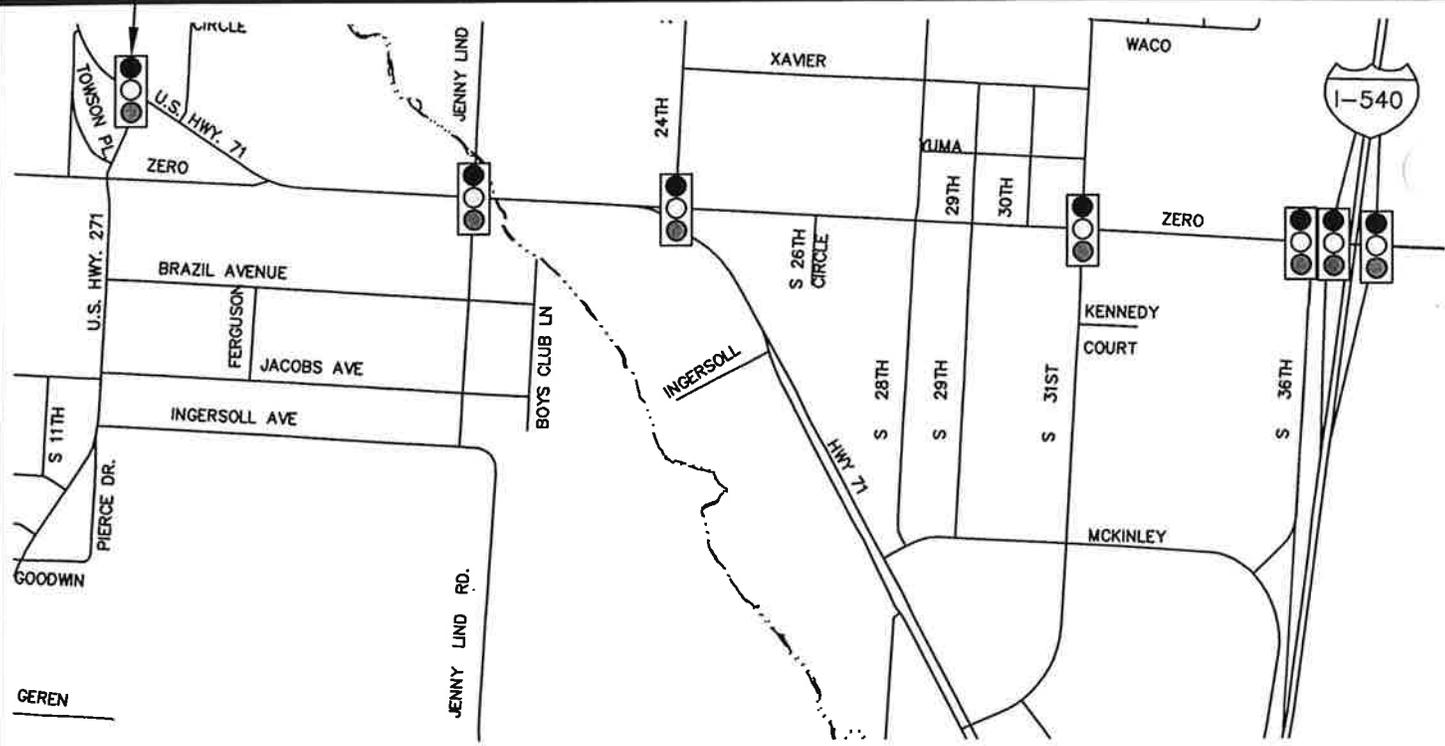
Attached is a Resolution to accomplish the above recommendation. Funds are available in the Sales Tax Program (1105) for the construction.

Enclosure

G:\DRAWINGS\CIP\00-00 CIPALL\2011\CIPALL 2011 OVERALL.DWG 12/27/11-14:03 RBR SIG EX1



PROPOSED SIGNAL REPLACEMENT



PROPOSED SIGNAL INTRECONNECT

2011 CAPITAL IMPROVEMENTS PROGRAM
SIGNAL IMPROVEMENTS



Project:	11-09-A
Date:	DEC. 2011
Scale:	NONE
Drawn By:	RBR

RESOLUTION _____

**A RESOLUTION ACCEPTING BIDS FOR THE PURCHASE OF
REAL PROPERTY AND AUTHORIZING THE MAYOR
TO EXECUTE DEEDS CONVEYING
REAL PROPERTY INTERESTS**

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

SECTION 1: The bid of RL LaRoche Properties, LLC., received on December 13, 2011, for the purchase of real property located at 3751 Park Avenue, described as Lots 3-10, Block 1, Clark Addition, City of Fort Smith, Sebastian County, Arkansas, in the amount of \$20,501.00, be accepted.

SECTION 2: The City Administrator and the City Attorney are hereby authorized to cause the real property transaction approved by Section 1 to be completed pursuant to the procedures set forth in the bid documents issued by the City. The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute and deliver a deed to the purchaser subject to execution by RL LaRoche Properties, LLC. for the real property.

This Resolution adopted this _____ day of January, 2012.

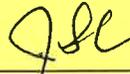
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



- No Publication Required
 Publish _____ Times

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator
FROM: Stan Snodgrass, P.E. *SS*
DATE: December 27, 2011
SUBJECT: Sale of Surplus City Property
3751 Park Avenue

In June 1992, the City purchased 3.42 acres of land between Park Avenue and Hon Avenue to construct a drainage detention pond. Subsequent to that a small detention pond was constructed by the City Operations department. In 2009, the City contracted for construction of a larger detention pond and significant channel improvements at this location. Of the original 3.42 acres of land that was acquired, 2.13 acres were utilized for the drainage improvements leaving a 1.29 acre remnant or surplus piece of property.

In July 2011, the surplus property was re-zoned by the City from Residential Multi-Family Medium Density (RM-3) to Residential Single-Family High Density (RS-4) to be consistent with the neighboring properties. In August, 2011, Calmo Realty, Inc. appraised the surplus property at \$28,089.

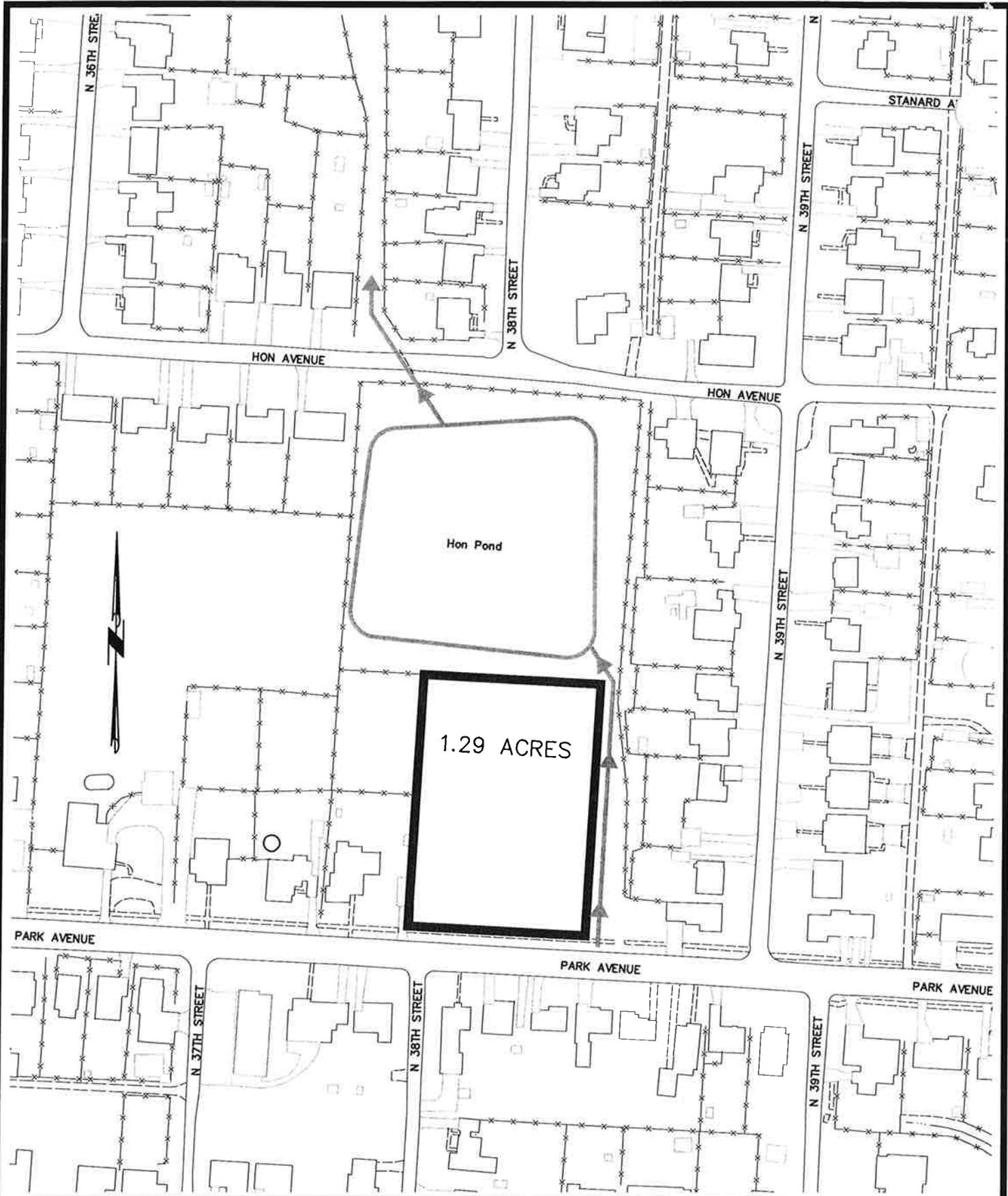
The surplus property was advertised for bid in the Real Estate section of the October 9 & 16, 2011 editions of the Times Record. The property was also advertised for bid on the City's website and a "For Sale" sign was posted on the property. The bid opening was December 13, 2011 at 10 a.m. in the Engineering Department conference room. One (1) bid was received as summarized below:

Bidder	Total Amount Bid
RL LaRoche Properties, LLC.	\$20,501.00

The original purchase price of \$47,500 for the 3.42 acres of land equates to a prorated amount of \$17,917 for the 1.29 acre remnant. Although the bid amount is below the current appraised amount it does exceed the prorated price based on the original purchase amount. Therefore, we recommend that the bid of \$20,501.00 be accepted and awarded to RL LaRoche Properties, LLC. Attached is a Resolution to accomplish the above recommendation.

Attachment

C:\City of Ft. Smith\Engineering\Snodgrass\Hon Pond South Property.dwg 12/27/11-16:17 RBR HON



SURPLUS CITY PROPERTY
3751 PARK AVENUE



Project:	
Date:	DEC. 2011
Scale:	NONE
Drawn By:	RBR

RESOLUTION _____

**A RESOLUTION AUTHORIZING ENGINEERING SERVICES
AGREEMENT FOR THE DESIGN OF A PROJECT IN THE
2012 SALES TAX PROGRAM**

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

SECTION 1: The Mayor is authorized to execute an engineering services agreement for the design of the following project in the 2012 Sales Tax Program utilizing the one cent sales tax proceeds.

Project No.	Description	Engineering Firm	Maximum Fee
12-06-F	"P" Street and "J" Street Storm Water Pump Station Improvements	Mickle-Wagner-Coleman Fort Smith, AR	\$83, 848.00

SECTION 2: Payment for engineering services authorized by Section 1 is hereby authorized from the Sales Tax Fund (1105).

This Resolution adopted this _____ day of January , 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form

Jfc

- No Publication Required
 Publish ____ Times

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

FROM: Stan Snodgrass, P.E., Director of Engineering 

DATE: December 27, 2011

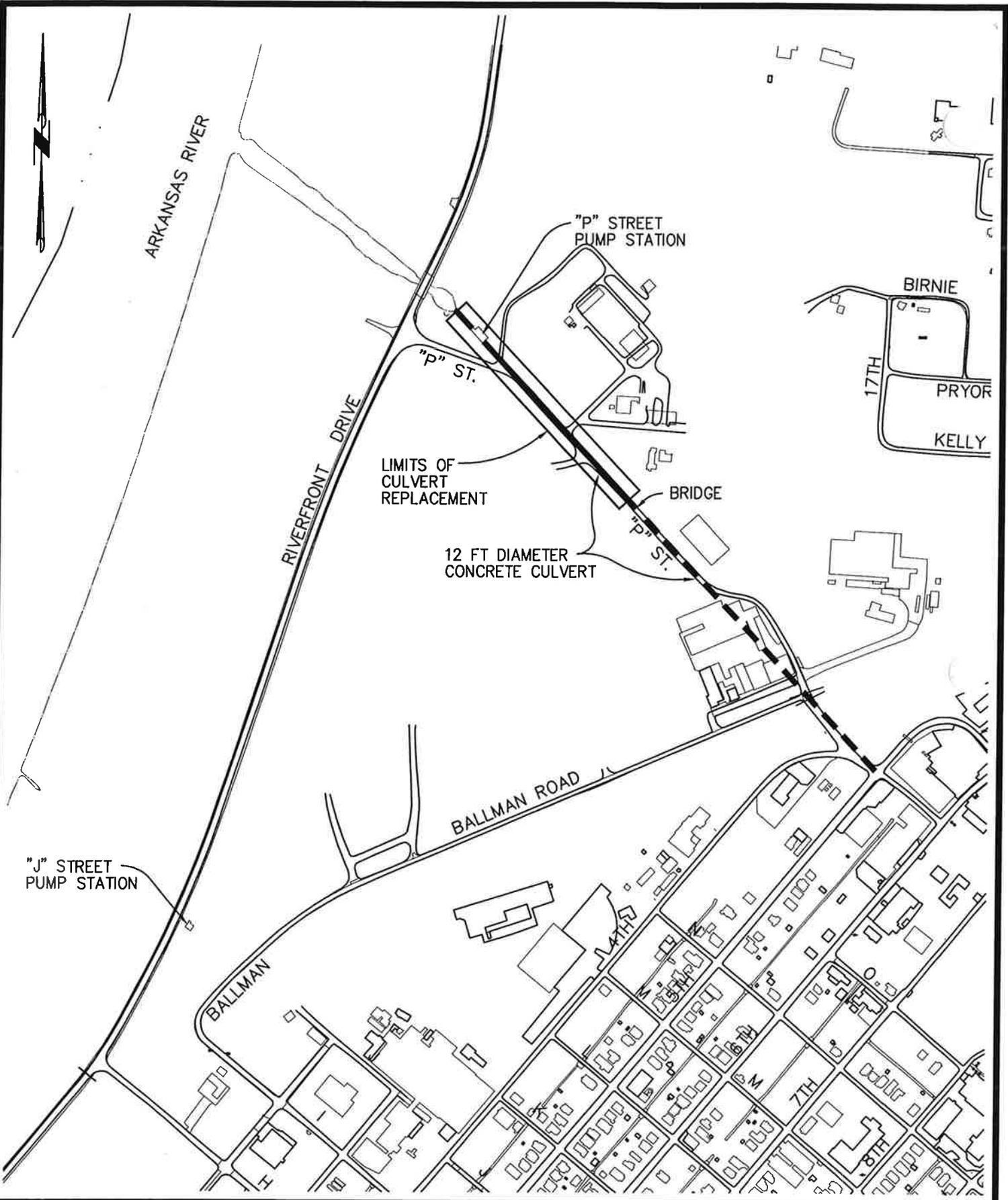
SUBJECT: 2012 Sales Tax Program Engineering Services Agreement
"P" Street and "J" Street Storm Water Pump Station Improvements
Project No. 12-06-F

The attached Resolution authorizes the Mayor to execute an engineering services agreement for a project in the 2012 Sales Tax Program for streets, bridges and related drainage improvements. This project includes improvements to the "P" Street and "J" Street Storm Water Pump Stations which were constructed in the 1940s. These improvements are necessary to meet the FEMA certification requirements and current building, electrical and life safety codes. The work will include construction of secondary (emergency) power sources, conversion to new 480 volt pump motors at the "P" Street location, updated electrical wiring and electrical controls, new floodgate operators, bar screen repairs and building roof, ventilation and life safety improvements.

We had initially intended on including this work with the repair of the P Street storm sewer culvert. However, separation of this type of work from the P Street culvert project will likely result in lower construction costs as the work is somewhat specialized and not typically included with drainage culvert projects.

Attached is a Resolution authorizing the Mayor to execute the above noted engineering services contract. I recommend that the Resolution be adopted by the Board at the next regular meeting.

Attachment



2012 CAPITAL IMPROVEMENTS PROGRAM
 "P" STREET AND "J" STREET STORM WATER
 PUMP STATION IMPROVEMENTS



Project:	
Date:	DEC. 2011
Scale:	NONE
Drawn By:	RBR

7.F.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING CONCERNING MOBILE DATA SUPPORT BETWEEN THE CITY OF FORT SMITH, ARKANSAS AND THE CITY OF GREENWOOD, ARKANSAS

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

Section 1. The Memorandum of Understanding between the City of Fort Smith and the City of Greenwood, Arkansas, which shall be substantially in the form attached hereto, is hereby approved and provides for the terms, conditions, and mutual understandings for the operation of mobile data systems between the two parties.

Section 2. The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute this Memorandum of Understanding to which the City of Fort Smith is a party.

THIS RESOLUTION ADOPTED this _____ day of _____, 2012.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:

JSC

No publication required

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF FORT SMITH, ARKANSAS AND

THE CITY OF GREENWOOD, POLICE DEPARTMENT

This agreement is made and entered into this ____ day of _____, 2011, by and between the Greenwood Police Department, acting by and through its governing body, the City Council, hereinafter referred to as GREENWOOD PD, and the City of Fort Smith, acting by and through its governing body, the Board of Directors, hereinafter referred to as CITY, both of Sebastian County, State of Arkansas, witnesseth:

WHEREAS, the purpose of this Agreement is to define responsibilities of the Fort Smith Police Department (the Hosting Agency) and Greenwood Police Department, the Greenwood PD, concerning use of Mobile Data Computers (MDC) connected to the Fort Smith Police Mobile Data network; and

WHEREAS, the Greenwood PD has entered into all necessary supporting contracts and / or Agreements to effectuate this agreement and will cooperate with any future requirements; and

WHEREAS, the Greenwood PD understands that entering into this agreement will result in certain recurring annual replacement costs and maintenance fees in support of the Mobile Data systems and network infrastructure and that those costs and fees shall be borne entirely by the Greenwood PD;

NOW, THEREFORE, the CITY of FORT SMITH and GREENWOOD PD agree as follows:

Section 1

Administration

1. The Hosting Agency will administer and maintain all MDC and network infrastructure used on the Hosting Agency Mobile Data Network (RVMD);
2. The Hosting Agency Network Manager and staff will administer all MDC equipment and installation of software for the Greenwood PD;
3. All software installation and configuration activities for MDC equipment connected to the Hosting Agency Network Infrastructure will be performed under the direction of the Hosting Agency Network Manager and staff, except as specified below in Section 4 paragraph 1;
4. The Hosting Agency Mobile Data Network Manager will administer all MDC user security accounts for the Greenwood PD ;
5. Greenwood PD enforcement personnel using the Hosting Agency Mobile Data Network will abide by all applicable Hosting Agency policies and IT Security Policies, including but not limited to, the Acceptable Use Policy of IT Resources;

6. The Greenwood PD will ensure that only authorized Law Enforcement personnel operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;
7. The Greenwood PD will notify the Hosting Agency Network Manager within 24 hours of a status change concerning the eligibility of any Greenwood PD Law Enforcement personnel to operate a Greenwood PD MDC by reason of separation, suspension, or other status change under this agreement. Such Hosting Agency Network Manager will immediately disable the member's MDC security account;
8. Either the Host Agency or the Greenwood PD can suspend connectivity pending resolution of any issue that may impact the confidentiality, integrity or availability of their respective systems;
9. In the event the Greenwood PD MDC equipment requires service, the Greenwood PD will contact and transport the equipment to the Hosting Agency Network Manager;
10. The Hosting Agency Network Manager will notify a member designated by the Greenwood PD of any planned or discovered un-planned interruption of the Mobile Data services.

Section 2

Arkansas Crime Information Center (ACIC)

1. The Greenwood PD will ensure that only Law Enforcement personnel or staff members currently certified by the Arkansas State Police or ACIC/NCIC access operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;
2. Violation of ACIC/NCIC policies will result in immediate suspension of connectivity.

Section 3

Audits

1. At regular intervals, the Hosting Agency will conduct audits of mobile data message traffic to ensure member compliance with established use policies. Mobile Data message traffic from Greenwood PD Law Enforcement personnel or staff members is subject to review during these audits;
2. If a Greenwood PD member is identified as having violated established Hosting Agency use policies, the Host Agency Chief of Police, or his/her designee, will contact the Greenwood PD Chief of Police or his/her designee and make notification of the violation;
3. The Hosting Agency Chief of Police will provide the Greenwood PD Chief of Police or a designated member, upon request, audits of Greenwood PD Law Enforcement personnel mobile message traffic, and any other security logs available.

Section 4

Technology Upgrade

1. To maintain the operational efficiency of the Hosting Agency Mobile Data Network, the Hosting Agency Network Manager regularly updates server hardware and software on MDC equipment and network systems. The Greenwood PD agrees to access and install these hardware and software updates and to transport MDC equipment to the Hosting Agency Mobile Data Coordinator for update installation, in instances when updates cannot be efficiently transmitted to MDC equipment wirelessly;
2. To maintain the operational efficiency of the Hosting Agency Mobile Data Network, the Hosting Agency has established a five-year hardware refresh schedule for MDC equipment which includes Mobile Data servers, software, and supporting network equipment. The Greenwood PD agrees to provide to the Hosting Agency the installation date for all Greenwood PD MDC equipment. The Hosting Agency Network Manager will notify a member designated by the Greenwood PD, at least ninety days in advance, that the Greenwood PD equipment is approaching the obsolescence date. No connectivity will be permitted for MDC equipment beyond the equipment obsolescence date. The Greenwood PD will be responsible for acquiring and funding replacement MDC equipment, servers, software and network equipment, specified by the Hosting Agency Network Manager.

Section 5

Regional Mobile Data Federal Grants

By accepting Regional Mobile Data equipment procured by the Fort Smith Police Department using federal grants, the recipient agrees to and understands:

- A. The equipment remains the property of the City of Fort Smith by the terms of the grant.
- B. The recipient is responsible for proper care and maintenance of the equipment while it is in his or her possession. The recipient cannot modify or alter the equipment without prior express written permission of the Fort Smith Police Chief or his designee. This includes removal of any inventory or identification tags.
- C. The recipient may not sell, barter, trade, pawn, loan, dispose of in any way, or otherwise encumber the equipment at any time. The equipment must be returned to the City of Ft. Smith for proper disposition.
- D. The above requirements are the result of federal grant mandates. They are non-negotiable.

Section 6

Fees

- 1. Year 2012 and each year thereafter total support fees for 15 MDC will total \$15,600.00

Terms:

- a. The Greenwood PD has requested support for 15 MDCs in 2011 and agrees to pay the Hosting Agency fees associated with the rendering of MDC service as follows:
- b. An internet usage fee of \$240.00 per MDC unit per year totaling \$3,600
- c. A support fee of \$800.00 per MDC unit per year totaling \$12,000

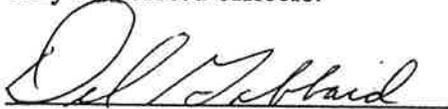
This equates to a total annual fee of \$15,600.00

Section 7

Renewal

- 1. This agreement shall have a term of one year upon its enactment and shall be renewed on a yearly basis. Either party not wishing to renew the agreement shall give written notice to the respective Chief of Police, or their designee, at least ninety (90) days in advance of the termination date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers.



Del Gabbard, Mayor
CITY OF GREENWOOD
POLICE DEPARTMENT

Sandy Sanders, Mayor
CITY OF FORT SMITH

DATE: Nov. 23, 2011

DATE: _____

ATTEST:

City Clerk

DATE: _____

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

City Attorney



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police 

Subject: Memorandum of Understanding between the City of Fort Smith and the City of Greenwood, Arkansas concerning Mobile Data Computers

Date: December 27, 2011

The Fort Smith Police Department continues its drive towards becoming a regional leader in communications and information dissemination. As part of this process the Department is able to supply the communication needs of other jurisdictions and receive compensation for those services. Monies received can then be reinvested in the technical infrastructure required to maintain the informational network thus benefiting not only the purchaser of services but also the citizens of Fort Smith.

The Department is proposing that the City enter into a Memorandum of Understanding that would allow the Department to collect revenue from the City of Greenwood, Arkansas for Mobile Data services. This is one of many such agreements that the Department has been able to enter into and is an important step in continuing the development of the Department's Information Technology and Communications goals.

Please contact me if you have questions or need additional information.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING CHANGE ORDER NUMBER ONE WITH FORSGREN, INC., FOR THE ZERO STREET OUTFALL SEWER IMPROVEMENTS PHASE II

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

Change Order Number One in the amount of \$31,012.50 to the contract with Forsgren, Inc., for the Zero Street Outfall Sewer Improvements Phase II, Project Number 09-19-C1, adjusting the contract amount to \$2,265,964.40, and adding 45 days to the contract completion time, is hereby approved.

This Resolution adopted this _____ day of January 2012.

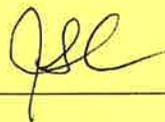
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: December 30, 2011

FROM: Steve Parke, Director of Utilities

SUBJECT: Zero Street Outfall Sewer Improvements Phase 2
Project Number 09-19-C1

I have attached a Resolution authorizing Change Order Number One to the contract with Forsgren, Inc., in the amount of \$31,012.50 for additional work incorporated into the Zero Street Outfall Sewer Improvements Phase 2 project. This change order was required to address project delays created by an AT&T underground fiber optic cable installation near the interface location of the Zero Street phase 1 and phase 2 projects. The extended time period AT&T needed to eliminate the conflict with the fiber optic cable would have created both time delay and additional expense for the Zero Street phase 1 project which was near the end of its contract period. In order to avoid those impacts, the phase 1 sewer main which could not be constructed due to the fiber optic cable conflict was deducted from the phase 1 project and transferred into the Zero Street phase 2 project. The \$31,012.50 expense for adding this work into the phase 2 project is offset by the phase 1 cost underrun resulting from the removal of the work from that project.

This change order also adds 45 days to the length of the contract. Nine days are related to weather delays in August, October and November. Twenty-six days are due to delay caused by a second AT&T fiber optic cable conflict which required engineering time to develop an alternate route and installation of two additional manholes. Ten days are related to problems associated with the installation of the sewer line between Mill Creek and Harvard Avenue.

The attached Resolution authorizes Change Order Number One with Forsgren, Inc., in the amount of \$31,012.50 and adjusts the contract amount to \$2,265,964.40. The contract completion time is increased to 285 days. A project summary sheet is attached. Funds for this construction are provided by the sales and use tax bonds issued for wet weather wastewater improvements.

Should you or members of the Board have any questions or need additional information, please let me know.

attachment

pc: Jeff Dingman

Project Summary

Project status: Underway

Project name: Zero Street Outfall Sewer Improvements Ph II

Today's date: December 30, 2011

Project number: 09-19-C1

Staff contact name: Steve Parke

Project engineer: Morrison-Shipley Engineers, Inc.

Staff contact phone: 784-2231

Project contractor: Forsgren, Inc.

Notice to proceed: May 2, 2011

Final completion date: January 30, 2012

	Dollar Amount	Contract time (Days)
Original contract:	2,234,951.90	240
Change orders:		
Change order No. 1 (if approved)	31,012.50	45
Total change orders:	31,012.50	45
Adjusted contract:	2,265,964.40	285
Payments to date (as negative):	-1,688,029.96	
Amount of this payment (as negative)	0.00	
Retainage held:	88,107.15	
Contract balance remaining	577,934.44	
Amount over original as a percentage	1%	



8

MEMORANDUM

December 30, 2011

TO: Mayor and Board of Directors

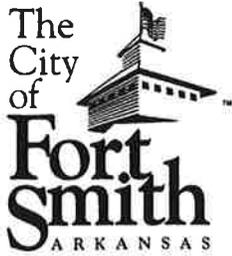
FROM: Ray Gosack, City Administrator

SUBJECT: Van Buren Water True Up

The agenda for the January 3rd regular board meeting includes an item for the Van Buren water true up. Placing this item on the agenda will allow the board to take any action it desires following the study session discussion earlier in the day. The study session packet is attached.

Ray

Attachment



1

MEMORANDUM

December 30, 2011

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Van Buren Water True Up

At the December 20th board meeting, the board requested a second legal opinion regarding the 2009 Van Buren water true up. Mark Moll of the Jones Jackson & Moll law firm has provided that opinion, which is attached. Mr. Moll will attend the study session to answer any questions and discuss his opinion.

Van Buren is reviewing our true up calculations for 2010. Once the calculation is confirmed, we'll issue an overpayment check to Van Buren for the full amount as the board directed at the December 6th meeting. Our calculations show this amount to be \$30,884.

During the period of 2006-2010, Van Buren has paid nearly \$17.7 million in water service payments to Fort Smith. These payments were based on rates adopted by Fort Smith in conformity with our water supply agreement with Van Buren. Fort Smith's retail customers paid slightly more than \$87 million in water service charges during the same period.

Options for resolving the 2006-2009 true ups which the board may wish to consider include:

- Invoking the arbitration provision in our settlement agreement with Van Buren to pursue a true up payment for 2009.

This option would allow us to make a claim for 2009 (\$253,706), but could jeopardize the amounts tentatively agreed to for 2006, 2007, and 2008 (\$581,174). It would also leave the matter unresolved for several months and create significant expense to go through arbitration.

- Entering into a settlement agreement with Van Buren as described in the attached e-mail.

This option would conclude the true ups for 2006-2010, but would result in no payment for 2009.

The 2004, 2005, 2006, 2007, 2008 and 2010 true ups were all processed timely. The following measures have been implemented to assure that we don't have another omission as we did with the 2009 true up.

- The utility rate analyst position has been transferred to the utilities dept. The director of utilities will monitor his work to ensure the required information is provided to Van Buren timely.
- The deputy city administrator will verify that the information is provided to Van Buren within 60 days of completing the CAFR.
- The board will be advised when the required information is provided to Van Buren.
- The utility rate analyst position will not be left unduly vacant for extended periods of time.

The failure of Fort Smith to provide Van Buren with the required information for the 2009 true up is a regrettable and costly inaction. Steps have been taken to ensure the error doesn't happen again. Fort Smith must now decide how it wants to resolve the error for the 2009 true up.

Ray

Attachments

JONES, JACKSON & MOLL, PLC

ATTORNEYS AT LAW
401 North 7th Street
Post Office Box 2023
Fort Smith, Arkansas 72902-2023

ROBERT L. JONES, JR. (1922-2004)
RANDOLPH C. JACKSON*
MARK A. MOLL
J. RANDALL MCGINNIS
KATHRYN A. STOCKS*
MICHAEL T. NEWMAN**
JOSHUA T. CARSON

December 30, 2011

TELEPHONE (479) 782-7203
FACSIMILE (479) 782-9460

*Also Licensed in Oklahoma
**Also Licensed in Oklahoma,
and Missouri

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

Re: Dispute With Van Buren on 2009 Water Bill

Dear Mr. Gosack:

This letter will confirm your request for my opinion on whether the City of Fort Smith is entitled to exercise the true-up provision in the Van Buren water supply agreement for the year 2009. My opinion is based on the applicable contracts between the cities of Fort Smith and Van Buren, copies of which you provided to me, and certain facts which are apparently not in dispute.

The Agreements

On February 25, 1983, Fort Smith and Van Buren entered into an Agreement pursuant to which Van Buren conveyed land that it owned in Crawford County to Fort Smith and in exchange Fort Smith constructed a dam impoundment and water reservoir in order to mutually benefit the citizens of Fort Smith, Van Buren and surrounding areas. Van Buren began purchasing water from Fort Smith based on a formula that was relatively easy to use compared to the formula used today.

On December 19, 2001, Fort Smith and Van Buren entered into a Final Settlement and Release Agreement which resolved a lawsuit that Van Buren had filed against Fort Smith alleging that Fort Smith had breached the 1983 Agreement. As part of the Final Settlement and Release Agreement, the parties signed an Addendum pursuant to which Van Buren paid the protested amounts and the parties agreed to submit any future disputes concerning the sale and purchase of water to arbitration.

December 30, 2011

Page 2

On October 18, 2002, Fort Smith and Van Buren entered into a Supplement to Final Settlement Agreement and Release which set forth a Rate Model to be used in determining water rates and charges that Van Buren would pay for water purchased from Fort Smith beginning in 2004 and continuing through 2021. The Rate Model was complicated and it required inputs and formulae for indirect and direct costs of operation and maintenance, capital costs for transmission system facilities, methodologies of the American Water Works Association, and costs associated with pumping and storage facilities.

The parties also agreed in the Supplement that “[d]uring 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,” one of which changes the Rate Model (not involved for purposes of our discussion) and the other involves using the existing Rate Model, but changing the data inputs and allocation formulae so as to either allow Fort Smith to retroactively adjustment of Van Buren’s water bill for the prior year or prospectively change it for the coming year. For purposes of this discussion, I am referring to paragraph 4 (A)(1) of the Supplement which authorizes Fort Smith to make a retroactive adjustment for the prior year’s charges.

The Supplement provides that the inputs may be adjusted by Fort Smith; there is nothing in the contract that reveals an intent of the parties to adjust either the Rate Model or the data inputs and allocation formulae on an annual basis. Fort Smith can exercise its right to adjust the inputs and thereby retroactively adjust Van Buren’s water bill for the prior year by complying with a two-step procedure: (1) provide Van Buren with a comparison of actual and projected revenues and costs and other specified inputs within sixty (60) days of the completion of Fort Smith’s Comprehensive Annual Financial Report (“CAFR Comparisons”), and (2) send Van Buren a subsequent “true-up” of the Rate Model which would reflect either additional charges or a credit for the year in question. There is no time restriction on providing the true-up. In the event of a dispute, either party has the right to submit the dispute to binding arbitration.

The Facts

There have been some years (2004 and 2005) in which there was no retroactive adjustment of Van Buren’s water bill. However, during the years 2006, 2007 and 2008, Fort Smith exercised its right to retroactively adjust the inputs – and thereby adjust the amounts due in those years – by providing Van Buren the CAFR Comparisons and subsequently providing a true-up invoice for each of those years. Van Buren disputed the amounts of each of the three-year adjustments. Van Buren submitted some payments under protest and escrowed other funds to account for its potential liability.

December 30, 2011

Page 3

Neither party has requested arbitration, presumably because the parties are continuing to negotiate.

An audited CAFR for Fort Smith for the year 2009 was completed in late June 2010. Unlike the previous three years, Fort Smith did not send the CAFR Comparisons of projected and actual revenues and expenses to Van Buren which would have initiated Fort Smith's right to adjust the amount of Van Buren's water bill for the year 2009. It is not clear whether Fort Smith intentionally or unintentionally failed to send the CAFR Comparisons. Pursuant to the instruction of the Fort Smith Board of Directors, an invoice representing the 2009 true-up amount of \$253,706.00 was sent to the Van Buren Municipal Utilities Commission in November 2011.

The Law

In my opinion, the contract provision in question is not ambiguous or subject to more than one reasonable interpretation. Paragraph 4(A)(1) of the Supplement clearly indicates that Fort Smith has the right but not an obligation to compare its actual and projected costs for a year and, if appropriate, retroactively charge Van Buren an additional amount for water consumed. However, without any action on the part of Fort Smith, there is no annual adjustment and Van Buren would have no contractual duty to pay any more for the water consumed or be entitled to any credit on its account. In other words, the latest Rate Model and inputs and formulae are used to calculate the cost of water to Van Buren unless and until either the Rate Model or the inputs and formulae are changed and Fort Smith has control over whether there will be any changes.

Any changes in the inputs and formulae – and thereby any retroactively adjustment of Van Buren's water bill – may be instigated by Fort Smith through compliance with the above-referenced two-step procedure. The CAFR Comparisons / true-up procedure is a "condition precedent" to Van Buren's obligation to pay or entitlement to any credit. A condition precedent is a fact or event which the parties intend must exist or take place before a corresponding duty arises. The wording of the contract that is central to this dispute reflects an intention of the parties to make Van Buren's obligation to pay additional charges for water consumed in a prior year conditional on Fort Smith timely providing the CAFR Comparisons and a true-up invoice for the additional charge. Therefore, noncompliance by Fort Smith results in a forfeiture of Fort Smith's right to make an adjustment in the amount that Van Buren owes for water consumed during the prior year.

In the alternative, even if, despite the language of the contract, the parties intended there to be an annual adjustment, it is my opinion that Fort Smith would be

December 30, 2011

Page 4

estopped or prevented from seeking to impose an adjustment for the year 2009 by failing to timely comply with the two-step procedure which required Fort Smith to provide Van Buren with the CAFR Comparisons and a true-up calculation.

Under contract law, there is a doctrine of substantial performance whereby a party may recover on a contract even if the party did not do everything that the contract required of the party if the party's performance was substantial. In this case, however, I do not believe it could be said that Fort Smith substantially performed the condition precedent because Fort Smith never provided the CAFR Comparisons and the true-up amount was not given to Van Buren until November of this year. There is language in the contract which states that the appropriate adjustment for a reported year shall be applied either as an additional charge or a credit against charges in the *immediately following annual period* with one-twelfth of the adjustment applied to each calendar month's bill. Thus, even if Fort Smith was given some leeway on the obligation of providing the CAFR Comparisons within 60 days from the date the CAFR was completed, Van Buren simply did not receive either the CAFR Comparisons or the true-up calculation in time in 2010 to adjust the rate that it charges its citizens for water in the following year. For these reasons, I believe that a court would conclude that Fort Smith did not substantially comply with the two-step procedure for adjusting Van Buren's water bill for the year 2009.

My opinion is the same whether Fort Smith intentionally or negligently failed to send the CAFR Comparisons and timely send the true-up amount. Under either scenario, Van Buren has no contractual obligation to pay an adjusted amount for water consumed in 2009.

Prior Years' True-Ups Owed by Van Buren

You also asked me for an opinion concerning whether Fort Smith had any risk of forfeiting the 2006, 2007 and 2008 true-up adjustments owed by Van Buren if Fort Smith pursued collection of the 2009 true-up amount of \$253,706.00. It is my understanding that Van Buren owes \$327,226.00 for 2006, \$129,227.00 for 2007, and \$124,721.00 for 2008.

In my opinion Fort Smith has no risk of adversely affecting Van Buren's legal obligation to pay the adjusted water bills for 2006, 2007 and 2008 by pursuing collection of an alleged amount due for 2009. My understanding is that Van Buren has offered to pay the amounts due for 2006 - 2008 provided Fort Smith relinquishes its claim for 2009.

December 30, 2011

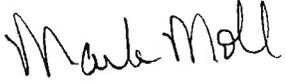
Page 5

While Van Buren could, of course, withdraw from negotiations if Fort Smith pursued collecting an adjusted amount for 2009, Fort Smith could exercise its right to submit the 2006 through 2008 and even the 2009 claim, to binding arbitration. Fort Smith's position with respect to 2009 would have no bearing on the amounts owed by Van Buren for 2006 - 2008.

Thank you for the opportunity to render this opinion to the City for Fort Smith. I will be pleased to answer any questions that you may have concerning these matters.

Yours very truly,

JONES, JACKSON & MOLL, PLC

By: 
Mark Moll

MAM:jlj

Gosack, Ray

From: Gosack, Ray
Sent: Wednesday, December 14, 2011 4:53 PM
To: Andre' Good; Andre' Good (good4ward2@gmail.com); Dingman, Jeff; Don Hutchings; George Catsavis (georgecatsavis@gmail.com); Philip Merry (philip_merry@ajg.com); pweber5469@aol.com; Sandy Sanders (SSanders@FortSmithAR.gov); Settle, Kevin (Board of Directors); Steve Tyler (sksttyler@sbcglobal.net)
Cc: Parke, Steve; Bushkuhl, Kara; Kimbrough, Mitzi; 'Jerry Canfield'
Subject: Van Buren Water True Up

I met today with C.E. Dougan, chairman of the Van Buren utilities commission, and Gary Smith, manager of Van Buren utilities to discuss the water true up payments. We spent most of our time discussing the 2009 water true up, and payment terms for the amounts Van Buren owes to Fort Smith.

Regarding the 2009 true up amount, Van Buren isn't willing to pay any additional amount for the following reasons:

- Van Buren believes it's on solid ground legally to not owe any payments for 2009
- Van Buren can't provide a rationale explanation to its citizens why it would make a payment for 2009 when Fort Smith didn't follow the contract requirements for that year
- Van Buren disagrees with the calculations for 2006-08 but tentatively accepted the amounts calculated by Fort Smith in the context of settling and getting behind them the true up disagreements for 2006-2009. If Fort Smith pursues arbitration/litigation to receive a payment for 2009, then Van Buren won't accept the amounts calculated by Fort Smith for 2006-08 and will challenge the true up amounts for all years.
- Van Buren has nothing to gain by making a payment for 2009

I asked if there was any circumstance under which Van Buren would consider paying a true up amount for 2009. Mr. Dougan replied that there wasn't.

We discussed terms for the payment of amounts owed by Van Buren. The amount is \$581,174. Van Buren had originally proposed paying \$161,000 (the checks previously issued by Van Buren to Fort Smith) of this amount up front and paying the balance in equal monthly installments over 3 years. I asked if Van Buren could pay up front not only the \$161,000 but also the \$236,000 which they're holding in a cash reserve, and then pay the balance (\$184,174) in equal installments over 12 months with interest. After considerable discussion, Van Buren said that they could live with this arrangement but didn't believe that they should have to pay interest on the amount which would be paid out over 12 months (\$184,174). They cited the provision in the agreement which allows them to make true up payments in equal monthly installments over a 12-month period after the true up payment amount is determined. I concur with this analysis.

In summary, Van Buren isn't willing to pay any additional amount for 2009, but is willing to pay up front \$397,000 and the balance of \$184,174 in equal monthly installments without interest during 2012.

If this true up settlement arrangement is acceptable, we'll prepare an agreement which would likely be ready for the January 3rd board meeting. If you'd like to have a study session discussion prior to considering a settlement agreement, please let me know.

Ray

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.

DAILY & WOODS

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L. MATTHEW DAVIS, P.A. †
COLBY T. ROE

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

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.

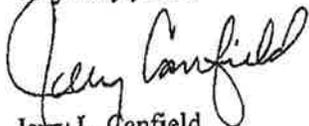
We express the foregoing opinion in spite of our established practice of viewing disputed fact situations and principles of law in the light most favorable to the City so that the City's actions can be taken by its policy makers and not dictated by our legal opinions. In this situation, the ability of 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". The signature is written in a cursive, slightly slanted style.

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
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(479) 785-2801
Administrative Offices FAX (479) 784-2430

Board Info
Steve Paulk, 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.

Serving Van Buren and Crawford County since 1893

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.

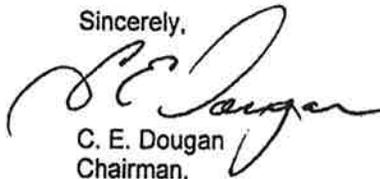
Unless Fort Smith and Van Buren otherwise agree, Van Buren will pay any amounts due to Fort Smith resulting from true up calculations for the year 2010 and subsequent years in twelve equal monthly installments in addition to the monthly amount shown above.

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

BOARD INFO

City of Van Buren, Arkansas

1003 Broadway • Van Buren, Arkansas 72956

cc: Steve Ankle, Utilities
Kara Bushnell, Finance
Jeff Dingman, Admin.

November 22, 2011

Mayor Sandy Sanders
City of Fort Smith
P. O. Box 1908
Fort Smith, AR 72902

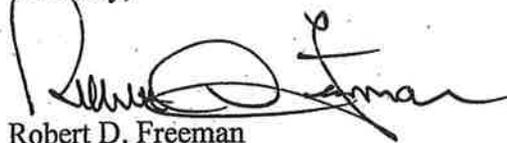
Dear Mayor Sanders,

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

RETAIL WATER SALES

	<u>Gallons used</u>	<u>CCF Used</u>	<u>\$ Amt</u>
2006	5,628,156,204	7,524,273	16,126,056.23
2007	5,188,271,616	6,936,192	16,039,873.44
2008	4,931,984,376	6,593,562	17,794,224.06
2009	4,625,122,612	6,183,319	17,253,071.68
2010	4,904,005,436	6,556,157	18,814,676.19
Total	25,277,540,244	33,793,503	87,027,901.60

Retail customers