



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Steve Tyler

Ward 2 – Andre’ Good

Ward 3 – Don Hutchings

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

AGENDA
Fort Smith Board of Directors
Regular Meeting
April 17, 2012 ~ 6:00 P.M.
Fort Smith Public Schools Service Center
3205 Jenny Lind Road

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 APRIL 3, 2012 REGULAR MEETING

ITEMS OF BUSINESS:

1. Ordinance authorizing issuance of Sales and Use Tax Refunding and Improvement Bonds, Series 2012 for the purpose of financing and refinancing all or a portion of the cost of capital improvements; pledging collections of a 0.75% Sales and Use Tax to pay the principal of and interest on the bonds; prescribing other matters relating thereto; and declaring an emergency
2. Ordinance repealing and replacing Section 2-44(b) of the Fort Smith Municipal Code (*Citizens Forum*) ~ *Tyler/Weber placed on agenda at the April 10, 2012 study session ~*
3. Items regarding televising of Board of Directors meetings ~ *Hutchings/Catsavis placed on agenda at the April 10, 2012 study session ~*
 - A. Resolution regarding televising of Board of Directors meetings

- B. Ordinance authorizing the appropriation of funds from the unreserved balance of the general fund
 - C. Ordinance adopting policies and procedures for operation of the City of Fort Smith Government Access Channel and repealing Ordinance No. 9-12
4. Consent Agenda
- A. Resolution authorizing the Mayor to execute a fiber optics network franchise agreement with Windstream Communications, Inc.
 - B. Resolution authorizing additional work and a time extension for the construction of the Garrison Avenue Streetscape, North 9th Street – North 13th Street, Project No. 09-90-B, Job 040545 (*\$51,455.00 / Engineering Department / Budgeted – 4111-301 Downtown Development Fund*)
 - C. Resolution authorizing a change order for the construction of Street Overlays / Reconstruction, Project No. 11-03-D (*\$3,314.88 / Engineering Department / Budgeted - Sales Tax Program Fund*)
 - D. Resolution accepting completion of and authorizing final payment for the construction of Street Overlays / Reconstruction, Project No. 11-03-D (*\$35,914.58 / Engineering Department / Budgeted - Sales Tax Program Fund*)
 - E. Resolution approving automobile and property insurance coverage for the City's fleet and buildings for 2012-2013 ~ *Board placed on agenda at the March 27, 2012 study session ~*
 - F. Resolution authorizing the execution of a Memorandum of Understanding between the City of Fort Smith, Arkansas and the City of Alma, Arkansas, concerning mobile data support
 - G. Resolution authorizing the execution of a Memorandum of Understanding concerning mobile data support between the City of Fort Smith, Arkansas and the University of Arkansas Fort Smith
 - H. Resolution authorizing the Mayor to execute an authorization with Brixey Engineering & Land Surveying for engineering services for the Neighborhood Water System Improvements – Jack Freeze Service Area (*\$107,076.25 / Utility Department / Budgeted – 2008 Revenue Bonds*)

- I. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Forsgren, Inc. for construction of the Neighborhood Water System Improvements – Jack Freeze Service Area (\$1,040,933.31 / Utility Department / Budgeted – 2008 Revenue Bonds)
- J. Resolution authorizing the Mayor to execute an implementing agreement with the Arkansas Department of Environmental Quality for the Arkansas Brownsfield Program for the Zero Street Pump Station Wet Weather Improvements

OFFICIALS FORUM ~ presentation of information requiring no official action

(Section 2-36 of Ordinance No. 24-10)

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

EXECUTIVE SESSION

- Appointments: Housing Assistance Board (1) and Outside Agency Review Panel (1)

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

AN ORDINANCE AUTHORIZING THE ISSUANCE OF SALES AND USE TAX REFUNDING AND IMPROVEMENT BONDS, SERIES 2012 FOR THE PURPOSE OF FINANCING AND REFINANCING ALL OR A PORTION OF THE COST OF CAPITAL IMPROVEMENTS; PLEDGING COLLECTIONS OF A 0.75% SALES AND USE TAX TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, there was submitted to the qualified electors of the City of Fort Smith, Arkansas (the "City") the questions of issuing, under Amendment No. 62 to the Constitution of the State of Arkansas (the "State") and under Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), capital improvement bonds as follows: (a) bonds 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 (the "Series 2006 Bonds"), Sales and Use Tax Bonds, Series 2008 (the "Series 2008 Bonds") and Sales and Use Tax and Water and Sewer Revenue Bonds, Series 2009 (the "Series 2009 Bonds"); (b) bonds 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 (the "Wastewater Improvements"); (c) bonds 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 (the "Water Improvements"); (d) bonds 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 (the "Firefighting Improvements"); and (e) bonds in the maximum principal amount of \$4,260,000 to finance a portion of the costs of an aquatic center consisting of swimming and other recreational facilities and any parking, equipment, furnishings and utility improvements therefor (the "Aquatic Center Improvements"); and

WHEREAS, at the special election held March 13, 2012, a majority of the electors voting on the questions approved the issuance of such bonds; and

WHEREAS, the Board of Directors has determined to proceed to refund the Series 2006 Bonds, the Series 2008 Bonds and the Series 2009 Bonds (collectively, the "Bonds Refunded"), to accomplish the Firefighting Improvement and the Aquatic Center Improvements and to accomplish a portion of the Wastewater Improvements and the Water Improvements, and to issue the initial series of capital improvement bonds in the aggregate principal amount of \$_____ designated as "City of Fort Smith, Arkansas Sales and Use Tax Refunding and Improvement Bonds, Series 2012" (the "Series 2012 Bonds"); and

WHEREAS, the City has made arrangements for the sale of the Series 2012 Bonds to Stephens Inc. and Morgan Keegan & Company, Inc., or its successor in interest (the "Purchasers"), at a price of \$_____ (principal amount less underwriters' discount of \$_____ plus net original issue premium of \$_____), plus accrued interest (the "Purchase Price"), pursuant to a Bond Purchase Agreement between the Purchasers and the City (the "Agreement"), which has been presented to and is before this meeting; and

WHEREAS, the Preliminary Official Statement, dated April 10, 2012, offering the Series 2012 Bonds for sale (the "Preliminary Official Statement"), has been presented to and is before this meeting; and

WHEREAS, the Continuing Disclosure Agreement between the City and BancorpSouth Bank, Stuttgart, Arkansas, as Dissemination Agent (the "Disclosure Agreement"), providing for the ongoing disclosure obligations of the City with respect to the Series 2012 Bonds, has been presented to and is before this meeting; and

WHEREAS, the principal amount of the Series 2012 Bonds is allocated among purposes as hereinafter set forth in Section 26 hereof and \$_____ in maximum principal amount of capital improvement bonds approved at the March 13, 2012 special election for the Wastewater Improvements and the Water Improvements that are not being issued are hereinafter collectively referred to as "Additional Parity Bonds," and the Series 2012 Bonds and the Additional Parity Bonds are hereinafter referred to collectively as the "bonds";

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

Section 1. The offer of the Purchasers for the purchase of the Series 2012 Bonds from the City at the Purchase Price, for Series 2012 Bonds bearing interest at the rates per annum, maturing and otherwise subject to the terms and provisions hereafter in this Ordinance set forth in detail be, and is hereby accepted and the Agreement, in substantially the form submitted to this meeting, is approved and the Series 2012 Bonds are hereby sold to the Purchasers. The Mayor is hereby authorized and directed to execute and deliver the Agreement on behalf of the City and to take all action required on the part of the City to fulfill its obligations under the Agreement.

Section 2. The Preliminary Official Statement is hereby approved and the previous use of the Preliminary Official Statement by the Purchasers in connection with the sale of the Series 2012 Bonds is hereby in all respects approved and confirmed, and the Mayor be and he is hereby authorized and directed, for and on behalf of the City, to execute the Preliminary Official Statement and the final Official Statement in the name of the City as set forth in the Agreement.

Section 3. The Disclosure Agreement, in substantially the form submitted to this meeting, is approved, and the Mayor is hereby authorized and directed to execute and deliver the Disclosure Agreement on behalf of the City. The Mayor and City Treasurer are each authorized

and directed to take all action required on the part of the City to fulfill the City's obligations under the Disclosure Agreement. Any legal fees and other administrative costs incurred by the City in connection with making the annual report pursuant to the Disclosure Agreement (except audit fees) shall be considered administrative charges that may be payable from moneys in the Bond Fund.

Section 4. Under the authority of the Constitution and laws of the State, including particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, the Series 2012 Bonds are hereby authorized and ordered issued in the total principal amount of \$_____, the proceeds of the sale of which are necessary to provide funds for the Water Improvements, the Wastewater Improvements, the Firefighting Improvements and the Aquatic Center Improvements (collectively, the "Improvements"), for the refunding of the Bonds Refunded, for the funding of a debt service reserve, and for the payment of expenses of issuing the Series 2012 Bonds.

The Series 2012 Bonds shall bear interest at the rates and shall mature on May 1 in the amounts and in the years as follows:

<u>Year</u> <u>(May 1)</u>	<u>Amount</u>	<u>Interest Rate</u>
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The Series 2012 Bonds shall be issuable only as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Unless the City shall otherwise direct, the Series 2012 Bonds shall be numbered from 1 upward in order of issuance. Each Series 2012 Bond shall have a CUSIP number but the failure of a CUSIP number to appear on any Series 2012 Bond shall not affect its validity.

Each Series 2012 Bond shall be dated as of May 1, 2012. Interest on the Series 2012 Bonds shall be payable on November 1, 2012, and semiannually thereafter on May 1 and November 1 of each year. Payment of each installment of interest shall be made to the person in whose name the Series 2012 Bond is registered on the registration books of the City maintained by BancorpSouth Bank, Stuttgart, Arkansas, as Trustee and Paying Agent (the "Trustee"), at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of any such bond subsequent to such Record Date and prior to such interest payment date, by check or draft mailed by the Trustee to such owner at his address on such registration

books; provided, however, payment of interest shall be made by wire transfer if requested by a registered owner of the Series 2012 Bonds in the aggregate principal amount of \$1,000,000 or more. Principal of the Series 2012 Bonds shall be payable at the principal corporate trust office of the Trustee.

Each Series 2012 Bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from May 1, 2012, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication thereof interest is in default thereon, in which event it shall bear interest from the date to which interest has been paid.

Only such Series 2012 Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Section 7 hereof (the "Certificate") duly executed by the Trustee shall be entitled to any right or benefit under this Ordinance. No Series 2012 Bond shall be valid and obligatory for any purpose unless and until the Certificate shall have been duly executed by the Trustee, and the Certificate of the Trustee upon any such Series 2012 Bond shall be conclusive evidence that such bond has been authenticated and delivered under this Ordinance. The Certificate on any Series 2012 Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate on all of the Series 2012 Bonds.

In case any bond shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new bond of like date, series, maturity, interest rate and tenor in exchange and substitution for and upon cancellation of such mutilated bond, or in lieu of and in substitution for such bond destroyed or lost, upon the owner paying the reasonable expenses and charges of the City and Trustee in connection therewith, and, in the case of a bond destroyed or lost, his filing with the Trustee evidence satisfactory to it that such bond was destroyed or lost, and of his ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new bond. In the event any such bond shall have matured, instead of issuing a new bond, the City may pay the same without the surrender thereof. Upon the issuance of a new bond under this Section, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

The City shall cause to be maintained books for the registration and for the transfer of the bonds as provided herein and in the bonds. The Trustee shall act as the bond registrar. Each bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered bond or bonds of the same maturity and interest rate, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of bonds of any other authorized denomination or denominations. The City shall execute and the Trustee shall authenticate and deliver bonds which the registered owner making the exchange is entitled to receive. The execution by the City of any bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall be thereby authorized to authenticate and deliver such bond.

No charge shall be made to any owner of any bond for the privilege of transfer or exchange, but any owner of any bond requesting any such transfer or exchange shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. Neither the Trustee nor the City shall be required to transfer or exchange any bonds selected for redemption in whole or in part.

The person in whose name any bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or premium, if any, or interest on any bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the bonds or the date fixed for redemption of any bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Section 5. The Series 2012 Bonds shall be registered initially in the name of Cede & Co., as nominee for the Depository Trust Company ("DTC"), which shall be considered to be the registered owner of the Series 2012 Bonds for all purposes under this Ordinance, including, without limitation, payment by the City of principal of, redemption price, premium, if any, and interest on the Series 2012 Bonds, and receipt of notices and exercise of rights of registered owners. There shall be one certificated, typewritten Series 2012 Bond for each stated maturity date and interest rate which shall be immobilized in the custody of DTC with the beneficial owners having no right to receive the Series 2012 Bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership of beneficial interests in the Series 2012 Bonds by book-entry on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book-entry, the City having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Series 2012 Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Series 2012 Bonds. The Series 2012 Bonds as such shall not be transferable or exchangeable, except for transfer to another

securities depository or to another nominee of a securities depository, without further action by the City.

If any securities depository determines not to continue to act as a securities depository for the Series 2012 Bonds for use in a book-entry system, the City may establish a securities depository/book-entry system relationship with another securities depository. If the City does not or is unable to do so, or upon request of the owners of all outstanding Series 2012 Bonds, the City and the Trustee, after the Trustee has made provision for notification of the beneficial owners by the then securities depository, shall permit withdrawal of the Series 2012 Bonds from the securities depository, and authenticate and deliver Series 2012 Bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the securities depository or its nominee, all at the cost and expense (including costs of printing definitive Series 2012 Bonds) of the City or of the beneficial owners of the Series 2012 Bonds.

Prior to issuance of the Series 2012 Bonds, the City shall have executed and delivered to DTC a written agreement (the "Representation Letter") setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the City with respect to the Series 2012 Bonds so long as the Series 2012 Bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section or in any other way impose upon the City any obligation whatsoever with respect to persons having interests in the Series 2012 Bonds other than the registered owners, as shown on the registration books kept by the Trustee. The Trustee shall take all action necessary for all representations of the City in the Representation Letter with respect to the Trustee to at all times be complied with.

The authorized officers of the Trustee and the City shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a securities depository for all or any portion of the Series 2012 Bonds; provided that neither the Trustee nor the City may assume any obligations to such securities depository or beneficial owners of Series 2012 Bonds that are inconsistent with their obligations to any registered owner under this Ordinance.

Section 6. The bonds shall be executed on behalf of the City by the manual or facsimile signatures of the Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City.

Section 7. The Series 2012 Bonds and the Trustee's Certificate shall be in substantially the following form and the Mayor and City Clerk are hereby expressly authorized and directed to make all recitals contained therein:

(Form of Series 2012 Bond)

REGISTERED
No. _____

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
COUNTY OF SEBASTIAN
CITY OF FORT SMITH
SALES AND USE TAX REFUNDING
AND IMPROVEMENT BOND
SERIES 2012

Interest Rate: _____ %
Dated Date: May 1, 2012
Registered Owner: _____
Principal Amount: _____

Maturity Date: May 1, _____
CUSIP No.: _____

_____ Dollars

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fort Smith, County of Sebastian, State of Arkansas (the "City"), for value received, hereby promises to pay to the Registered Owner shown above upon the presentation and surrender hereof at the principal corporate trust office of BancorpSouth Bank, Stuttgart, Arkansas, or its successor or successors, as Trustee and Paying Agent (the "Trustee"), on the Maturity Date shown above, the Principal Amount shown above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and to pay by check or draft to the Registered Owner shown above interest thereon, in like coin or currency from the interest commencement date described below at the Interest Rate per annum shown above, payable on each May 1 and November 1 after the Dated Date shown above, until payment of such Principal Amount or, if this bond or a portion hereof shall be duly called for redemption, until the date fixed for redemption, and to pay interest on overdue principal and interest (to the extent legally enforceable) at the rate borne by this bond. Payment of each installment of interest shall be made to the person in whose name this bond is registered on the registration books of the City maintained by the Trustee at the close of business on the fifteenth day of the month (whether or not a business day) next preceding each interest payment date (the "Record Date"), irrespective of any transfer or exchange of this bond subsequent to such Record Date and prior to such interest payment date. Notwithstanding the above, payment of interest shall be made by wire transfer when requested by the Registered Owner hereof if it is the registered owner of bonds of this issue in the aggregate principal amount of \$1,000,000 or more.

Unless this bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is

made to Cede & Co. or to such other entity as is required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

This bond shall bear interest from the payment date next preceding the date on which it is authenticated unless it is authenticated on an interest payment date, in which event it shall bear interest from such date, or unless it is authenticated during the period from the Record Date to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless it is authenticated prior to the first interest payment date, in which event it shall bear interest from the Dated Date shown above, or unless at the time of authentication hereof interest is in default hereon, in which event it shall bear interest from the date to which interest has been paid.

This bond is one of an issue of City of Fort Smith, Arkansas Sales and Use Tax Refunding and Improvement Bonds, Series 2012, aggregating _____ Dollars (\$_____) in aggregate principal amount (the "bonds"), and is issued for the purpose of financing the costs 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, accomplishing wastewater improvements, water improvements, firefighting improvements and aquatic center improvements, paying necessary expenses incidental thereto, funding a debt service reserve, and paying expenses of authorizing and issuing the bonds.

The bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas (the "State"), particularly Amendment No. 62 to the Constitution of the State and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and pursuant to Ordinance No. _____ of the City duly adopted on _____, 2012 (the "Authorizing Ordinance"), and an election duly held on March 13, 2012 at which the majority of the legal voters of the City voting on the questions approved the issuance of the bonds. Reference is hereby made to the Authorizing Ordinance for the details of the nature and extent of the security and of the rights and obligations of the City, the Trustee and the registered owners of the bonds. The bonds are special obligations of the City, payable from the collections derived by the City from a 0.75% sales and use tax (the "Tax") levied by the City under the Authorizing Legislation and Ordinance No. 1-12 of the City duly adopted on January 3, 2012, and the City hereby pledges its collections of the Tax for the payment of this bond. The City has reserved the right in the Authorizing Ordinance to issue additional bonds under the Authorizing Ordinance on a parity of security with the bonds (the "Additional Parity Bonds").

The bonds are subject to extraordinary and optional redemption prior to maturity as follows:

(1) The bonds shall be redeemed by the City from proceeds of the bonds not needed for the intended purposes and Surplus Tax Collections (defined below), in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

The City has covenanted in the Authorizing Ordinance that "Surplus Tax Collections", being collections from the Tax in excess of the amount necessary to (1) insure the prompt payment of the principal of, interest on and Trustee's and administrative fees and expenses in connection with the bonds and the Additional Parity Bonds as the same become due, (2) establish and maintain the Debt Service Reserve Account in the required amount, and (3) make any arbitrage rebate payment due the United States, must be used from time to time, at least annually, as and to the extent available, to redeem outstanding bonds prior to maturity.

If there are no Additional Parity Bonds outstanding, the City shall apply 100% of the Surplus Tax Collections to the redemption of the bonds. If there are Additional Parity Bonds outstanding, the City shall use 50% of the Surplus Tax Collections to redeem the bonds and 50% of the Surplus Tax Collections to redeem the Additional Parity Bonds. In the event of a redemption from Surplus Tax Collections, the bonds shall be redeemed in inverse order of maturity and by lot within a maturity in such manner as the Trustee shall determine.

In the case of any defeasance of the bonds, redemption of defeased bonds shall be scheduled on the basis of the mandatory redemption requirements and assuming annual Tax receipts in an amount equal to Tax receipts for a twelve-month period that ends not less than 30 and not more than 90 days prior to the defeasance.

(2) The bonds may be redeemed at the option of the City from funds from any source, on and after May 1, 2022, in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed, plus accrued interest to the redemption date. If fewer than all of the bonds shall be called for redemption, the particular maturities and interest rates of the bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the bonds of any one maturity and interest rate shall be called for redemption, the particular bonds or portion thereof to be redeemed from such maturity shall be selected by lot by the Trustee.

In case any outstanding bond is in a denomination greater than \$5,000, each \$5,000 of face value of such bond shall be treated as a separate bond of the denomination of \$5,000.

Notice of redemption identifying the bonds or portions thereof (which shall be \$5,000 or a multiple thereof) to be redeemed and the date they shall be presented for payment shall be given by the Trustee, not less than 30 nor more than 60 days prior to the date fixed for redemption, by mailing a copy of the redemption notice by first class mail, postage prepaid, to all registered owners of bonds to be redeemed. Failure to mail an appropriate notice or any such notice to one or more registered owners of bonds to be redeemed shall not affect the validity of the proceedings for redemption of other bonds as to which notice of redemption is duly given in proper and timely fashion. All such bonds or portions thereof thus called for redemption and for the retirement of which funds are duly provided in accordance with the Authorizing Ordinance prior to the date fixed for redemption will cease to bear interest on such redemption date.

This bond is transferable by the Registered Owner shown above in person or by his attorney-in-fact duly authorized in writing at the principal corporate trust office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, and upon surrender and cancellation of this bond. Upon such transfer a new fully registered bond or bonds of the same maturity and interest rate, of authorized denomination or denominations, for the same aggregate principal amount, will be issued to the transferee in exchange therefor. This bond is issued with the intent that the laws of the State shall govern its construction.

The City and the Trustee may deem and treat the Registered Owner shown above as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and interest due hereon and for all other purposes, and neither the City nor the Trustee shall be affected by any notice to the contrary.

The bonds are issuable only as fully registered bonds in the denomination of \$5,000, and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Authorizing Ordinance, fully registered bonds may be exchanged for a like aggregate principal amount of fully registered bonds of the same maturity and interest rate of other authorized denominations.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed, under the Constitution and laws of the State, particularly Amendment No. 62 to the Constitution of the State and the Authorizing Legislation, precedent to and in the issuance of this bond have existed, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by this bond and the issue of which it forms a part does not exceed any constitutional or statutory limitation; and that a tax sufficient to pay the bonds and interest thereon has been duly levied and receipts derived therefrom are pledged to the payment of the bonds in accordance with the Authorizing Legislation.

This bond shall not be valid until it shall have been authenticated by the Certificate hereon duly signed by the Trustee.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this bond to be executed by its Mayor and City Clerk and its corporate seal to be impressed or imprinted on this bond, all as of the Dated Date shown above.

CITY OF FORT SMITH, ARKANSAS

ATTEST:

By _____
Mayor

City Clerk

(SEAL)

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds issued under the provisions of the within mentioned Authorizing Ordinance.

Date of Authentication: _____.

BANCORPSOUTH BANK
Stuttgart, Arkansas
TRUSTEE

By _____
Authorized Signature

(A Form of Assignment shall be attached to the bonds.)

Section 8. The City hereby expressly pledges and appropriates all of the revenues derived by the City from a new 0.75% sales and use tax (the "Tax") levied by Ordinance No. 1-12, adopted January 3, 2012 that will replace two 0.5% sales and use taxes currently pledged to the Series 2006 Bonds and the Series 2008 Bonds (the "2006 Tax"), to the payment of the principal of and interest on the bonds when due at maturity or at redemption prior to maturity, administrative costs, the fees and charges of the Trustee, and any required arbitrage rebate due to the United States. The City covenants that the Tax shall not be repealed or reduced while any of the bonds are outstanding. The City further covenants to use due diligence in collecting the Tax. Nothing herein shall prohibit the City from increasing the Tax from time to time, to the extent permitted by law, and no part of the revenues derived from any such increase shall become part of the revenues pledged hereunder.

Section 9. (a) The City hereby designates BancorpSouth Bank, Stuttgart, Arkansas as the bank which shall receive collections of the Tax (the "Pledged Revenues") from the State Treasurer and the City covenants to file a written designation thereof with the State Treasurer prior to the issuance of the Series 2012 Bonds. The Trustee shall deposit all Pledged Revenues as and when received into a special fund of the City in the Trustee which is hereby created and designated "2012 Sales and Use Tax Bond Fund" (the "Bond Fund"), for the purpose of providing funds for the payment of principal of and interest on the bonds as they become due at maturity or at redemption prior to maturity, the Trustee's fees and expenses and other administrative charges and any required arbitrage rebate due to the United States. Moneys in the Bond Fund shall be used on each interest payment date (or in the case of arbitrage rebate or bond redemption payment under clauses (6) and (7) on any date due) in the following order of priority as and when necessary:

- (1) to pay the interest on the bonds then due; and

(2) to pay the principal of the bonds then due at maturity or upon mandatory sinking fund redemption; and

(3) to make provision in the Bond Fund for payment of one-half of the principal next due on the bonds at maturity or upon mandatory sinking fund redemption if principal is not due on such interest payment date; and

(4) to transfer into the Debt Service Reserve Account (hereinafter identified) such amounts as necessary to increase the Debt Service Reserve Account to the Required Level (defined in subsection (b)); and

(5) to pay the Trustee's fees and expenses and other administrative charges then due; and

(6) to make any rebate payment due the United States under Section 148(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

(7) to redeem outstanding bonds prior to maturity.

The Bond Fund (excluding those moneys in the Debt Service Reserve Account and the Redemption Account (hereinafter identified)) shall, except as provided in this Section, be depleted once a year except for a carryover amount not to exceed the greater of (i) one year's earnings on the Bond Fund or (ii) 1/12 of the debt service on the bonds. Any moneys in the Bond Fund shall, except as provided in this Section, be spent for one of the above purposes within a thirteen-month period beginning on the date of deposit, and any amount received from investment of money held in the Bond Fund will be spent within a one-year period beginning on the date of receipt.

(b) There shall be established and maintained in the Bond Fund a Debt Service Reserve Account in an amount equal to 5% of the original principal amount of the bonds as issued (the "Required Level"). The City shall fund the Debt Service Reserve Account with proceeds of the bonds as issued. Moneys in the Debt Service Reserve Account shall be used to make principal and interest payments on the bonds when due if moneys in the Bond Fund are not otherwise sufficient for that purpose. Moneys in the Debt Service Reserve Account over and above the Required Level shall be immediately transferred from the Debt Service Reserve Account into the Bond Fund. Moneys in the Debt Service Reserve Account shall be used to make the final payment of the principal and interest due on the Bonds, at maturity or upon redemption prior to maturity.

(c) When the moneys in the Bond Fund, including the Debt Service Reserve Account and the Redemption Account, shall be and remain sufficient to pay (1) the principal of all the bonds then outstanding, (2) interest on the bonds until the next interest payment date, (3) the Trustee's fees and expenses and other administrative charges and (4) any arbitrage rebate due to the United States under Section 148(f) of the Code, there shall be no obligation to make any further payments into the Bond Fund and any Pledged Revenues remaining in the Bond Fund

after the principal of, premium, if any and interest on the bonds and the other obligations set forth herein have been paid may be used by the City for any lawful purpose.

(d) All moneys in the Bond Fund shall be used solely for the purpose of paying the principal of and interest on the bonds, Trustee's fees and expenses and other administrative charges, and any arbitrage rebate due to the United States under Section 148(f) of the Code as the same become due. There shall be established and maintained in the Bond Fund a Redemption Account into which there shall be deposited all Pledged Revenues remaining after making the applications required by clauses (1) through (6) of subsection (a) above ("Surplus Tax Collections") and bond proceeds transferred to the Redemption Account pursuant to Section 16 of this Ordinance. The City covenants that moneys in the Redemption Account shall be used on the next available interest payment date for the purpose of redeeming bonds in accordance with clause (7) of subsection (a) above.

(e) The Trustee is authorized and directed to withdraw moneys from the Bond Fund from time to time as necessary for paying principal of and interest on the bonds when due at maturity or at redemption prior to maturity and for making other authorized Bond Fund expenditures.

(f) The bonds shall be specifically secured by a pledge of the Pledged Revenues, which pledge in favor of the bonds is hereby irrevocably made according to the terms of this Ordinance, and the City, and the officers and employees of the City, shall execute, perform and carry out the terms thereof in strict conformity with the provisions of this Ordinance.

(g) Anything herein to the contrary notwithstanding, moneys in the Special Redemption Account and interest earnings thereon (1) shall be used from time to time to make up shortfalls in the Bond Fund, rather than redeeming bonds prior to maturity, and (2) shall not be used to redeem bonds more often than annually (rather than on each interest payment date) if the Trustee reasonably determines that such amounts available for redemption may be needed to make scheduled debt service payments.

Section 10. Any bond shall be deemed to be paid within the meaning of this Ordinance when payment of the principal of and interest on such bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash sufficient to make such payment and/or (2) non-callable Government Securities (as defined in Section 17 hereof) (provided that such deposit will not cause any of the bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of any bonds within the meaning of this Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such bonds, all such moneys and/or Government Securities.

When all the bonds shall have been paid within the meaning of this Ordinance, if the Trustee has been paid its fees and expenses, and if any required arbitrage rebate payment has been made to the United States under Section 148(f) of the Code or provision made therefor, the Trustee shall take all appropriate action to cause (i) the pledge and lien of this Ordinance to be discharged and cancelled, and (ii) all moneys held by it pursuant to this Ordinance and which are not required for the payment of such bonds to be paid over or delivered to or at the direction of the City.

Section 11. The City covenants that it will not issue any bonds, except the Series 2012 Bonds and one or more series of the Additional Parity Bonds, or incur any additional obligations, secured by a lien on or pledge of the Pledged Revenues. The Additional Parity Bonds may be issued so long as either: (i) upon the issuance of the Additional Parity Bonds, the rating agency rating the Series 2012 Bonds confirms that the rating on the Series 2012 Bonds will not be reduced, or (ii) the City has received collections from the Tax (or three fourths (3/4) of a 1% sales and use tax levied by the City if the Tax has not been in effect for 12 months) for a 12 month period that ends not less than 30 and not more than 90 days prior to the date that the Additional Parity Bonds are authorized by the Board of Directors of the City to be issued, in an amount equal to or in excess of 125% of the maximum annual debt service requirement for the Series 2012 Bonds, any outstanding Additional Parity Bonds and the Additional Parity Bonds proposed to be issued. Notwithstanding the above, nothing herein shall be construed to prohibit the City from refunding any bonds and pledging the Pledged Revenues to the refunding bonds on a parity with the non-refunded bonds and such refunding bonds shall be a part of the Additional Parity Bonds hereunder.

Section 12. The Series 2012 Bonds shall be callable for payment prior to maturity in accordance with the terms set out in the face of the bond form set forth in Section 7 of this Ordinance. The City hereby covenants to use Series 2012 Bond proceeds not necessary for the purposes intended to redeem Series 2012 Bonds on the first available interest payment date. The City hereby covenants to use Surplus Tax Collections to redeem the bonds on the first available interest payment date, in accordance with clause (7) of Section 9(a) of this Ordinance.

Section 13. It is hereby covenanted and agreed by the City with the owners of the bonds that the City will faithfully and punctually perform all duties with reference to the Tax and the bonds required by the Constitution and laws of the State and by this Ordinance, including the collection of the Tax, as herein specified and covenanted, and the applying of the Pledged Revenues as herein provided.

Section 14. The Trustee will keep or cause to be kept proper books of accounts and records in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues and such books shall be available for inspection by the City, the Purchasers, and the owner of any of the bonds at reasonable times and under reasonable circumstances. The Trustee shall furnish a report to the City on a monthly basis of all receipts and disbursements of

the Pledged Revenues received by the Trustee, which monthly report shall commence one month following the first month in which the Pledged Revenues are received by the Trustee.

Section 15. (a) If there be any default in the payment of the principal of and interest on any of the bonds, or if the City defaults in the performance of any covenant contained in this Ordinance, the Trustee may, and shall, upon the written request of the owners of not less than 10% in principal amount of the bonds then outstanding, by proper suit compel the performance of the duties of the officials of the City under the Constitution and laws of the State and under this Ordinance, and to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(b) No owner of any bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under this Ordinance or under the Constitution and laws of the State unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of this Ordinance or to any other remedy hereunder. It is understood and intended that no one or more owners of the bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Ordinance, or to enforce any right hereunder except in the manner herein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all owners of the outstanding bonds, and that any individual rights of action or other right given to one or more of such owners by law are restricted by this Ordinance to the rights and remedies herein provided.

(c) All rights of action under this Ordinance or under any of the bonds, enforceable by the Trustee, may be enforced by it without the possession of any of the bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the owners of the bonds, subject to the provisions of this Ordinance.

(d) No remedy herein conferred upon or reserved to the Trustee or the owners of the bonds is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or given by any law or by the Constitution of the State.

(e) No delay or omission of the Trustee or any owners of the bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be

construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by this Ordinance to the Trustee and to the owners of the bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) The Trustee may, and upon the written request of the owners of not less than a majority of the owners in principal amount of the bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provisions of this Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Section 16. When the Series 2012 Bonds have been executed and sealed as herein provided, they shall be delivered to the Trustee, which shall authenticate them and deliver them to the Purchasers upon payment of the Purchase Price. The accrued interest shall be deposited in the Bond Fund. The expenses of issuing the Series 2012 Bonds as set forth in the delivery instructions to the Trustee signed by the Mayor and City Clerk (the "Delivery Instructions") shall be paid from the Purchase Price.

The amount necessary from the Purchase Price to accomplish the refunding of the Bonds Refunded as set forth in the Delivery Instructions shall be deposited into escrow deposit funds established with the trustees for the Bonds Refunded.

The balance of the Purchase Price shall be deposited in four special accounts of the City hereby created in a bank or trust company that is a member of the Federal Deposit Insurance Corporation (each a "Construction Fund"). Moneys shall be allocated among the Construction Funds in proportion to the principal amount of Series 2012 Bonds allocated for each purpose. Each Construction Fund shall be designated to reflect the purpose, e.g., "Wastewater Construction Fund." The amounts credited to each Construction Fund shall be expended to accomplish the purpose for which the account was created. Issuance costs and other expenses not specific to any one purpose shall be joint obligations to be paid from each Construction Fund in proportion to the initial moneys credited thereto. Disbursements shall be made from each Construction Fund on the basis of checks or requisitions which shall specify: the name of the person, firm or corporation to whom payment is to be made; the amount of the payment; and the purpose by general classification of the payment. Each check or requisition must be signed by the City Administrator and the City Treasurer. The City shall keep records as to all payments made from the Construction Funds.

Moneys in each Construction Fund shall also be used to pay the principal of and interest on the Series 2012 Bonds when due on a pro rata basis if moneys in the Bond Fund are not sufficient for that purpose.

When the Improvements of a particular type (e.g., wastewater improvements) have been completed and all required expenses paid and expenditures made from the related Construction Fund for and in connection with the accomplishment of such Improvements and the financing thereof, this fact shall, if moneys remain in such Construction Fund, be evidenced by a certificate signed by the Mayor, which certificate shall state, among other things, the date of the

completion and that all obligations payable from such Construction Fund have been discharged. A copy of the certificate shall be filed with the Trustee. The City shall transfer any remaining balance to the Redemption Account in the Bond Fund.

Section 17. (a) Moneys held for the credit of each Construction Fund may be invested and reinvested in Permitted Investments (as hereinafter defined) or other investments permitted by State law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(b) Moneys held for the credit of the Debt Service Reserve Account shall be invested and reinvested in Permitted Investments, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than seven (7) years after the date of investment or the final maturity date of the outstanding bonds, whichever is earlier. The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(c) Moneys held for the credit of the Bond Fund (other than the Debt Service Reserve Account) shall be invested and reinvested in Permitted Investments, which will mature, or which will be subject to redemption by the holder thereof at the option of the holder, not later than the date or dates on which the money shall be required for the payment of the principal of and interest on the bonds when due. The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(d) Obligations purchased as an investment of any fund or account shall be deemed at all times a part of such fund. Any profit or loss realized on investments of moneys in any fund shall be charged to said fund.

(e) "Permitted Investments" are defined as (i) direct or fully guaranteed obligations of the United States of America ("Government Securities"), (ii) direct obligations of an agency, instrumentality or government-sponsored enterprise created by an act of the United States Congress and authorized to issue securities or evidences of indebtedness, regardless of whether the securities or evidences of indebtedness are guaranteed for repayment by the United States Government, (iii) certificates of deposit or time deposits of banks, including the Trustee, which are insured by Federal Deposit Insurance Corporation or, if in excess of insurance coverage, collateralized by Government Securities or other securities authorized by Arkansas law to secure public funds or (iv) money market funds invested exclusively in Government Securities and the obligations described in (ii) above.

Section 18. BancorpSouth Bank, Stuttgart, Arkansas is hereby appointed to act as Trustee and Paying Agent pursuant to this Ordinance. The Trustee shall be responsible for the exercise of good faith and ordinary prudence in the execution of its trusts. The recitals in this Ordinance and in the bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action as Trustee unless it shall have been requested to do so in writing by the owners of not less than 10% in principal amount of bonds then outstanding and

shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign by giving 60 days' notice in writing to the City Clerk and the owners of the bonds, and either the City, so long as it is not in default hereunder, or the majority in principal amount of the owners of the outstanding bonds at any time, with or without cause, may remove the Trustee. In the event of a vacancy in the office of Trustee either by resignation or removal, the City shall forthwith designate a new Trustee by a written instrument filed in the office of the City Clerk. The new Trustee shall be a bank or a trust company duly authorized to exercise trust powers and subject to examination by federal or state authority, having a reported capital and surplus of not less than \$50,000,000. The preceding criteria may be met by a parent corporation if the parent corporation has guaranteed the obligations of the successor trustee. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts imposed upon it by this Ordinance, but only upon the terms and conditions set forth in this Ordinance and subject to the provisions of this Ordinance, to all of which the respective owners of the bonds agree. Such written acceptance shall be filed with the City Clerk and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee. Notwithstanding the above, no removal, resignation or termination of the Trustee shall take effect until a successor shall be appointed.

Section 19. (a) The terms of this Ordinance shall constitute a contract between the City and the owners of the bonds and no variation or change in the undertaking herein set forth shall be made while any of the bonds are outstanding, except as hereinafter set forth in subsections (b) and (c).

(b) The Trustee may consent to any variation or change in this Ordinance (i) that the Trustee determines is not to the material prejudice of the owners of the bonds, (ii) in order to cure any ambiguity, defect or omission in this Ordinance or any amendment hereto or (iii) in connection with the issuance of the Additional Parity Bonds, without the consent of the owners of the bonds.

(c) The owners of not less than 75% in aggregate principal amount of the bonds then outstanding shall have the right, from time to time, anything contained in this Ordinance to the contrary notwithstanding, to consent to and approve the adoption by the City of such ordinance supplemental hereto as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Ordinance or in any supplemental ordinance; provided, however, that nothing contained in this Section shall permit or be construed as permitting (1) an extension of the maturity of the principal of or the interest on any bond, or (2) a reduction in the principal amount of any bond or the rate of interest thereon, or (3) the creation of a pledge of the Pledged Revenues superior to the pledge created by this Ordinance, or (4) a privilege or priority of any bond or bonds over any other bond or bonds, or (5) a reduction in the aggregate principal amount of the bonds required for consent to such supplemental ordinance.

Section 20. (a) The City covenants that it shall not take any action or suffer or permit any action to be taken or condition to exist which causes or may cause the interest payable on the bonds to be included in gross income for federal income tax purposes. Without

limiting the generality of the foregoing, the City covenants that the proceeds of the sale of the bonds and the Pledged Revenues will not be used directly or indirectly in such manner as to cause the bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) The City represents that it has not used or permitted the use of, and covenants that it will not use or permit the use of the Improvements, the facilities refinanced by the bonds or the proceeds of the bonds, in such manner as to cause the bonds to be "private activity bonds" within the meaning of Section 141 of the Code. In this regard, the City covenants that (i) it will not use (directly or indirectly) the proceeds of the bonds to make or finance loans to any person, and (ii) that while the bonds are outstanding the Improvement and the facilities refinanced by the bonds will only be used by state and local governmental entities and by persons on a basis as members of the general public.

The City covenants that it will not enter into wholesale water contracts in the future with non-governmental entities or modify existing contracts with non-governmental entities, if such contracts or modifications would cause the bonds to become "private activity bonds" within the meaning of Section 141 of the Code.

(c) The City covenants that it will not reimburse itself from Series 2012 Bond proceeds for any costs paid prior to the date the Series 2012 Bonds are issued except in compliance with United States Treasury Regulation No. 1.150-2 (the "Regulation"). This Ordinance shall constitute an "official intent" for the purpose of the Regulation.

(d) The City covenants that it will, in compliance with the requirements of Section 148(f) of the Code, pay with moneys in the Bond Fund to the United States Government in accordance with the requirements of Section 148(f) of the Code, from time to time, an amount equal to the sum of (1) the excess of (A) the amount earned on all Non-purpose Investments (as therein defined) attributable to the Series 2012 Bonds, other than investments attributable to such excess over (B) the amount which would have been earned if such Non-purpose Investments attributable to the Series 2012 Bonds were invested at a rate equal to the Yield (as defined in the Code) on the Series 2012 Bonds, plus (2) any income attributable to the excess described in (1), subject to the exceptions set forth in Section 148 of the Code. The City further covenants that in order to assure compliance with its covenants herein, it will employ a qualified consultant to advise the City in making the determination required to comply with this subsection (d). Anything herein to the contrary notwithstanding this provision may be modified or rescinded if in the opinion of Bond Counsel such modification or rescission will not affect the tax-exempt status of the Series 2012 Bonds for federal income tax purposes.

Section 21. The City covenants that it will take no action which would cause the bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code. The City further covenants that it will submit to the Secretary of the Treasury of the United States, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Series 2012 Bonds are issued, a statement concerning the Series 2012 Bonds which contains the information required by Section 149(e) of the Code.

Section 22. Except as provided in Section 23 hereof, all collections of the 2006 Tax that are received after the Series 2012 Bonds are issued and that are not necessary to pay the principal of, interest on, trustee's fees and arbitrage rebate in connection with the Series 2006 Bonds and the Series 2008 Bonds shall be deposited into the Bond Fund as and when received and are hereby appropriated and pledged to the payment of the Bonds and shall become Pledged Revenues hereunder and be used for the purposes for which other moneys in the Bond Fund may be expended.

Section 23. All moneys in the 2006 Sales and Use Tax Bond Fund established by Ordinance No. 74-06, adopted August 15, 2006 are hereby appropriated and shall either (a) be deposited into an escrow deposit fund established with the trustee for the Series 2006 Bonds and the Series 2008 Bonds (the "Series 2006 and 2008 Escrow Fund") and used to accomplish the refunding of the Series 2006 Bonds and the Series 2008 Bonds, (b) be used to pay any arbitrage rebate and expenses related thereto with respect to the Series 2006 Bonds and the Series 2008 Bonds, or (c) be deposited into the Bond Fund and become a part of the Pledged Revenues hereunder, all in accordance with the Delivery Instructions.

Section 24. The refunding of the Bonds Refunded shall be accomplished and the Mayor and City Clerk are hereby authorized and directed to execute and deliver all necessary contracts and documents, including escrow deposit agreements between the City and the trustees for the Bonds Refunded. The Bonds Refunded shall be redeemed on the earliest available dates.

Section 25. The Mayor, and other officers of the City in accordance with their offices, are authorized to execute such writings and take such action as may be appropriate to cause the bonds to be issued.

Section 26. The principal amount of the Series 2012 Bonds (\$_____) will be allocated on the date the Series 2012 Bonds are issued following a determination of the amount of funds to be deposited into the Series 2006 and Series 2008 Escrow Fund in accordance with Sections 16 and 23 hereof. The allocation shall be evidenced by a certificate signed by the Mayor and City Clerk and a copy of the Certificate shall be placed in the Series 2012 Bond transcript. The final allocation shall be based upon these initial allocations of principal amounts: (a) \$_____ for the Wastewater Improvements; (b) \$_____ for the Water Improvements; (c) \$_____ for the Firefighting Improvements; (d) \$_____ for Aquatic Center Improvements and (e) \$_____ for the refunding of the Bonds Refunded. The initial allocations have been determined based upon \$_____ being available from funds on hand for the refunding of the Series 2006 Bonds and the Series 2008 Bonds. An increase in such amount shall cause a lower allocation of the principal amount for the refunding of the Bonds Refunded and a greater allocation of the principal amount for the Wastewater Improvements. A decrease in such amount shall cause a higher allocation of the principal amount for the refunding of the Bonds Refunded and a lower allocation of the principal amount for the Wastewater Improvements.

Section 27. The provisions of this Ordinance are separable and in the event that any section or part hereof shall be held to be invalid, such invalidity shall not affect the remainder of this Ordinance.

Section 28. All ordinances and resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 29. It is hereby ascertained and declared that the Improvements are immediately needed for the preservation of the public peace, health and safety and to remove existing hazards thereto. The Improvements cannot be accomplished without the issuance of the Series 2012 Bonds, which cannot be sold at the interest rates specified herein unless this Ordinance is immediately effective. Therefore, it is declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and take effect immediately upon and after its passage.

PASSED: _____, 2012.

APPROVED:

ATTEST:

City Clerk

Mayor

(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Fort Smith, Arkansas (the "City"), hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. _____, passed at a regular session of the Board of Directors of the City, held at the regular meeting place of the Board, at 6:00 o'clock p.m. on the _____ day of _____, 2012, and that the Ordinance is of record in Ordinance Record Book No. _____ at Page _____, now in my possession.

GIVEN under my hand and seal this _____ day of _____, 2012.

City Clerk

(SEAL)

Memo



To: Ray Gosack, City Administrator
From: Jeff Dingman, Deputy City Administrator
Date: 4/11/2012
Re: Bond Ordinance: Sales and Use Tax Refunding & Improvement Bonds, Series 2012

For consideration by the Board at its April 17 regular meeting is an ordinance authorizing the sale of \$109,350,000 in Sales and Use Tax Refunding and Improvement Bonds, Series 2012. The offering of these bonds will fund the specific refunding and capital projects authorized by Fort Smith voters at the March 13, 2012 special election. The Board of Directors further authorized the sale of the bonds by Resolution No. R-60-12 adopted at the March 20, 2012 regular meeting. The proposed ordinance is required to authorize the refunding and improvement bonds. Included in the documentation attached to this memo are the following:

1. Bond Ordinance
2. Preliminary Official Statement
3. Bond Purchase Agreement
4. Continuing Disclosure Agreement

These documents have been prepared for the Board's consideration by Friday, Eldredge & Clark, LLP serving as the City's bond counsel.

As you will recall, the purpose of this bond issuance is to 1) refinance existing debt; 2) fund wet weather sanitary sewer improvements; 3) fund water transmission improvements; 4) fund fire service improvements; and 5) fund an aquatics center. This issue represents full funding for refinancing, fire service, and aquatics improvements and partial funding for wet weather sanitary sewer and water system improvements.

The ordinance presented for the Board packet is a draft and does not yet include pricing. The bonds will be priced and offered for sale on Monday & Tuesday, April 16 & 17. At such time the pricing will be determined for inclusion in the bond ordinance and documentation. The ordinance will be updated and presented to the Board at the meeting for authorization to sell the bonds at those specific prices.

Shep Russell, bond counsel, Dennis Hunt of Stephens, Inc. Investment Bankers and Ron Pyle of Raymond James/Morgan Keegan will likely be in attendance at the Board meeting to answer any questions the Board may have. In the meantime, the Board may direct questions regarding this agenda item to me.

Some hard copies of this Board meeting packet may not include all documents relating to this bond issue in the interest of reducing waste. All documents may be obtained by contacting Wendy Beshears in the City Administrator's office.

**NEW ISSUE
BOOK-ENTRY ONLY**

**RATING
S&P: "AA"**

*In the opinion of Bond Counsel, based on existing statutes, regulations, rulings and court decisions, the interest on the Series 2012 Bonds is excludable from gross income for federal income tax purposes, subject to the condition that the City comply with all requirements of the Internal Revenue Code that must be satisfied subsequent to the issuance of the Series 2012 Bonds, and the Series 2012 Bonds and interest thereon are exempt from all Arkansas state, county and municipal taxes. In the opinion of Bond Counsel, interest on the Series 2012 Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although it is included in book income in calculating the corporate alternative minimum taxable income. See **LEGAL MATTERS, Tax Exemption** herein.*

\$109,350,000*
CITY OF FORT SMITH, ARKANSAS
SALES AND USE TAX
REFUNDING AND IMPROVEMENT BONDS
SERIES 2012

Dated: May 1, 2012

Due: May 1, as shown below

Principal of and interest on the Series 2012 Bonds are payable from a pledge of receipts derived by the City of Fort Smith, Arkansas (the "City") from a 0.75% sales and use tax levied by the City. Interest on the Series 2012 Bonds is payable semiannually on May 1 and November 1 in each year, commencing November 1, 2012, and the Series 2012 Bonds mature (on May 1 of each year), bear interest and are priced to yield as follows:

MATURITY SCHEDULE*

<u>Maturity</u>	<u>Amount</u>	<u>Rate (%)</u>	<u>Yield (%)</u>	<u>Maturity</u>	<u>Amount</u>	<u>Rate (%)</u>	<u>Yield (%)</u>
2013	\$10,050,000			2021	\$6,890,000		
2014	7,960,000			2022	7,235,000		
2015	5,445,000			2023	7,595,000		
2016	5,610,000			2024	7,975,000		
2017	5,780,000			2025	8,375,000		
2018	6,010,000			2026	8,665,000		
2019	6,250,000			2027	8,950,000		
2020	6,560,000						

(Accrued interest from May 1, 2012 to be added)

The Series 2012 Bonds of each maturity and interest rate will be initially issued as a single registered bond registered in the name of Cede & Co., the nominee of The Depository Trust Company ("DTC"), New York, New York. The Series 2012 Bonds will be available for purchase in book-entry form only, in denominations of \$5,000 or any integral multiple thereof. Except in limited circumstances described herein, purchasers of the Series 2012 Bonds will not receive physical delivery of Series 2012 Bonds. Payments of principal of and interest on the Series 2012 Bonds will be made by BancorpSouth Bank, Stuttgart, Arkansas, as the Trustee, directly to Cede & Co., as nominee for DTC, as registered owner of the Series 2012 Bonds, to be subsequently disbursed to DTC Participants and thereafter to the Beneficial Owners of the Series 2012 Bonds, all as further described herein.

The Series 2012 Bonds are offered, subject to prior sale, when, as and if issued and received by the Underwriters named below, subject to the approval of legality by Friday, Eldredge & Clark, LLP, Little Rock, Arkansas, Bond Counsel, and subject to certain other conditions. It is expected that the Series 2012 Bonds will be available for delivery on or about May 22, 2012.

This cover page contains information for quick reference only. It is not a summary of the issue. Investors must read the entire Official Statement to obtain information essential to the making of an informed investment decision.

Stephens Inc.
Investment Bankers

RAYMOND JAMES®

Morgan Keegan

Dated: _____, 2012.

*Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment without notice. These securities may not be sold nor any offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

No dealer, broker, salesman or other person has been authorized by the City or the Underwriters to give any information or to make any representations, other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell or other solicitation of an offer to buy, nor shall there be any sale of the Series 2012 Bonds by any persons in any state in which it is unlawful for such person to make such offer, solicitation or sale. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the City since the date hereof.

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OFFICIAL STATEMENT

\$109,350,000*
CITY OF FORT SMITH, ARKANSAS
SALES AND USE TAX
REFUNDING AND IMPROVEMENT BONDS
SERIES 2012

INTRODUCTION TO OFFICIAL STATEMENT

This Introduction is subject in all respects to the more complete information contained in this Official Statement. The offering of the bonds to potential investors is made only by means of the entire Official Statement, including the cover page hereof and exhibits hereto. A full review should be made of the entire Official Statement, as well as the Authorizing Ordinance described herein.

This Official Statement of the City of Fort Smith, Arkansas (the "City") is furnished in connection with the offering by the City of its \$109,350,000* principal amount of Sales and Use Tax Refunding and Improvement Bonds, Series 2012 (the "Bonds"), dated May 1, 2012 (the "Series 2012 Bonds"). The Series 2012 Bonds are being issued for the purpose of financing various capital improvements (the "Improvements") for the City and advance refunding certain outstanding bonds. See **THE SERIES 2012 BONDS, Purposes for Bonds**.

The City is a city of the first class duly organized under the laws of the State of Arkansas (the "State") and is located in northwestern Arkansas. The City is authorized under Amendment No. 62 to the Constitution of the State ("Amendment 62") and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") to issue capital improvement bonds and to expend the proceeds thereof for the intended purposes. See **THE CITY AND THE COUNTY**.

The Series 2012 Bonds are not general obligations of the City, but are special obligations payable solely from collections from a 0.75% sales and use tax (the "Tax") levied by the City. See **THE TAX** and **THE SERIES 2012 BONDS, Security**. The Tax is levied under Ordinance No. 1-12 of the City adopted January 3, 2012 (the "Tax Ordinance"). The issuance of the Series 2012 Bonds and the pledging of the Tax to the payment of the principal of and interest on the Series 2012 Bonds was approved at the special election held March 13, 2012. The Series 2012 Bonds are being issued pursuant to and in full compliance with Amendment 62 and the Authorizing Legislation and Ordinance No. _____ of the City, adopted on _____, 2012 (the "Authorizing Ordinance"). See **THE AUTHORIZING ORDINANCE**.

The City has reserved the right in the Authorizing Ordinance to issue additional bonds on a parity of security with the Series 2012 Bonds (the "Additional Parity Bonds"). See **THE SERIES 2012 BONDS, Security**, herein.

The Series 2012 Bonds will be initially issued in book-entry form and purchasers of Bonds will not receive certificates representing their interest in the Series 2012 Bonds purchased. See **THE SERIES 2012 BONDS, Book-Entry Only System**. The Series 2012 Bonds will contain such other terms and provisions as described herein. See **THE SERIES 2012 BONDS, Generally**.

The Series 2012 Bonds are issuable only as fully registered bonds, without coupons, in the denomination of \$5,000 or an integral multiple thereof. Interest is payable November 1, 2012, and semiannually thereafter on each May 1 and November 1. Unless the Series 2012 Bonds are in book-entry form, payment of principal of the Series 2012 Bonds will be made to the owners of the Series 2012 Bonds at the principal office of BancorpSouth Bank, Stuttgart, Arkansas, as trustee and paying agent for the Series 2012 Bonds (the "Trustee"). Interest is payable by check mailed by the Trustee to the registered owners as of the record date for each interest payment date. The record date for payment of interest on the Series 2012 Bonds shall be the fifteenth day of the calendar month next preceding each interest payment date. A Series 2012 Bond may be transferred, in whole or in part (in integral multiples of \$5,000), but only upon delivery of the Series 2012

* Preliminary; subject to change.

Bond, together with a written instrument of transfer, to the Trustee. See **THE SERIES 2012 BONDS, Generally, and Book-Entry Only System.**

The Series 2012 Bonds are subject to extraordinary redemption from proceeds of the Series 2012 Bonds not needed for the purposes intended and Surplus Tax Receipts (as hereinafter defined). The Series 2012 Bonds are subject to optional redemption on and after May 1, 2022. The Trustee shall give at least thirty (30) days notice of redemption. See **THE SERIES 2012 BONDS, Redemption.**

Under existing law and assuming compliance with certain covenants described herein, (i) interest on the Series 2012 Bonds is excludable from gross income for federal income tax purposes, (ii) interest on the Series 2012 Bonds is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, (iii) with respect to corporations, interest on the Series 2012 Bonds will be taken into account in determining adjusted current earnings for the purpose of computing the federal alternative minimum tax and (iv) the Series 2012 Bonds and interest thereon are exempt from all State, county and municipal taxes. See **LEGAL MATTERS, Tax Exemption.**

It is expected that the Series 2012 Bonds will be available for delivery on or about May 22, 2012, through the facilities of the Depository Trust Company in New York, New York.

The City and the Trustee have entered into a Continuing Disclosure Agreement in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the "Continuing Disclosure Agreement"). See **CONTINUING DISCLOSURE AGREEMENT.**

This Official Statement speaks only as of its date, and the information contained herein is subject to change. Copies of the Authorizing Ordinance and the Continuing Disclosure Agreement summarized herein are available upon request from Stephens Inc., 111 Center Street, Suite 2300, Little Rock, Arkansas 72201, Attention: Public Finance and Morgan Keegan & Company, Inc., or its successor in interest, 100 Morgan Keegan Drive, Suite 400, Little Rock, Arkansas 72202, Attention: Public Finance.

THE SERIES 2012 BONDS

Book-Entry Only System. The Depository Trust Company ("DTC"), New York, New York, or its successor, will act as securities depository for the Series 2012 Bonds. The Series 2012 Bonds will each be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2012 Bond certificate for each maturity and interest rate will be issued in the principal amount of the maturity and interest rate, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com and www.dtc.org.

Series 2012 Purchases of Series 2012 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2012 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2012 Bond (referred to herein as "Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2012 Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in Series 2012 Bonds, except in the event that use of the book-entry system for the Series 2012 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2012 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Series 2012 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2012 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2012 Bonds are credited, which may or may not be the Beneficial Owners. Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices will be sent to Cede & Co. If fewer than all of the Series 2012 Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2012 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Trustee as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2012 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, interest and premium, if any, payments on the Series 2012 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the City or Trustee, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or the City, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, interest and premium, if any, to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2012 Bonds at any time by giving reasonable notice to the City or the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2012 Bonds are required to be printed and delivered. The City may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Series 2012 Bonds will be printed and delivered.

The information concerning DTC and DTC's book-entry system set forth above has been obtained from DTC. Neither the Underwriters nor the City make any representation or warranty regarding the accuracy or completeness thereof.

So long as the Series 2012 Bonds are in book-entry only form, Cede & Co., as nominee for DTC, will be treated as the sole owner of the Series 2012 Bonds for all purposes under the Authorizing Ordinance, including receipt of all principal of and interest on the Series 2012 Bonds, receipt of notices, voting and requesting or directing the Trustee to take or not to take, or consenting to, certain actions under the Authorizing Ordinance. The City and the Trustee have no responsibility or obligation to the Participants or the Beneficial Owners with respect to (a) the accuracy of any records maintained by DTC or any Participant; (b) the payment by any Participant of any amount due to any Beneficial Owner in respect of the principal of and interest on the Series 2012 Bonds; (c) the delivery or timeliness of delivery by any Participant of any notice to any Beneficial Owner which is required or permitted under the terms of the Authorizing Ordinance to be given to owners of Series 2012 Bonds; or (d) other action taken by DTC or Cede & Co. as owner of the Series 2012 Bonds.

Generally. The Series 2012 Bonds are dated, mature and bear interest as set forth on the cover page hereof. The principal of the Series 2012 Bonds is payable upon presentation and surrender at the principal office of the Trustee. Payment of interest on the Series 2012 Bonds will be made to each registered owner thereof by check or draft mailed by the Trustee to such owner at his address as such name and address appear on the registration book of the City kept by the Trustee on the record date which is the fifteenth day of the calendar month next preceding the calendar month in which such interest payment date falls. All such payments will be made in lawful money of the United States of America.

The Series 2012 Bonds are issuable in the form of registered Series 2012 Bonds without coupons in the denomination of \$5,000 each or any integral multiple thereof, interchangeable in accordance with the provisions of the Authorizing Ordinance. In the event any Series 2012 Bond is mutilated, lost or destroyed, the City shall, if not then prohibited by law, execute and the Trustee may authenticate a new Series 2012 Bond in accordance with the provisions therefor in the Authorizing Ordinance.

Each Series 2012 Bond is transferable by the registered owner thereof or by his attorney duly authorized in writing at the principal office of the Trustee. Upon such transfer a new fully registered Series 2012 Bond or Series 2012 Bonds of the same maturity and interest rate, of authorized denomination or denominations, for the same aggregate principal amount will be issued to the transferee in exchange therefor.

No charge shall be made to any owner of any Series 2012 Bond for the privilege of registration, but any owner of any Series 2012 Bond requesting any such registration shall pay any tax or other governmental charge required to be paid with respect thereto. Except as otherwise provided in the immediately preceding sentence, the cost of preparing each new Series 2012 Bond upon each exchange or transfer and any other expenses of the City or the Trustee incurred in connection therewith shall be paid by the City. Neither the City nor the Trustee shall be required to transfer or exchange any Series 2012 Bonds selected for redemption in whole or in part.

The person in whose name any Series 2012 Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal or interest of any Series 2012 Bond shall be made only to or upon the order of the registered owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Series 2012 Bond to the extent of the sum or sums so paid.

In any case where the date of maturity of interest on or principal of the Series 2012 Bonds or the date fixed for redemption of any Series 2012 Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

Redemption. The Series 2012 Bonds are subject to extraordinary and optional redemption prior to maturity as follows:

(1) Extraordinary Redemption. The Series 2012 Bonds shall be redeemed from Surplus Tax Receipts (hereinafter defined) and from proceeds of the Series 2012 Bonds not needed for the purposes intended, in inverse order of maturity (and by lot within a maturity in such manner as the Trustee shall determine), in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

“Surplus Tax Receipts” are collections of the Tax in excess of the amount necessary to (1) insure the prompt payment of the principal of, interest on and Trustee’s fees and expenses and other administrative charges in connection with the Series 2012 Bonds and the Additional Parity Bonds, (2) maintain the debt service reserve in the required amount and (3) pay any arbitrage rebate due under Section 148(f) of the Internal Revenue Code of 1986, as amended (the “Code”).

If there are no Additional Parity Bonds outstanding, the City shall apply 100% of the Surplus Tax Receipts to the redemption of the Series 2012 Bonds. If there are Additional Parity Bonds outstanding, the City shall use 50% of Surplus Tax Receipts to redeem the Series 2012 Bonds and 50% of Surplus Tax Receipts to redeem the Additional Parity Bonds.

In case of any defeasance of the Series 2012 Bonds, redemption of defeased Series 2012 Bonds shall be scheduled on the basis of mandatory redemption requirements and assuming annual Tax Receipts in an amount equal to receipts for the most recent twelve-month period.

(2) Optional Redemption. The Series 2012 Bonds are subject to redemption at the option of the City, from funds from any source, on and after May 1, 2022, in whole at any time or in part on any interest payment date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date. If fewer than all of the Series 2012 Bonds shall be called for redemption, the particular maturities and interest rates of the Series 2012 Bonds to be redeemed shall be selected by the City in its discretion. If fewer than all of the Series 2012 Bonds of any one maturity and interest rate shall be called for redemption, the particular Series 2012 Bonds or portion thereof to be redeemed from such maturity and interest rate shall be selected by lot by the Trustee.

In the case of any redemption of Series 2012 Bonds prior to maturity, the Trustee shall mail a copy of the redemption notice to the registered owners of the Series 2012 Bonds to be redeemed, in each case not less than 30 nor more than 60 days prior to the date of redemption. After the date for redemption no further interest shall accrue on any Series 2012 Bond called for redemption if funds for redemption of such Series 2012 Bond have been deposited with the Trustee as provided in the Authorizing Ordinance.

Notwithstanding the above, so long as the Series 2012 Bonds are issued in book-entry only form, if fewer than all the Series 2012 Bonds of an issue are called for redemption, the particular Series 2012 Bonds to be redeemed will be selected pursuant to the procedures established by DTC. So long as the Series 2012 Bonds are issued in book-entry only form, notice of redemption will be given only to Cede & Co., as nominee for DTC. **The Trustee will not give any notice of redemption to the Beneficial Owners of the Series 2012 Bonds.**

Otherwise, any selection of Series 2012 Bonds by lot shall be effected by the Trustee, by any method chosen by the Trustee in its discretion.

Purposes for Series 2012 Bonds. At the special election held March 13, 2012, there was approved the issuance of bonds for the following purposes:

- (a) refunding the City's outstanding Sales and Use Tax Refunding and Improvement Bonds, Series 2006 (the “Series 2006 Bonds”), Sales and Use Tax Bonds, Series 2008 (the “Series 2008 Bonds”) and Sales and Use Tax and Water and Sewer Revenue Bonds, Series 2009 (the “Series 2009 Bonds”) - \$55,380,000;

- (b) financing 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 ("Wastewater Improvements") - \$71,070,000;
- (c) financing 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 ("Water Improvements") - \$28,120,000;
- (d) financing 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 ("Firefighting Improvements") - \$9,110,000; and
- (e) financing a portion of the costs of an aquatic center consisting of swimming and other recreational facilities and any parking, equipment, furnishings and utility improvements therefor ("Aquatic Center Improvements") - \$4,260,000.

The City is issuing \$109,350,000* of the voter approved bonds as Series 2012 Bonds for the following purposes:

- (1) Refunding of Series 2006 Bonds, the Series 2008 Bonds and the Series 2009 Bonds - \$37,567,866*;
- (2) Water Improvements - \$20,458,494*;
- (3) Wastewater Improvements - \$38,841,488*;
- (4) Firefighting Improvements - \$8,505,100*; and
- (5) Aquatic Center Improvements - \$3,977,052*.

The balance of the voter approved bonds for Water Improvements and Wastewater Improvements are expected to be issued as Additional Parity Bonds in the fall of 2014 and will be limited to approximately \$35,435,000* in aggregate principal amount . Any remaining balance of the voter approved bonds for the refunding, the Firefighting Improvements and Aquatic Center Improvements will not be issued.

The refunding will be accomplished by the defeasance method. A portion of the proceeds of the Series 2012 Bonds will be held by the trustees for the Series 2006 Bonds, the Series 2008 Bonds and the Series 2009 Bonds (collectively, the "Bonds Refunded") and invested in United States Treasury Obligations – State and Local Government Securities which will mature and bear interest at such times and in such amounts as will, together with uninvested cash, provide a cash flow sufficient to fully redeem the Series 2006 Bonds by September 1, 2013, the Series 2008 Bonds by September 1, 2013 and the Series 2009 Bonds by September 1, 2014.

* Preliminary; subject to change.

The City will provide a debt service reserve and pay costs of issuing the Series 2012 Bonds from Series 2012 Bond proceeds. The proceeds of the Series 2012 Bonds (exclusive of accrued interest), along with available funds from the Bonds Refunded, are estimated to be expended by the City as follows:

SOURCES:*

Principal Amount of Bonds	\$109,350,000
Net Reoffering Premium	7,772,767
Existing Funds for Bonds Refunded	<u>15,914,833</u>
Total Sources	\$133,037,600

USES:*

Costs of Improvements	\$72,629,500
Refunding Costs	53,926,177
Debt Service Reserve	5,467,500
Costs of Issuance and Underwriters' Discount	1,010,775
Contingency	<u>3,648</u>
Total Uses	\$133,037,600

The payment of Underwriters' discount and the fee of Bond Counsel will be contingent on the Series 2012 Bonds being issued. See **MISCELLANEOUS, Underwriting** for a description of the Underwriters' discount. The City will deposit the net proceeds of the Series 2012 Bonds (principal amount plus net reoffering premium less Underwriters' discount, debt service reserve deposit, refunding deposit and certain issuance costs) into four construction funds established in one or more banks or trust companies selected by the City that are members of the Federal Deposit Insurance Corporation (each, a "Construction Fund"). Moneys contained in the Construction Funds will be disbursed by the City in payment of costs of the Improvements, paying necessary expenses incidental thereto and paying expenses of issuing the Series 2012 Bonds. Each Construction Fund will be designated to reflect the purpose, e.g., Water Construction Fund, and will have deposited therein a pro rata portion of the Series 2012 Bond proceeds based upon principal amount. Moneys in each Construction Fund shall be used only for the specific Improvements related thereto. Disbursements shall be on the basis of checks or requisitions which shall contain at least the following information: the person to whom payment is being made; the amount of the payment; and the purpose by general classification of the payment. For a description of how the Series 2012 Bond proceeds are to be invested pending use and the provisions governing those investments, see **THE AUTHORIZING ORDINANCE, Investments**.

General. The Series 2012 Bonds are not general obligations of the City but are special obligations, secured by a first and prior pledge of collections of the Tax ("Tax receipts"). Tax receipts must be used solely to pay the principal of and interest on the Series 2012 Bonds and any Additional Parity Bonds, Trustee's fees and expenses and other administrative charges and any arbitrage rebate due under Section 148(f) of the Code. The Series 2012 Bonds are secured under the Authorizing Ordinance. For a summary of the terms of the Authorizing Ordinance, see **THE AUTHORIZING ORDINANCE**.

Additional Bonds. The City covenants that it will not issue any additional bonds, or incur any other additional obligations, secured by a lien on or pledge of the Tax receipts, other than the Additional Parity Bonds. The Additional Parity Bonds are limited to \$35,435,000* in principal amount and are expected to be issued in the fall of 2014. The Additional Parity Bonds may be issued so long as either (i) upon the issuance of the Additional Parity Bonds, the rating agency rating the Series 2012 Bonds confirms that the rating on the Series 2012 Bonds will not be reduced or (ii) the City has received collections from the Tax (or three quarters (3/4) of a 1% sales and use tax levied by the City if the Tax has not been in effect for 12 months) for a 12 month period that ends not less than 30 and not more than 90 days prior to the date that the Additional Parity Bonds are authorized by the Board of Directors of the City to be issued, in an amount equal to or in excess of 125% of the maximum annual debt service requirement for the Series 2012 Bonds, any outstanding Additional Parity Bonds and the Additional Parity Bonds proposed to be issued. Notwithstanding the above, nothing shall be

* Preliminary; subject to change.

construed to prohibit the City from refunding any Series 2012 Bonds or Additional Parity Bonds and pledging Tax receipts to the refunding bonds on a parity with the non-refunded Series 2012 Bonds or Additional Parity Bonds.

Debt Service Reserve. A debt service reserve will be maintained in the Bond Fund in an amount equal to 5% of the original principal amount of the Series 2012 Bonds. See **THE AUTHORIZING ORDINANCE, The Bond Fund.** The debt service reserve will be funded in an amount equal to 5% of the original principal amount of the Series 2012 Bonds with proceeds of the Series 2012 Bonds. At the time any Additional Parity Bonds are issued, the City will fund the additional amount in order for the debt service reserve to be maintained at a level equal to 5% of the original principal amount of the Series 2012 Bonds and the Additional Parity Bonds being issued as set forth herein. See **THE AUTHORIZING ORDINANCE, The Bond Fund.**

The Tax. Pursuant to the Authorizing Legislation and the Tax Ordinance, the City has levied the Tax, which is a tax within the City on all items which are subject to taxation under The Arkansas Gross Receipts Act of 1941 and a tax on the receipts from storing, using or consuming tangible personal property under The Arkansas Compensating (Use) Tax Act of 1949. Pursuant to the Authorizing Ordinance, the City has pledged the Tax receipts to the payment of the Series 2012 Bonds. The Tax was approved as security for the Series 2012 Bonds at the special election held March 13, 2012. The Tax, which replaces taxes at an aggregate rate of 1% pledged to the Bonds Refunded (collectively, the "Existing Bond Tax"), will not take effect until the day following the date the Existing Bond Tax expires. The effective date is expected to be October 1, 2012.

Collections of the Existing Bond Tax received after the Series 2012 Bonds are issued are pledged under the Authorizing Ordinance to the Series 2012 Bonds and shall be considered Tax receipts when such term is used herein, unless the context indicates otherwise.

The Streamline Sales and Use Tax Agreement ("Streamline") has been adopted by the State and became effective on January 1, 2008. Streamline amended Arkansas sales and use tax law to allow the State to collect sales and use taxes from internet sales from vendors outside the State. Streamline limits the collection of the local sales and use tax on the first \$2,500 of sales proceeds only on the following sales: motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes. There is no limit of the amount of local sales and use tax to be paid on all other items. The State allows businesses, nonprofits and governmental entities to file for a credit or rebate on a local sales and use tax if the amount on an invoice totals more than \$2,500 on certain qualified purchases. Claims for credit or rebates must be filed with the Arkansas Department of Finance and Administration ("DF&A") within six (6) months from the date of purchase or six (6) months from the date of payment, if later. DF&A will then cause the State Treasurer to withhold the amount of the refund from future disbursements to the local government levying the sales and use tax. Prior to January 1, 2008, sales and use taxes were collected on the first \$2,500 of sales proceeds for each single transaction, as defined by the City.

Pursuant to Act 757 of 2011 (the "Sales Tax Holiday Act"), the State has created an annual sales tax holiday in which clothing (which are less than \$100 per item), clothing accessories or equipment (which are less than \$50 per item), school art supplies, school instructional materials and school supplies are exempt from taxation under The Arkansas Gross Receipts Tax Act of 1941. The annual sales tax holiday is from 12:01 a.m. on the first Saturday in August until 11:59 p.m. the following Sunday. The City cannot predict the future impact of the Sales Tax Holiday Act.

Set forth in Exhibit A attached hereto is a summary of certain provisions of the statutes authorizing the Tax. The summary does not purport to be complete statements of the laws. Reference is made to the Arkansas Code Annotated §§26-52-101 et seq. and 26-53-101 et seq. for the full text and complete descriptions of such provisions.

Administration. Pursuant to the Authorizing Legislation, the Commissioner of Revenues of the State (the "Commissioner") performs all functions incidental to the administration, collection, enforcement and operation of the Tax. All Tax receipts collected, less certain charges payable and retainage due the Commissioner for administrative services in the amount of 3% of the gross Tax receipts, shall be remitted by the State Treasurer to the Trustee monthly for deposit into the Bond Fund. See **THE AUTHORIZING ORDINANCE, The Bond Fund.**

Historical Tax Receipts. The City has collected sales and use taxes at an aggregate rate of 1% pledged to the bonded indebtedness of the City since 2001 (the “Bond Tax”). Collections of the Bond Tax have been as follows since 2007:

<u>Year</u>	<u>Bond Tax Collections</u>	<u>75% of Bond Tax Collections</u>
2011	\$19,213,204	\$14,409,903
2010	18,475,912	13,856,934
2009	18,981,774	14,236,331
2008	20,525,627	15,394,220
2007	18,875,312	14,156,484

Collections of the Bond Tax for the twelve month period ended March 31 have been as follows for the periods indicated:

<u>Twelve Month Period Ended March 31</u>	<u>Bond Tax Collections</u>	<u>75% of Bond Tax Collections</u>
2012	\$19,636,582	\$14,727,437
2011	18,694,070	14,020,553
2010	18,532,777	13,899,583
2009	20,574,973	15,431,230
2008	19,038,193	14,278,645

Future Tax Receipts. Tax receipts will be contingent upon the sale and use of property and services within the City, which activity is generally dependent upon economic conditions within the City. Also, Tax receipts may be affected by changes to transactions exempted from the Tax made by legislation adopted by the General Assembly of the State or by the people of the State in the form of a constitutional amendment or initiated act. In the past the General Assembly of the State has considered new exemptions to the Tax, such as food sales, which, if adopted, would materially reduce Tax receipts. The City has no control over actions of the General Assembly or the people of the State and cannot predict whether changes to the Tax may be made. Accordingly, the City cannot predict with certainty the expected amount of Tax receipts to be received and, therefore, there can be no assurance that Tax receipts will be sufficient to pay the principal of and interest on the Series 2012 Bonds.

DEBT SERVICE REQUIREMENTS

The Series 2012 Bonds are structured to provide approximately level scheduled debt service requirements in each year beginning in 2015. However, the City expects to retire the Series 2012 Bonds earlier than scheduled from Surplus Tax Receipts (as defined herein) through the use of redemptions of the Series 2012 Bonds. See **THE SERIES 2012 BONDS, Redemption and PROJECTED MANDATORY REDEMPTION**.

The following table shows amounts required to pay scheduled principal and interest on the Series 2012 Bonds during each year ending May 1:

<u>Year (Ending May 1)</u>	<u>Bond Principal</u>	<u>Bond Interest</u>	<u>Total Debt Service</u>
2013	\$10,050,000		
2014	7,960,000		
2015	5,445,000		
2016	5,610,000		
2017	5,780,000		
2018	6,010,000		
2019	6,250,000		
2020	6,560,000		
2021	6,890,000		
2022	7,235,000		
2023	7,595,000		
2024	7,975,000		
2025	8,375,000		
2026	8,665,000		
2027	<u>8,950,000</u>		
Totals	\$109,350,000		

DEBT SERVICE COVERAGE

Set forth below is estimated debt service coverage information for the Series 2012 Bonds. In arriving at the estimate of annual Tax receipts for this calculation, the City examined the collections of the Bond Tax for the twelve month period ended March 31, 2012.

Actual Tax receipts collected by the City will depend upon, among other things, the level of retail activity within the City, the economic health of the City and surrounding trade area, possible future actions by the people of the State or General Assembly of the State defining transactions subject to the Tax and granting exemptions from the Tax, such as exemptions for food sales. The figure set forth below is only an estimate and there can be no assurance that future Tax receipts will equal the estimate shown below. See **THE TAX, Future Tax Receipts**.

Based upon the pledge of 100% of estimated Tax receipts, debt service coverage is as follows:

	<u>12 Month Period Ending May 1, 2013</u>	<u>12 Month Periods Ending May 1, 2014 and Thereafter</u>
Estimated Tax Receipts Available for Debt Service ^{(A)(1)}	\$17,591,105	\$14,727,437
Maximum Annual Debt Service on the Bonds ^{(B)(2)}	14,070,063	11,779,063
Debt Service Coverage ^(A/B)	1.25X	1.25X

⁽¹⁾ For the twelve month period ending May 1, 2013, the City is pledging collections of the Existing Bond Tax that it will receive in May through November 2012. The Existing Bond Tax is a 1% local sales and use tax that will expire September 30, 2012. The City will receive collections of the Existing Bond Tax through November 2012. Commencing in December 2012, the City will receive collections of the Tax which is levied at the rate of 0.75%.

⁽²⁾ Using a year ending May 1; assuming an average coupon rate of 3.85% for the Series 2012 Bonds.

PROJECTED MANDATORY REDEMPTION

The table under the caption **DEBT SERVICE REQUIREMENTS** does not reflect possible redemptions from the Surplus Tax Receipts, if available. Surplus Tax Receipts are derived solely from Tax collections in excess of the amounts needed to pay principal of, interest on, and Trustee's fees and expenses and administrative charges in connection with the Series 2012 Bonds when due, to pay arbitrage rebate and to maintain the Debt Service Reserve Account at its required level. Based upon sales and use tax collections for the twelve-month period ended March 31, 2012, Existing Bond Tax (1%) collections being received through November 2012 and no projected growth, the City estimates the Tax collections will be \$17,591,105 for the twelve month period ending May 1, 2013 and \$14,727,437 for each 12 month period thereafter while the Series 2012 Bonds are outstanding. The City has also assumed that the Additional Parity Bonds will be issued in the fall of 2014 in the aggregate principal amount of \$35,435,000 with scheduled principal due annually from 2015 through 2028 and an average coupon rate of 4.00%. **THERE IS NO GUARANTEE THAT THESE ESTIMATES WILL BE TRUE.** See **THE TAX, Future Tax Receipts**. The Series 2012 Bonds would be paid in full by May 1, 2024 from Surplus Tax Receipts, if these estimates are correct, as follows:

<u>Year</u> <u>(Ending May 1)</u>	<u>Scheduled</u> <u>Principal</u>	<u>Bonds Redeemed</u> <u>Prior to Maturity</u>	<u>Total</u> <u>Principal Retired</u>
2013	\$10,050,000	\$2,540,000	\$12,590,000
2014	7,960,000	3,005,000	10,965,000
2015	5,445,000	3,375,000	8,820,000
2016	5,610,000	1,500,000	7,110,000
2017	5,780,000	1,560,000	7,340,000
2018	6,010,000	1,615,000	7,625,000
2019	6,250,000	1,670,000	7,920,000
2020	6,560,000	1,735,000	8,295,000
2021	6,890,000	1,800,000	8,690,000
2022	7,235,000	1,865,000	9,100,000
2023	7,595,000	1,940,000	9,535,000
2024	<u>7,975,000</u>	<u>3,385,000</u>	<u>11,360,000</u>
Totals	\$83,360,000	\$25,990,000	\$109,350,000

THE CITY AND THE COUNTY

Location. The City, incorporated in 1842, is located in Sebastian County (the "County") and in northwest Arkansas, on the Oklahoma state line and 159 miles west of Little Rock, Arkansas and 145 miles southeast of Tulsa, Oklahoma. The City is the seat of government for the upper district of the County and serves as the central focus for a six-county economic and trade region in the west central area of Arkansas and the east central area of Oklahoma.

Population. Population trends of the City and the County are estimated as follows:

<u>Year</u>	<u>City</u>	<u>County</u>
2005	82,337	118,488
2006	83,406	120,365
2007	84,253	121,741
2008	84,708	122,436
2009	85,547	123,597
2010 ⁽¹⁾	86,209	125,744

Transportation. The City is served by U.S. Highways 271, 71 and 64 as well as Interstate Nos. 540 and 40. The City is also served by two short line railroads with access to three class 1 railroads, more than 31 motor freight carriers and an airport for which two commercial carriers provide service. The City is located on the Arkansas River and has available a public port with a barge-rail terminal.

Government. Since 1967, the City has operated under a City Administrator-Director form of government. Four directors are elected from wards, three are elected at large, and the Mayor is elected at large. Ray Gosack, a city management professional with more than 28 years of experience, has been the City Administrator since January 2011. Prior to that time, he served as Deputy City Administrator for approximately 12 years.

⁽¹⁾ Source: U. S. Census Bureau

The following are the Mayor and the members of the Board of Directors, their occupations and their terms of office:

<u>Name</u>	<u>Occupation</u>	<u>Term Expires</u>
Sandy Sanders, Mayor	Retired, Executive Management	2014
Kevin Settle, Vice Mayor	Industrial Management	2014
Pam Weber	Real Estate	2014
Phillip H. Merry, Jr.	Insurance Executive	2014
Steve Tyler	Retired	2012
André Good	Federal Express Service	2012
Rev. Don Hutchings	Pastor	2012
George Catsavis	Restaurant Owner	2012

City Services. The City provides through its budget the following services: administrative, code enforcement, police protection, fire protection, parks and recreation, downtown parking, public transit, water and sewer, solid waste disposal and collection, planning, airport, district court, street construction and maintenance, library, convention center and information technology services.

Medical Facilities. The City serves as a regional medical center with St. Edward Mercy Medical Center and Sparks Regional Medical Center having approximately 853 acute care beds. Sparks Regional Medical Center has recently completed construction of a 40,000 square foot addition that houses its emergency room, critical care units and imaging services. In addition, a 54-bed rehabilitation center is located in the City. There are over 200 physicians practicing in the area.

Financial Institutions. The City is served by two banks having their principal offices in the City and by nine banks that have branch offices in the City. Bank deposits in the County have been as follows for the years indicated:⁽¹⁾

<u>Year</u>	<u>Total Deposits</u>	<u>Average Annual Growth (%)</u>
1970	\$150,086,000	-
1980	459,908,000	11.8
1990	862,752,000	6.5
2000	1,786,774,000	7.6
2009	2,300,373,000	2.8

Education. The Fort Smith School District system (elementary and secondary) has approximately 29 schools. There are several private schools in the City providing education for kindergarten through high school. The southern most area of the City is served by the Greenwood School District.

University of Arkansas-Fort Smith, with an enrollment of approximately 5,895 (expressed as FTE) for the fall semester of 2011, has four-year degree programs and continues its collaboration with other universities to offer graduate degrees locally. Webster University and John Brown University also offer graduate degrees in the City.

⁽¹⁾ Source: Arkansas State and County Economic Data. University of Arkansas at Little Rock, Institute for Economic Advancement, College of Business (December 2010).

Economy. The economy of the City is a mixture of industrial, medical, corporate and commercial trade. According to the Fort Smith Chamber of Commerce, the largest employers in the City (over 500 employees) are as follows:

<u>Employer</u>	<u>Business or Product</u>	<u>Number of Employees⁽¹⁾</u>
Sparks Health System	Hospital	2,400
Baldor Electric Company	Electric motors	2,393
OK Industries	Poultry processing	1,800
Fort Smith Public Schools	Primary and secondary education	1,783
St. Edward Mercy Medical Center	Hospital	1,487
188 th Air National Guard	Air National Guard	1,100
University of Arkansas at Fort Smith	Higher education	951
Arkansas Best Corp.	Trucking	936
Rheem Manufacturing Company	Heat/air equipment	900
City of Fort Smith	Government	900
Golden Living	Nursing homes	800
Cloyes Gear	Automotive supplier	700

Economic Outlook. The City has experienced modest downturns during the recent national recession. Sales tax revenue has seen increases in ten (10) of the last eleven (11) months after an annual decline in 2010 of less than 1%. Some industrial employers, particularly those in the housing sector, have experienced layoffs. The City's unemployment rate remains well below the national average.

On October 27, 2011 Whirlpool Corporation announced its intention to permanently close its production facility in the City in 2012, likely before June 1. Whirlpool was the City's seventh largest employer, employing at the time 1,130 people at the Fort Smith facility, all of whom presumably will be either laid off or transferred from this facility within the next six months. This number of jobs lost is equal to 9/10 of 1% (0.009) of the civilian labor force in the Fort Smith Metropolitan Service Area. The City is working with Whirlpool Corporation, the Fort Smith Regional Chamber of Commerce and the Arkansas Economic Development Commission to seek appropriate re-purposing of the property.

The City has also seen significant industrial and residential development. Umarex USA, a manufacturer of air rifles and small caliber firearms, opened its new 100,000 square foot manufacturing and distribution center at Chaffee Crossing in 2010. The facility employs approximately 60 persons. Gerber Products has announced plans to invest \$90 million to expand its Fort Smith baby food manufacturing plant and add approximately 50 new jobs.

Chaffee Crossing and other areas of the City continue to see robust residential development. There are currently 800 residential lots at various stages of development in the City. An additional 300 acres of property for residential development were annexed into the City in 2011. The City's utility infrastructure planning has encouraged these developments.

The City has seen large and small commercial developments continue in the City. In 2008, Target opened its first store in the region in the City, and Wal-Mart opened its third Supercenter in the City. This was Wal-Mart's 6th Supercenter in the area. Restaurant chains such as Cheddar's, Longhorn Steakhouse and Beef O'Brady's are finding the City a vibrant market place. Dick's Sporting Goods opened a new store in 2011.

Three new hotels on the City's east side near I-540 and the airport have opened in the last two years. The Arkansas Air National Guard received a new flying mission through the Base Realignment and Closure Commission. The unit, located at the airport, has replaced 14 obsolete F-16 fighter aircraft with 21 A-10 attack aircraft. This change preserves 1,000 full and part-time jobs and adds 150 new positions. Sparks Regional Medical Center has completed a major expansion to its health care campus near the downtown area of the City. The downtown area of the City is continuing its resurgence with additional streetscaping projects and private investment in office, residential, commercial and entertainment properties.

⁽¹⁾ Approximate as of December 2011.

The Fort Smith Regional Chamber of Commerce organized the Fort Smith Regional Alliance, a regional economic development organization which includes areas of western Arkansas and eastern Oklahoma up to 30 miles from the City. The regional approach will enhance relationships among the two states' economic development agencies, and offers prospects more choices for potential locations.

St. Edward Mercy Health System recently announced its commitment to invest \$192 million to update and expand its facilities in the City. Plans include an \$8 million 12,977 square foot orthopedic hospital that is under construction and is expected to be complete in late 2012.

Sykes Call Center opened a new facility in the City in 2010 that now employs approximately 600 people. Golden Living is consolidating its administrative operations in the City which will add 200 more jobs.

Litigation. The City is a party to multiple matters of litigation and regulatory proceedings arising from the City's various governmental activities. In the course of business, a number of claims and lawsuits arise from individuals seeking compensation for personal injury, death, and/or property damage resulting from accidents occurring in the City. In addition, the City has been named as a defendant in a number of lawsuits relating to personnel and contractual matters. Management does not believe that the outcome of these claims will have a material adverse effect on the City's financial position. The City appropriates funds as necessary to meet settlements and awards.

County Economic Data. Per capita personal income estimates for the County and the State are as follows for the years indicated:⁽¹⁾

Year	County		State	
	Per Capita Personal Income	Average Annual Growth (Decline) (%)	Per Capita Personal Income	Average Annual Growth(Decline) (%)
2005	\$31,929	--	\$27,907	--
2006	34,363	7.6	29,455	5.50
2007	35,825	4.3	31,424	6.70
2008	37,971	6.0	32,597	3.70
2009	36,547	(3.8)	32,315	(0.09)

Total personal income estimates for the County and the State are as follows for the years indicated:⁽¹⁾

Year	County		State	
	Total Personal Income	Average Annual Growth (Decline) (%)	Total Personal Income	Average Annual Growth (Decline) (%)
2005	\$3,783,167,000	--	\$77,475,378,000	--
2006	4,136,101,000	9.3	82,918,067,000	7.00
2007	4,361,431,000	5.5	89,312,492,000	7.70
2008	4,648,965,000	6.6	93,480,735,000	4.70
2009	4,517,049,000	(2.8)	93,373,894,000	(0.11)

⁽¹⁾ Source: Bureau of Economic Analysis, U.S. Department of Commerce.

Set forth below is a breakdown of retail sales in the County and the State for the years indicated:⁽¹⁾

Year	County		State	
	Retail Sales	Average Annual Growth (%)	Retail Sales	Average Annual Growth(%)
1990	\$956,642,000	-	\$15,386,039,000	-
1995	1,264,773,000	5.7	20,998,923,000	6.4
2008	2,629,699,000	5.8	43,820,789,000	5.8

The annual average unemployment rates for the County and the State since 2006 are as follows according to the Arkansas Department of Workforce Services:

Year	Annual Average Unemployment Rate(%)	
	County	State
2006	4.7	5.2
2007	5.0	5.2
2008	4.7	5.2
2009	7.1	7.3
2010	6.6	7.7
2011*	8.7	7.7

*As of December 2011.

Construction Activity and Estimated Values. The following are the construction activity for the years indicated and the estimated real property values resulting from construction in the City:⁽²⁾

Year	Commercial Construction		Residential Construction	
	Number Of Units	Value	Number of Units	Value
2006	83	\$58,295,215	412	\$31,409,062
2007	71	88,621,767	426	37,421,119
2008	67	107,390,575	350	37,681,093
2009	45	44,192,081	514	40,173,803
2010	41	23,582,143	359	49,402,500
2011	43	64,716,229	339	45,224,255

THE AUTHORIZING ORDINANCE

Set forth below is a summary of certain portions of the Authorizing Ordinance. This summary does not purport to be comprehensive and reference is made to the full text of the Authorizing Ordinance for a complete description of its provisions. **Unless the context clearly indicates otherwise, all references under this heading to the "Bonds" shall include the Series 2012 Bonds and the Additional Parity Bonds.** The City will covenant as set forth below in the Authorizing Ordinance.

The Bond Fund. (a) The Trustee shall deposit all Tax receipts (which for purposes of the Authorizing Ordinance includes collections of the Tax and the Existing Bond Tax) as and when received into a special fund of the City in the Trustee which is created by the Authorizing Ordinance and designated "2012 Sales and Use Tax Bond Fund" (the "Bond Fund"), for the purpose of providing funds for the payment of principal of and

⁽¹⁾ Source: Arkansas State and County Economic Data. University of Arkansas at Little Rock, Institute for Economic Advancement, College of Business Administration (December 2010).

⁽²⁾ City of Fort Smith Building Department Estimate.

interest on the Bonds as they become due at maturity or at redemption prior to maturity, the Trustee's fees and expenses and other administrative charges and any arbitrage rebate. Moneys in the Bond Fund shall be used on each interest payment date (or in the case of a rebate or bond redemption payment under clauses (6) and (7) on any date due) in the following order of priority as and when necessary:

- (1) to pay the interest on the Bonds then due; and
- (2) to pay the principal of the Bonds then due at maturity or upon mandatory sinking fund redemption; and
- (3) to make provision in the Bond Fund for payment of one-half of the principal next due at maturity or upon mandatory sinking fund redemption on the Bonds if principal is not due on such interest payment date; and
- (4) to pay into the Debt Service Reserve Account (hereinafter identified) any moneys necessary to increase the Debt Service Reserve Account to the required level; and
- (5) to pay the Trustee's fees and expenses and other administrative charges then due; and
- (6) to make any arbitrage rebate payment due under Section 148(f) of the Code; and
- (7) to redeem Bonds prior to maturity.

(b) There shall be established and maintained in the Bond Fund a Debt Service Reserve Account in an amount equal to 5% of the original principal amount of the Bonds when issued (the "required level"). The City shall fund the Debt Service Reserve Account with proceeds of the Bonds as issued. Moneys in the Debt Service Reserve Account shall be used to make the payments described in clauses (1) and (2) of subsection (a) above if moneys in the Bond Fund are not otherwise sufficient for that purpose. Moneys in the Debt Service Reserve Account over and above the required level shall be immediately transferred from the Debt Service Reserve Account into the Bond Fund. Moneys in the Debt Service Reserve Account shall be used to make the final payment of the principal of and interest on the Bonds due at maturity or redemption prior to maturity.

(c) There shall be established and maintained in the Bond Fund a Special Redemption Account into which shall be deposited all funds in the Bond Fund available for the redemption of the Bonds arising from Surplus Tax Receipts and transfers from the Construction Fund. Moneys in the Special Redemption Account shall be used to redeem the Bonds prior to maturity.

(d) When the moneys in the Bond Fund shall be and remain sufficient to pay (1) the principal of all the Bonds then outstanding, (2) interest on the Bonds until the next interest payment date, (3) the Trustee's fees and expenses and other administrative charges and (4) all arbitrage rebate payments due the United States under Section 148(f) of the Code, there shall be no obligation to make any further payments into the Bond Fund and any Tax receipts remaining in the Bond Fund after the principal of, premium, if any and interest on the Bonds have been paid may be used by the City for any lawful purpose.

Investments. (a) Moneys held for the credit of each Construction Fund may be invested and reinvested in Permitted Investments (as hereinafter defined) or other investments permitted by State law, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than the date or dates when such money will be required for the purposes intended.

(b) Moneys held for the credit of the Debt Service Reserve Account shall be invested and reinvested in Permitted Investments, which shall mature, or which shall be subject to redemption by the holder thereof, at the option of such holder, not later than seven (7) years after the date of investment or the final maturity date of the outstanding Bonds, whichever is earlier. The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(c) Moneys held for the credit of the Bond Fund (other than the Debt Service Reserve Account) shall be invested and reinvested in Permitted Investments, which will mature, or which will be subject to redemption by the holder thereof at the option of the holder, not later than the date or dates on which the money shall be required for the payment of the principal of and interest on the Bonds when due. The Trustee shall so invest and reinvest pursuant to the direction of the City and in the Trustee's discretion in the absence of any direct instructions from the City.

(d) Obligations purchased as an investment of any fund or account shall be deemed at all times a part of such fund. Any profit or loss realized on investments of moneys in any fund shall be charged to said fund.

(e) "Permitted Investments" are defined as (i) direct or fully guaranteed obligations of the United States of America ("Government Securities"), (ii) direct obligations of an agency, instrumentality or government-sponsored enterprise created by an act of the United States Congress and authorized to issue securities or evidences of indebtedness, regardless of whether the securities or evidences of indebtedness are guaranteed for repayment by the United States Government, (iii) certificates of deposit or time deposits of banks, including the Trustee, which are insured by Federal Deposit Insurance Corporation or, if in excess of insurance coverage, collateralized by Government Securities or other securities authorized by Arkansas law to secure public funds or (iv) money market funds invested exclusively in Government Securities and the obligations described in (ii) above.

Certain Covenants. The City covenants that:

(a) It will not take, suffer or permit any action which may cause the interest payable on the Bonds to be included in gross income for federal income tax purposes, including any use of proceeds of the sale of the Bonds or Tax receipts directly or indirectly in such manner as to cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code.

(b) It will not use or permit the use of the Improvements, the facilities refinanced by the Bonds or the proceeds of the Bonds in such manner as to cause the Bonds to be private activity bonds within the meaning of Section 141 of the Code.

(c) It will faithfully and punctually perform all duties with reference to the Tax and the Bonds, required by the Constitution and laws of the State and by the Authorizing Ordinance, including the collection of the Tax, as therein specified and covenanted, the segregating of the Tax receipts and the applying of the Tax receipts as provided in the Authorizing Ordinance.

(d) It will make any arbitrage rebate payment due the United States under Section 148(f) of the Code from moneys in the Bond Fund.

Defaults and Remedies. (a) If there be any default in the payment of the principal of and interest on the Bonds, or if the City defaults in the performance of any covenant contained in the Authorizing Ordinance, the Trustee may, and upon the written request of the owners of not less than 10% in principal amount of the Bonds then outstanding shall, by proper suit compel the performance of the duties of the officials of the City and officials of the State, under the Authorizing Ordinance, to take any action or obtain any proper relief in law or equity available under the Constitution and laws of the State.

(b) No owner of any Bond shall have any right to institute any suit, action, mandamus or other proceeding in equity or in law for the protection or enforcement of any right under the Authorizing Ordinance or under the Constitution and laws of the State unless such owner previously shall have given to the Trustee written notice of the default on account of which such suit, action or proceeding is to be taken, and unless the owners of not less than 10% in principal amount of the Bonds then outstanding shall have made written request of the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers herein granted or granted by the Constitution and laws of the State, or to institute such action, suit or proceeding in its name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the cost, expense and liabilities to be incurred therein or thereby and the Trustee shall have

refused or neglected to comply with such request within a reasonable time, and such notification, request and offer of indemnity are in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trust of the Authorizing Ordinance or to any other remedy thereunder. No one or more owners of the Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Authorizing Ordinance, or to enforce any right thereunder except in the manner therein provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner therein provided and for the benefit of all owners of the outstanding Bonds, and any individual rights of action or other right given to one or more of such owners by law are restricted by the Authorizing Ordinance to the rights and remedies therein detailed.

(c) All rights of action under the Authorizing Ordinance or under any of the Bonds secured thereby, enforceable by the Trustee, may be enforced by it without the possession of any of the Bonds, and any such suit, action or proceeding instituted by the Trustee shall be brought in its name and for the benefit of all the owners of the Bonds, subject to the provisions of the Authorizing Ordinance.

(d) No remedy conferred upon or reserved to the Trustee or to the owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Authorizing Ordinance or given by any law or by the Constitution of the State.

(e) No delay or omission of the Trustee or of any owners of the Bonds to exercise any right or power accrued upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every power and remedy given by the Authorizing Ordinance to the Trustee and to the owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(f) The Trustee may, and upon the written request of the owners of not less than a majority in principal amount of the Bonds then outstanding shall, waive any default which shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted under the provision of the Authorizing Ordinance or before the completion of the enforcement of any other remedy, but no such waiver shall extend to or affect any other existing or any subsequent default or defaults or impair any rights or remedies consequent thereon.

Defeasance. Any Bond shall be deemed to be paid within the meaning of the Authorizing Ordinance when payment of the principal of and interest on such Bond (whether at maturity or upon redemption as provided herein, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment (1) cash sufficient to make such payment and/or (2) non-callable Government Securities (provided that such deposit will not cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148 of the Code), maturing as to principal and interest in such amounts and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

On the payment of any Bonds within the meaning of the Authorizing Ordinance, the Trustee shall hold in trust, for the benefit of the owners of such Bonds, all such moneys and/or Government Securities.

When all the Bonds shall have been paid within the meaning of the Authorizing Ordinance, if the Trustee has been paid its fees and expenses and if any arbitrage rebate payment has been paid or provision has been made therefor, the Trustee shall take all appropriate action to cause (i) the pledge and lien of the Authorizing Ordinance to be discharged and cancelled and (ii) all moneys held by it pursuant to the Authorizing Ordinance and which are not required for the payment of such Bonds, to be paid over or delivered to or at the direction of the City.

The Trustee. The Trustee shall be responsible for the exercise of good faith and ordinary prudence in the execution of its trusts and duties. The recitals in the Authorizing Ordinance and in the Bonds are the recitals of the City and not of the Trustee. The Trustee shall not be required to take any action unless it shall have been

requested to do so in writing by the owners of not less than 10% in principal amount of Bonds then outstanding and shall have been offered reasonable security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. The Trustee may resign at any time by 60 days' notice in writing to the City and the owners of the Bonds, and the majority in principal amount of the owners of the outstanding Bonds or the City, so long as it is not in default under the Authorizing Ordinance, may at any time, with or without cause, remove the Trustee. In the event of a vacancy in the office of Trustee either by resignation or by removal, the City shall forthwith designate a new Trustee. The Trustee and any successor Trustee shall file a written acceptance and agreement to execute the trusts and duties imposed upon it by the Authorizing Ordinance, but only upon the terms and conditions set forth in the Authorizing Ordinance and subject to the provisions of the Authorizing Ordinance, to all of which the respective owners of the Bonds agree. Such written acceptance shall be filed with the City, and a copy thereof shall be placed in the bond transcript. Any successor Trustee shall have all the powers herein granted to the original Trustee.

Supplemental Ordinances. The terms of the Authorizing Ordinance constitute a contract between the City and the owners of the Bonds and no variation or change in the undertaking set forth in the Authorizing Ordinance shall be made while any of the Bonds are outstanding, except as hereinafter set forth. The owners of not less than 75% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the adoption by the City of a supplemental ordinance as shall be necessary or desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Authorizing Ordinance or in any supplemental ordinance. The Trustee may consent to any change without the consent of 75% of the owners of the aggregate principal amount of Bonds outstanding (i) that the Trustee determines is not to the material prejudice of the owners of the Bonds, (ii) in order to cure any ambiguity or formal defect or omission in the Authorizing Ordinance or any amendment thereto or (iii) in connection with the issuance of Additional Parity Bonds, provided, however, that nothing therein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond issued thereunder, or (b) a reduction in the principal amount of any Bond or the rate of interest thereon, or (c) the creation of a pledge of Tax receipts superior to the pledge created by the Authorizing Ordinance, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance.

CONTINUING DISCLOSURE AGREEMENT

The City will enter into a Continuing Disclosure Agreement with the Trustee in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). The City is a party to continuing disclosure agreements with respect to outstanding indebtedness of the City. The City has complied in all material respects with its obligations under those agreements.

Set forth below is a summary of certain portions of the Continuing Disclosure Agreement. This summary does not purport to be comprehensive and reference is made to the full text of the Continuing Disclosure Agreement for a complete description of its provisions.

Purpose of the Continuing Disclosure Agreement. The Continuing Disclosure Agreement is executed and delivered by the City and the Trustee for the benefit of the Beneficial Owners of the Series 2012 Bonds and in order to assist the Underwriters in complying with the Securities and Exchange Commission, Rule 15c2-12(b)(5).

Definitions. In addition to the definitions set forth in this Official Statement, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any annual report provided by the City pursuant to, and as described in, the Continuing Disclosure Agreement.

“Beneficial Owner” of a Bond shall mean any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent, or any successor Dissemination Agent designated in writing by the City and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access System as described in 1934 Act Release No. 59062 and maintained by the MSRB for purposes of the Rule.

“Listed Events” shall mean any of the events listed hereunder.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

Provision of Annual Report. (a) The City shall, or cause the Dissemination Agent to, not later than one hundred eighty (180) days after the end of the City’s fiscal year (presently December 31), commencing with the report after the end of the 2012 fiscal year, provide to the MSRB, through its continuing disclosure service portal provided through EMMA at <http://www.emma.msrb.org> or any similar system acceptable to the Securities and Exchange Commission, an Annual Report which is consistent with the requirements of the Continuing Disclosure Agreement. The Annual Report shall be in electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package and may cross-reference other information as provided in the Continuing Disclosure Agreement; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date, but, in such event, such audited financial statements shall be submitted within thirty (30) days after receipt thereof by the City. If the City’s fiscal year changes, it shall give notice of such change in the manner as for a Listed Event.

(b) Not later than fifteen (15) business days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the City shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). If by such date, the Trustee has not received a copy of the Annual Report, the Trustee shall contact the City and the Dissemination Agent to determine if the City is in compliance with the first sentence of this subsection (b).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Trustee shall send a notice to the MSRB.

Content of Annual Reports. The City’s Annual Report shall contain or incorporate by reference the following:

(a) Information of the type set forth in this Official Statement (a) under the captions **THE CITY AND THE COUNTY** with respect to (i) City and County population in the latest year for which available and the four (4) previous years for which figures are available; (ii) unemployment rates in the latest year for which available and the four (4) previous years; and (iii) major employers at the City on the date of the report.

(b) Tax receipts for the latest calendar year and the four (4) previous years, if available.

(c) The annual audit of the City prepared in accordance with Government Auditing Standards issued by the Comptroller General of the United States and applicable state law.

Any or all of the items above may be incorporated by reference from other documents, including official statements of debt issues of the City or related public entities, which have been submitted to the MSRB or the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The City shall clearly identify each such other document so incorporated by reference.

Reporting of Significant Events. (a) This caption describes the giving of notices of the occurrence of any of the following events:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults, if material.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.
6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax-exempt status of the security.
7. Modification to rights of security holders, if material.
8. Bond calls (excluding mandatory sinking fund redemptions), if material.
9. Defeasances and tender offers.
10. Release, substitution, or sale of property securing repayment of the securities, if material.
11. Rating changes.
12. Bankruptcy, insolvency, receivership or similar event of the obligated person.
13. The consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) After the occurrence of a Listed Event (excluding an event described in (a)8 above), the City shall promptly notify the Dissemination Agent (if other than the City) in writing. Such notice shall instruct the Dissemination Agent to report the occurrence.

(c) After the occurrence of a Listed Event (excluding an event described in (a)8 above), whether by notice from the Trustee or otherwise, the City shall file (or shall cause the Dissemination Agent to file), in a timely manner not in excess of ten (10) business days after the occurrence of such Listed Event, a notice of such occurrence with the MSRB, through its continuing disclosure service portal provided through EMMA at <http://www.msrb.emma.org> or any other similar system that is acceptable to the Securities and Exchange Commission, with a copy to the Trustee (if the Trustee is not the Dissemination Agent). Each notice of the occurrence of a Listed Event shall be captioned "Notice of Listed Event" and shall be filed in electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB. In the event of a Listed Event described in (a)8 above, the Trustee shall make the filing and notice thereof need not be given any earlier than the notice for the underlying event is given to registered owners of affected Bonds pursuant to the terms of the Authorizing Ordinance.

Termination of Reporting Obligation. The City's obligations under the Continuing Disclosure Agreement shall terminate upon the defeasance, prior redemption or payment in full of all the Series 2012 Bonds.

Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under the Continuing Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the City pursuant to the

Continuing Disclosure Agreement. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent. The initial Dissemination Agent shall be the Trustee.

Amendment; Waiver. Notwithstanding any other provision of the Continuing Disclosure Agreement, the City and the Trustee may amend the Continuing Disclosure Agreement, and any provisions of the Continuing Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the requirements for providing an Annual Report, to the contents of the Annual Report or the reporting of Listed Events, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Series 2012 Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Series 2012 Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Beneficial Owners of the Series 2012 Bonds in the same manner as provided in the Authorizing Ordinance for amendments to the Authorizing Ordinance with the consent of Beneficial Owners, or (ii) does not, in the opinion of the Trustee, materially impair the interests of the Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of the Continuing Disclosure Agreement, the City shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason of the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event, and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Additional Information. Nothing in the Continuing Disclosure Agreement shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in the Continuing Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by the Continuing Disclosure Agreement. If the City chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by the Continuing Disclosure Agreement, the City shall have no obligation under the Continuing Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event

Default. In the event of a failure of the City or the Trustee to comply with any provision of the Continuing Disclosure Agreement, the Trustee, the City or any Beneficial Owner may (and the Trustee, at the request of the Underwriters or the Beneficial Owners of at least 25% aggregate principal amount of outstanding Bonds, shall) take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the City or the Trustee, as the case may be, to comply with its obligations under the Continuing Disclosure Agreement. A default under the Continuing Disclosure Agreement shall not be deemed a default under the Authorizing Ordinance, and the sole remedy under the Continuing Disclosure Agreement in the event of any failure of the City or the Trustee to comply with the Continuing Disclosure Agreement shall be an action to compel performance.

Duties of Trustee and Dissemination Agent and Right of Indemnity. The Dissemination Agent (if other than the Trustee) and the Trustee in its capacity as Dissemination Agent shall have only such duties as are specifically set forth in the Continuing Disclosure Agreement, and the City agrees to indemnify and save the Dissemination Agent and the Trustee, their officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their

powers and duties hereunder, including the costs and expenses (including attorney's fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or the Trustee's gross negligence or willful misconduct.

Beneficiaries. The Continuing Disclosure Agreement shall inure solely to the benefit of the City, the Trustee, the Dissemination Agent, the Underwriters and the Beneficial Owners and shall create no rights in any other person or entity.

LEGAL MATTERS

Legal Proceedings. There is no litigation pending seeking to restrain or enjoin the Tax or the issuance or delivery of the Series 2012 Bonds, or questioning or affecting the legality of the Tax or the Series 2012 Bonds or the proceedings and authority under which the Series 2012 Bonds are to be issued, or questioning the right of the City to adopt the Authorizing Ordinance or to issue the Series 2012 Bonds or the levy and pledge of the Tax by the City.

Legal Opinions. Legal matters incident to the authorization and issuance of the Series 2012 Bonds are subject to the unqualified approving opinion of Friday, Eldredge & Clark, LLP, Little Rock, Arkansas, Bond Counsel. Certain legal matters will be passed upon for the City by its counsel, Daily & Woods, P.L.L.C.

Tax Exemption. In the opinion of Friday, Eldredge & Clark, LLP, Bond Counsel, under existing law the interest on the Series 2012 Bonds is exempt from all Arkansas state, county and municipal taxes.

In the opinion of Bond Counsel, interest on the Series 2012 Bonds under existing law is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, it should be noted that with respect to corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on such corporations. The opinions set forth in the preceding sentence are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Series 2012 Bonds in order that interest thereon be (or continue to be) excluded from gross income for federal income tax purposes. These requirements generally relate to arbitrage, the use of the proceeds of the Series 2012 Bonds and the Improvements. Failure to comply with certain of such requirements could cause the interest on the Series 2012 Bonds to be so included in gross income retroactive to the date of issuance of the Series 2012 Bonds. The City has covenanted to comply with all such requirements in the Authorizing Ordinance.

Prospective purchasers of the Series 2012 Bonds should be aware that (i) with respect to insurance companies subject to the tax imposed by Section 831 of the Code, Section 832(b)(5)(B)(i) reduces the deduction for loss reserves by 15 percent of the sum of certain items, including interest on the Series 2012 Bonds, (ii) interest on the 2012 Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the Code, (iii) passive investment income including interest on the Series 2012 Bonds, may be subject to federal income taxation under Section 1375 of the Code for Subchapter S corporations that have Subchapter C earnings and profits at the close of the taxable year if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income and (iv) Section 86 of the Code requires recipients of certain Social Security and certain Railroad Retirement benefits to take into account in determining gross income, receipts or accruals of interest on the Series 2012 Bonds.

Prospective purchasers of the Series 2012 Bonds should be further aware that Section 265 of the Code denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Series 2012 Bonds or, in the case of a financial institution, that portion of a holder's interest expense allocated to interest on the Series 2012 Bonds, except with respect to certain financial institutions (within the meaning of Section 265(b)(5) of the Code).

As shown on the cover page of the Official Statement, certain of the Series 2012 Bonds are being sold at an original issue discount (the "Discount Bonds"). The difference between the initial public offering prices, as set forth on the front cover page, of such Discount Bonds and their stated amounts to be paid at maturity

constitutes original issue discount treated as interest which is excluded from gross income for federal income tax purposes, as described above.

The amount of original issue discount which is treated as having accrued with respect to such Discount Bond is added to the cost basis of the owner in determining, for federal income tax purposes, gain or loss upon disposition of such Discount Bond (including its sale, redemption, or payment at maturity). Amounts received upon disposition of such Discount Bond which are attributable to accrued original issue discount will be treated as tax-exempt interest, rather than as taxable gain, for federal income tax purposes.

Original issue discount is treated as compounding semiannually, at a rate determined by reference to the yield to maturity of each individual Discount Bond, on days which are determined by reference to the maturity date of such Discount Bond. The amount treated as original issue discount on such Discount Bond for a particular semiannual accrual period is equal to the product of (i) the yield of maturity for such Discount Bond (determined by compounding at the each of accrual period) and (ii) the amount which would have been the tax basis of such Discount Bond at the beginning of the particular accrual period if held by the original purchaser, less the amount of any interest payable for such Discount Bond during the accrual period. The tax basis is determined by adding to the initial public offering price on such Discount Bond the sum of the amounts which have been treated as original issue discount for such purposes during all prior periods. If such Discount Bond is sold between semiannual compounding dates, original issue discount which would have been accrued for that semiannual compounding period for federal income tax purposes is to be apportioned in equal amounts among the days in such compounding period.

Owners of the Discount Bonds should consult their tax advisors with respect to the determination and treatment of original issue discount accrued as of any date and with respect to the state and local tax consequences of owning a Discount Bond.

As shown on the cover page of this Official Statement, certain of the Series 2012 Bonds are being sold at a premium (the "Premium Bonds"). An amount equal to the excess of the issue price of a Premium Bond over its stated redemption price at maturity constitutes premium on such Premium Bond. An initial purchaser of a Premium Bond must amortize any premium over such Premium Bond's term using constant yield principles, based on the purchaser's yield to maturity (or, in the case of a Premium Bond callable prior to its maturity, by amortizing the premium to the call date, based on the purchaser's yield to the call date and giving effect to the call premium). As premium is amortized, the amount of the amortization offsets a corresponding amount of interest for the period and the purchaser's basis in such Premium Bond is reduced by a corresponding amount resulting in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes upon a sale or disposition of such Premium Bond prior to its maturity. Even though the purchaser's basis may be reduced, no federal income tax deduction is allowed. Purchasers of a Premium Bond should consult with their tax advisors with respect to the determination and treatment of amortizable premium for federal income tax purposes and with respect to the state and local tax consequences of owning a Premium Bond.

On September 12, 2011, President Obama announced a legislative proposal entitled the "American Jobs Act of 2011" (the "Jobs Act"). If enacted, for tax years beginning on or after January 1, 2013, the Jobs Act would limit the exclusion from gross income of interest on obligations like the Series 2012 Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. The Jobs Act or other legislative proposals, if enacted into law, may cause interest on the Series 2012 Bonds to be subject, directly or indirectly, to federal income taxation or otherwise prevent holders of the Series 2012 Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals may also affect the market price for, or marketability of, the Series 2012 Bonds. Prospective purchasers of the Series 2012 Bonds should consult their own tax advisors regarding any such pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

It is not an event of default on the Series 2012 Bonds if the Jobs Act or other legislation is enacted reducing or eliminating the exclusion of interest on state and local government bonds from gross income for federal or state income tax purposes.

MISCELLANEOUS

Underwriting. Under a Bond Purchase Agreement (the "Agreement") entered into by and between the City, as issuer, and Stephens Inc. and Morgan Keegan & Company, Inc., or its successor in interest, as underwriters (the "Underwriters"), the Series 2012 Bonds are being purchased at a price of \$_____ (principal amount plus net original issue premium of \$_____ less Underwriters' discount of \$_____) plus accrued interest. The Agreement provides that the Underwriters will purchase all of the Series 2012 Bonds if any are purchased. The obligation of the Underwriters to accept delivery of the Series 2012 Bonds is subject to various conditions contained in the Agreement, including the absence of pending or threatened litigation questioning the validity of the Series 2012 Bonds or any proceedings in connection with the issuance thereof, and the absence of material adverse changes in the financial or business condition of the City.

The Underwriters intend to offer the Series 2012 Bonds to the public initially at the offering prices set forth on the cover page of this Official Statement, which prices may subsequently change without any requirement of prior notice. The Underwriters reserve the right to join with dealers and other underwriters in offering the Series 2012 Bonds to the public. The Underwriters may offer and sell Bonds to certain dealers (including dealers depositing Series 2012 Bonds into investment trusts) at prices lower than the public offering price.

The City has agreed to indemnify the Underwriters against certain civil liabilities in connection with the offering and sale of the Series 2012 Bonds, including certain liabilities under federal securities laws.

On April 2, 2012, Raymond James Financial, Inc. ("RJF"), the parent company of Raymond James & Associates, Inc. ("Raymond James"), acquired all of the stock of Morgan Keegan & Company, Inc. ("Morgan Keegan") from Regions Financial Corporation. Morgan Keegan and Raymond James are each registered broker-dealers. Both Morgan Keegan and Raymond James are wholly owned subsidiaries of RJF and, as such, are affiliated broker-dealer companies under the common control of RJF, utilizing the trade name "Raymond James | Morgan Keegan" that appears on the cover of this Preliminary Official Statement. It is anticipated that the businesses of Raymond James and Morgan Keegan will be combined.

Rating. Standard & Poor's Ratings Services ("S&P") will assign its municipal bond rating of "AA" to the Series 2012 Bonds. Any explanation of such rating may only be obtained from S&P. Generally, rating agencies base their ratings upon information and materials supplied to them and on their own investigations, studies and assumptions. There is no assurance that such rating, once assigned, will remain for any given period of time or that they will not be lowered or withdrawn entirely by the rating agency if in its judgment circumstances so warrant. Any such downward change or withdrawal of the rating assigned to the Series 2012 Bonds by S&P may have an adverse effect on the market price of the Series 2012 Bonds. The Underwriters and the City have undertaken no responsibility after issuance of the Series 2012 Bonds to assure the maintenance of the rating or to oppose any such revision or withdrawal.

Enforceability of Remedies. Rights of the registered owners of the Series 2012 Bonds and the enforceability of the remedies available under the Authorizing Ordinance may depend on judicial action and may be subject to the valid exercise of the constitutional powers of the United States of America and of the sovereign police powers of the State or other governmental units having jurisdiction, and to the application of federal bankruptcy laws or other debtor relief or moratorium laws in general. Therefore, enforcement of those remedies may be delayed or limited, or the remedies may be modified or unavailable, subject to the exercise of judicial discretion in accordance with general principles of equity. Bond Counsel expresses no opinion as to any effect upon any right, title, interest or relationship created by or arising under the Authorizing Ordinance resulting from the application of state or federal bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws affecting creditors' rights which are presently or may from time to time be in effect.

Information in Official Statement. Any statements made in this Official Statement involving matters of opinion or of estimates, whether or not so expressly stated, are set forth as such and not as representations of fact, and no representation is made that any of the estimates will be realized. This Official Statement is not to be construed as a contract or agreement between the City and the purchasers or owners of any of the Series 2012 Bonds.

The information contained in this Official Statement has been taken from sources considered to be reliable, but is not guaranteed. To the best of the knowledge of the undersigned the Official Statement does not include any untrue statement of a material fact, nor does it omit the statement of any material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

The execution of this Official Statement has been duly authorized by the City.

CITY OF FORT SMITH, ARKANSAS

By _____
Mayor

Dated: As of the Cover Page hereof.

EXHIBIT A

SUMMARY OF STATE SALES AND USE TAX PROVISIONS

Sales Tax. The sales tax portion of the Tax is generally levied upon the gross proceeds and receipts derived from all sales to any person within the City of the following (list not exclusive):

- (a) Tangible personal property;
- (b) Natural or artificial gas, electricity, water, ice, steam, or any other utility or public service except transportation services, sewer services and sanitation or garbage collection services;
- (c)
 - (i) Service by telephone, telecommunications and telegraph companies to subscribers or users, including transmission of messages or images, whether local or long distance, including all service, installation, construction and rental charges having any connection with transmission of any message or image;
 - (ii) Service of furnishing rooms, suites, condominiums, townhouses, rental houses or other accommodations by hotels, apartment hotels, lodging houses, tourist camps, tourist courts, property management companies, or any other provider of accommodations to transient guests;
 - (iii) Service of cable television, community antenna television, and any and all other distribution of television, video, or radio services with or without the use of wires provided to subscribers, paying customers or users, including installation, service, rental, repair and other charges having any connection with the providing of the said services;
 - (iv) Service of initial installation, alteration, addition, cleaning, refinishing, replacement and repair of motor vehicles, aircraft, farm machinery and implements, motors of all kinds, tires and batteries, boats, electrical appliances and devices, furniture, rugs, flooring, upholstery, household appliances, televisions and radios, jewelry, watches and clocks, engineering instruments, medical and surgical instruments, machinery of all kinds, bicycles, office machines and equipment, shoes, tin and sheet metal, mechanical tools and shop equipment; however, the tax does not apply to (A) coin operated car washes, (B) the maintenance or repair of railroad parts, railroad cars and equipment brought into the City solely and exclusively for the purpose of being repaired, refurbished, modified, or converted within the City, (C) the service of alteration, addition, cleaning, refinishing, replacement or repair of commercial jet aircraft or commercial jet aircraft components or subcomponents, (D) the repair or remanufacture of industrial metal rollers or platens that have a remanufactured non-metallic material covering on all or a part of the roller or platen surface, or (E) the initial installation, alteration, addition, cleaning, refinishing, replacement or repair of non-mechanical, passive or manually operated components of buildings or other improvements or structures affixed to real estate;
 - (v) Service of providing transportation or delivery of money, property or valuables by armored car; service of providing cleaning or janitorial work; service of pool cleaning and servicing; pager services; telephone answering services; landscaping and non-residential lawn care services; service of parking a motor vehicle or allowing a motor vehicle to be parked; service of storing a motor vehicle; service of storing furs; and the service of providing indoor tanning at a tanning salon;
- (d) Printing of all kinds, types and characters, including the service of overprinting, and photography of all kinds;
- (e) Tickets or admissions to places of amusement, to athletic, entertainment, recreational events, or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes and tickets, admissions, dues or fees;

(f) Dues and fees to health spas, health clubs and fitness clubs; dues and fees to private clubs which hold any permit from the Alcoholic Beverage Control Board allowing the sale, dispensing or serving of alcoholic beverages of any kind on the premises;

(g) Contracts, including service contracts, maintenance agreements, and extended warranties, which in whole or in part provide for future performance of or payment for services which are subject to gross receipts tax;

(h) Retail sale of any device used in playing bingo and any charge for admittance to facilities or for the right to play bingo or other games of chance;

(i) Prepaid telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers;

(j) Beer, wine, liquor, or any intoxicating beverages;

(k) Tangible personal property and services sold to financial institutions.

(l) Wrecker and towing services;

(m) Collection and disposal of solid wastes;

(n) Cleaning of parking lots and gutters;

(o) Dry cleaning and laundry services;

(p) Industrial laundry services;

(q) Body piercing, tattooing, and electrolysis services;

(r) Pest control services;

(s) Security and alarm monitoring services;

(t) Boat storage and docking fees;

(u) Furnishing camping spaces or trailer spaces at public or privately-owned campgrounds, except for federal campgrounds, on less than a month-to-month basis;

(v) Locksmith services;

(w) Pet grooming and kennel services; and

(x) Portable toilet lease or rental and services associated with the lease or rental of portable toilets.

Exemptions from Sales Tax. As summarized below, several types of transactions have been exempted from the sales tax by the General Assembly of the State. Some of the current exemptions include the sale of:

(a) New or used house trailers, mobile homes, aircraft, motor vehicles, trailers or semi-trailers and a used house trailer, mobile home, aircraft, motor vehicle, trailer or semi-trailer is taken as a credit or part payment of the purchase price, when the total consideration is less than the following: \$2,000 for aircraft, house trailers and mobile homes (or \$10,000 in case the house trailer or mobile home is a "manufactured home"); and \$4,000 for motor vehicles, trailers and semi-trailers;

(b) Aircraft held for resale and used for rental or charter, whether by a business or an individual for a period not to exceed one year from the date of purchase of aircraft;

(c) Tangible personal property or services by churches, except where such organizations may be engaged in business for profit;

(d) Tangible personal property or services by charitable organizations, except where such organizations may be engaged in business for profit;

(e) Food in public, common, high school or college cafeterias and lunchrooms operated primarily for teachers and pupils, and not operated primarily for the public or for profit;

(f) Newspapers;

(g) Property or services to the United States Government; motor vehicles and adaptive equipment to disabled veterans who have purchased said vehicles or equipment with financial assistance of the Veterans Administration; tangible personal property to and leasing motor vehicles to the Boy Scouts of America, the Girl Scouts of America or any of the Scout Councils in the State; tangible personal property or service to the Salvation Army, Heifer Project International, Inc., or Habitat for Humanity; tangible personal property or service to the Boys Clubs of America or any local councils or organizations of the Boys Clubs of America, the Girls Clubs of America or any local councils or organizations of the Girls Clubs of America, to the Poets' Roundtable of Arkansas, to 4-H Clubs and FFA Clubs, to the Arkansas 4-H Foundation, the Arkansas Future Farmers of America Foundation and the Arkansas Future Farmers of America Association;

(h) Gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State, special fuel or petroleum products sold for consumption by vessels, barges and other commercial watercraft and railroads, dyed distillable special fuel on which a tax has been paid and biodiesel fuel;

(i) Property resales to persons regularly engaged in the business of reselling the articles purchased;

(j) Advertising space in newspapers and publications and billboard advertising services;

(k) Gate admissions at State, district, county or township fairs or at any rodeo if the receipts derived from gate admissions to the rodeo are used exclusively for the improvement, maintenance and operation of such rodeo, and if no part of the net earnings thereof inures to the benefit of any private stockholder or individual;

(l) Property or services which the State is prohibited by the constitution or laws of the United States or by the constitution of the State from taxing or further taxing and tangible personal property exempted from taxation by the Arkansas Compensating (Use) Tax Act of 1949, as amended;

(m) Isolated sales not made by an established business;

(n) Cotton, seed cotton, lint cotton, baled cotton, whether compressed or not, or cotton seed in its original condition; seed for use in commercial production of an agricultural product or of seed; raw products from the farm, orchard or garden, where such sale is made by the producer of such raw products directly to the consumer and user; livestock, poultry, poultry products and dairy products of producers owning not more than five cows; and baby chickens;

(o) Foodstuffs to governmental agencies for free distribution to any public, penal and eleemosynary institutions or for free distribution to the poor and needy, and the rental or sale of medical equipment, for the benefit of persons enrolled in and eligible for Medicare or Medicaid programs;

(p) Tangible personal property or services provided to any hospital or sanitarium operated for charitable and nonprofit purposes or any nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium;

(q) Used tangible personal property when the used property was (1) traded in and accepted by the seller as part of the sale of other tangible personal property and (2) the Arkansas Gross Receipts Tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property; provided, however, this exemption does not apply to transactions involving used automobiles, used mobile homes, or used aircraft;

(r) Unprocessed crude oil;

(s) Tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing or packaging of articles of commerce at (i) new manufacturing or processing plants or facilities in the State or (ii) existing manufacturing or processing plants or facilities in the State if the tangible personal property is used to replace existing machinery and equipment;

(t) Property consisting of machinery and equipment required by State law or regulation to be installed and utilized by manufacturing or processing plants or facilities to prevent or reduce air and/or water pollution or contamination;

(u) Electricity used in the manufacture of aluminum metal by the electrolytic reduction process and sale of articles sold on the premises of the Arkansas Veterans Home;

(v) Automobile parts which constitute "core charges," which are received for the purpose of securing a trade-in for the article purchased;

(w) Bagging and other packaging and tie materials sold to and used by cotton gins for packaging and/or tying baled cotton and from the sale of twine which is used in the production of tomato crops;

(x) Prescription drugs by licensed pharmacists, hospitals, oncologists or dispensing physicians, and oxygen sold for human use on prescription of a licensed physician;

(y) Property or services to humane societies;

(z) Vessels, barges and towboats of at least fifty tons load displacement and parts and labor used in the repair and construction of the same;

(aa) Property or sales to all orphans' homes, or children's homes, which are not operated for profit and whether operated by a church, religious organization or other benevolent charitable association;

(bb) Agricultural fertilizer, agricultural limestone, agricultural chemicals, and water purchased from a public surface-water delivery project to reduce or replace water used for in-ground irrigation or reduce dependence on ground water for agriculture.

(cc) Sale of tickets or admissions, by municipalities and counties, to places of amusement, to athletic entertainment, recreational events, or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes, tickets, admissions, dues or fees;

(dd) New and used farm machinery and equipment;

(ee) New automobiles to a veteran of the United States Armed Services who is blind as a result of a service connected injury;

(ff) Motor vehicles sold to municipalities, counties, school districts, and state supported colleges and universities;

(gg) School buses sold to school districts and, in certain cases, to other purchasers providing school bus service to school districts;

(hh) Catalysts, chemicals, reagents, and solutions which are consumed or used by manufacturing or processing plants or facilities in the State in producing, manufacturing, fabricating, processing, or finishing articles of commerce or to prevent or reduce air or water pollution or contamination;

(ii) Feedstuffs used in the commercial production of livestock or poultry;

(jj) New custom manufactured homes constructed from materials on which the State sales tax has been paid;

(kk) The first 500 kilowatt hours of electricity per month and the total franchise tax billed to each residential customer whose household income is less than \$12,000 per year;

(ll) Electricity and natural gas to qualified steel manufacturers;

(mm) Tangible personal property lawfully purchased with food stamps, food coupons, food instruments or vouchers in connection with certain Federal programs;

(nn) Publications sold through regular subscriptions;

(oo) Tickets for admission to athletic events and interscholastic activities of public and private elementary and secondary schools in the State and tickets for admission to athletic events at public and private colleges and universities in the State;

(pp) Prescriptive adaptive medical equipment and prescriptive disposable medical equipment;

(qq) Insulin and test strips for testing blood sugar levels in humans;

(rr) Telephone instruments sent into the State for refurbishing or repair and then shipped back to the state of origin;

(ss) Industrial metal rollers sent into the State for repair or remanufacture and then shipped back to the state of origin;

(tt) New motor vehicles purchased by non-profit organizations and used for the performance of contracts with the Department of Human Services, and new motor vehicles purchased with Urban Mass Transit Administration funds if (i) the vehicles are purchased in lots of ten vehicles, (ii) meet minimum State specifications, and (iii) vehicles are used for transportation under the Department of Human Services' programs for the aging, disabled, mentally ill, and children and family services;

(uu) Motor fuels to owners or operators of motor buses operated on designated streets according to regular schedule and under municipal franchise which are used for municipal transportation purposes;

(vv) Parts or other tangible personal property incorporated into or which become a part of commercial jet aircraft component or subcomponents;

(ww) Transfer of fill material by a business engaged in transporting or delivering fill material;

(xx) Long-term leases, thirty days or more, of commercial trucks used for interstate transportation of goods under certain conditions;

(yy) Foodstuffs to nonprofit agencies;

(zz) Tangible personal property consisting of forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers or composites and which are destroyed or consumed during the manufacture of the item;

(aaa) Natural gas used as a fuel in the process of manufacturing glass;

(bbb) Sales to Fort Smith Clearinghouse;

(ccc) Substitute fuel used in producing, manufacturing, fabrication, assembling, processing, finishing or packaging of articles at manufacturing facilities or processing plants in the State;

(ddd) Railroad rolling stock used in transporting persons or property in interstate commerce;

(eee) Parts or other tangible personal property which become a part of railroad parts, railroad cars and equipment brought into the State for the purpose of being repaired, refurbished, modified or converted within the State;

(fff) Fire protection and emergency equipment to be owned by and exclusively used by a volunteer fire department, and supplies and materials to be used in the construction and maintenance of volunteer fire departments;

(ggg) Gas produced from biomass and sold for the purpose of generating energy to be sold to the gas producer;

(hhh) Fuel packaging materials sold to a person engaged in the business of processing hazardous and non-hazardous waste materials into fuel products at an approved site and machinery and equipment, including analytical equipment and chemicals used directly in the processing and packaging of hazardous and non-hazardous waste materials into fuel products at an approved site;

(iii) Electricity and natural gas used in the manufacturing of wall and floor tile by approved manufacturers;

(jjj) Textbooks, library books, and instructional materials purchased by an Arkansas school district or the State for free distribution to Arkansas schools or school districts;

(kkk) Tangible personal property or services to the Arkansas Symphony Orchestra, Inc.;

(lll) Electricity used for the production of chlorine and other chemicals using a chlor-alkali manufacturing process;

(mmm) Tangible personal property or services to a qualified museum;

(nnn) Livestock reproduction equipment or services;

(ooo) Natural gas and electricity used in the manufacturing of tires in the State;

(ppp) Thermal imaging equipment purchased by a county government for use by law enforcement aircraft;

(qqq) Tangible property or services to the Arkansas Search Dog Association, Inc.;

(rrr) Certain new or used trucks to be engaged in interstate commerce (this exemption will be effective on July 1, 2012);

(sss) Tangible personal property or services to the Arkansas Black Hall of Fame Foundation;

(ttt) Kegs purchased by a wholesale beer manufacturer and used to sell beer wholesale.

Reference is made to "The Arkansas Gross Receipts Act of 1941," Title 26, Chapter 52 of the Arkansas Code of 1987 Annotated, for more information concerning the sales tax.

Use Tax. The use tax portion of the Tax is levied on every person for the privilege of storing, using, distributing or consuming in the City any article of tangible personal property purchased for storage, use, distribution or consumption. The use tax applies to the use, distribution, storage or consumption of every article of tangible personal property except as hereinafter provided. The use tax does not apply to aircraft equipment, and railroad parts, cars, and equipment, nor to tangible personal property owned or leased by aircraft, automotive or railroad companies brought into the City solely and exclusively for refurbishing, conversion, or modification within the City or storage for use outside or inside the City regardless of the length of time any such property is so stored in the City. The use tax is levied on the following described tangible personal property:

(a) Tractors, trailers, semi-trailers, trucks, buses and other rolling stock, including replacement tires, used directly in the transportation of persons or property in intrastate or interstate common carrier transportations;

(b) Property (except fuel) consumed in the operation of railroad rolling stock;

(c) Transmission lines and pumping or pressure control equipment used directly in or connected to the primary pipeline facility engaged in intrastate or interstate common carrier transportation of property;

(d) Airplanes and navigation instruments used directly in or becoming a part of flight aircraft engaged in transportations of persons or property in regular scheduled intrastate or interstate common carrier transportation;

(e) Exchange equipment, lines, boards and all accessory devices used directly in and connected to the primary facility engaged in the transmission of messages;

(f) Transmission and distribution pipelines in pumping or pressure control and equipment used in connection therewith used directly in primary pipeline facility for the purpose of transporting and delivering natural gas;

(g) Transmission and distribution lines, pumping machinery and controls used in connection therewith in cleaning or treating equipment of primary water distribution system;

(h) Property of public electric power companies consisting of all machinery and equipment including reactor cores and related accessory devices used in the generation and production of electric power and energy and transmission facilities consisting of the lines, including poles, towers and other supporting structures, transmitting electric power and energy together with substations located on or attached to such lines;

- (i) Computer software; and
- (j) Tangible personal property provided to a financial institution.

Exemptions from Use Tax. Some of the property exempted from the use tax by the General Assembly of the State is as follows:

- (a) Property, the storage, use or consumption of which the State is prohibited from taxing under the Constitution or laws of the United States of America or the State;
- (b) Sales of tangible personal property in which the tax under the Arkansas Gross Receipts Act of 1941 is levied;
- (c) Tangible personal property which is exempted from the sales tax under the Arkansas Gross Receipts Act of 1941;
- (d) Feedstuffs used in the commercial production of livestock or poultry in the State;
- (e) Unprocessed crude oil;
- (f) Machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing or packaging of articles of commerce at manufacturing or processing plants or facilities in the State, including facilities and plants for manufacturing feed, processing of poultry and/or eggs and livestock and the hatching of poultry and such equipment is either (1) purchased to create or expand manufacturing or processing plants in the State, (2) purchased to replace existing machinery and used directly in producing, manufacturing, fabricating, assembling, processing, finishing or packaging of articles of commerce at manufacturing or processing plants in the State, or (3) required by State law to be installed and utilized by manufacturing or processing plants to prevent or reduce air and/or water pollution or contamination;
- (g) Custom manufactured homes constructed with materials on which the sales or use tax has once been paid;
- (h) Aircraft, aircraft equipment, railroad parts, cars, and equipment, and tangible personal property owned or leased by aircraft, airmotive, or railroad companies, brought into the State solely and exclusively for refurbishing, conversion, or modification or for storage for use outside or inside the State;
- (i) Vessels, barges, and towboats of at least 50 tons load displacement and parts and labor used in the repair and construction of them;
- (j) Motor fuels to the owners or operators of motor buses operated on designated streets according to regular schedule, under municipal franchise, which are used for municipal transportation purposes;
- (k) Agricultural fertilizer, agricultural limestone, agricultural chemicals, including agricultural pesticides and herbicides used in commercial production of agricultural products, and vaccines, medications, and medicinal preparations, used in treating livestock and poultry being grown for commercial purposes and other ingredients used in the commercial production of yeast;
- (l) All new and used motor vehicles, trailers or semi-trailers that are purchased for a total consideration of less than \$4,000;

(m) Any tangible personal property used, consumed, distributed, or stored in this State upon which a like tax, equal to or greater than the Arkansas Compensating (Use) Tax, has been paid in another state;

(n) Prescriptive adaptive medical equipment and prescriptive disposable medical equipment;

(o) Fire protection and emergency equipment to be owned by and exclusively used by a volunteer fire department, and supplies and materials to be used in the construction and maintenance of volunteer fire departments;

(p) Electricity and natural gas used in the manufacturing of wall and floor tile by approved manufacturers;

(q) Tangible personal property consisting of forms constructed of plaster, cardboard, fiberglass, natural fibers, synthetic fibers or composites and which are destroyed or consumed during the manufacture of the item;

(r) Natural gas used as a fuel in the process of manufacturing glass;

(s) Sales to Fort Smith Clearinghouse;

(t) Prepaid telephone calling cards or prepaid authorization numbers and the recharge of such cards or numbers;

(u) Foodstuffs to nonprofit agencies;

(v) Tangible personal property or services for a qualified museum;

(w) Certain new or used trucks to be engaged in interstate commerce (this exemption will be effective July 1, 2012); and

(x) Railroad rolling stock manufactured for use in transporting persons or property in interstate commerce.

Reference is made to "The Arkansas Compensating (Use) Tax Act of 1949," Title 26, Chapter 53 of the Arkansas Code of 1987 Annotated, for more information concerning the use tax.

EXHIBIT B
FORM OF BOND COUNSEL OPINION

May ___, 2012

BancorpSouth Bank
Stuttgart, Arkansas, as Trustee

Stephens Inc.
Little Rock, Arkansas

Morgan Keegan & Company, Inc.
Little Rock, Arkansas

Re: \$_____ City of Fort Smith, Arkansas Sales and Use Tax Refunding
and Improvement Bonds, Series 2012

Gentlemen:

We have acted as Bond Counsel in connection with the issuance by the City of Fort Smith, Arkansas (the "City") of \$_____ City of Fort Smith, Arkansas Sales and Use Tax Refunding and Improvement Bonds, Series 2012, dated May 1, 2012 (the "Series 2012 Bonds"). The Series 2012 Bonds are being issued to refund the City's 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, finance the costs of capital improvements, fund a debt service reserve and pay expenses of authorizing and issuing the Series 2012 Bonds. We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion, including particularly a certified copy of Ordinance No. _____ of the City adopted on _____, 2012, authorizing the issuance of the Series 2012 Bonds (the "Authorizing Ordinance"), and Ordinance No. 1-12 of the City adopted on January 3, 2012 (the "Tax Ordinance"), levying a 0.75% sales and use tax within the City (the "Tax").

As to questions of fact material to our opinion we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify such facts by independent investigation. Based on our examination, we are of the opinion, as of the date hereof and under existing law, as follows:

1. The Series 2012 Bonds have been lawfully authorized and issued under the Constitution and laws of the State of Arkansas now in force, including particularly Amendment No. 62 to the Constitution of the State of Arkansas and Title 14, Chapter 164, Subchapter 3 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation"), and are valid and binding obligations of the City enforceable in accordance with their terms.

2. The Series 2012 Bonds are not general obligations of the City but are special obligations payable from and secured by a pledge of collections of the Tax duly levied by the City under the authority of the Authorizing Legislation and the Tax Ordinance. The Series 2012 Bonds are not secured by any lien on or security interest in any physical properties of the City.

3. The interest on the Series 2012 Bonds (including any original issue discount properly allocable thereto) is excludable from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on certain corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. The opinions

set forth in the preceding sentence are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Series 2012 Bonds in order that interest thereon be (or continue to be) excluded from gross income for federal income tax purposes. The City has covenanted in the Authorizing Ordinance to comply with all such requirements. Failure to comply with certain of such requirements could cause the interest on the Series 2012 Bonds to be so included in gross income retroactive to the date of issuance of the Series 2012 Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Series 2012 Bonds.

4. The Series 2012 Bonds and income thereon are exempt from all Arkansas state, county and municipal tax. It is to be understood that the rights of the registered owners of the Series 2012 Bonds and the enforceability thereof may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and that their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of equity.

Sincerely yours,

FRIDAY, ELDREDGE & CLARK, LLP

BOND PURCHASE AGREEMENT

\$_____ City of Fort Smith, Arkansas
Sales and Use Tax Refunding and Improvement Bonds,
Series 2012

City of Fort Smith, Arkansas
Attention: Mayor

April 17, 2012

Gentlemen:

The undersigned Stephens Inc. and Morgan Keegan _____ (collectively, the "Underwriter"), hereby offers to enter into this Bond Purchase Agreement (the "Agreement") with you, the City of Fort Smith, Arkansas (the "Issuer"), for the purchase by the Underwriter and the sale by you of the Bonds of the Issuer more particularly described below. Upon approval by you and by the execution of the acceptance hereof by the Mayor this Agreement shall be in full force and effect in accordance with its terms and shall be valid, binding and enforceable upon both the Issuer and the Underwriter. The further terms of this Agreement are:

1. Upon the terms and conditions and upon the basis of the representations herein set forth, the Underwriter hereby agrees to purchase from the Issuer and the Issuer hereby agrees to sell to the Underwriter the entire principal amount of an issue of bonds designated "City of Fort Smith, Arkansas Sales and Use Tax Refunding and Improvement Bonds, Series 2012" (the "Bonds") to be issued under and secured by Ordinance No. _____ of the Issuer (the "Bond Ordinance") substantially in the form heretofore delivered by you to the Underwriter, with only such changes therein as shall be mutually agreed upon between the Issuer and the Underwriter.

2. The Bonds are being issued for the purpose of refunding the City's 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 (collectively, the "Refunded Bonds") and financing the costs of wastewater improvements, water improvements, firefighting improvements and aquatic center improvements for the Issuer (collectively, the "Project"), funding a debt service reserve and paying costs incidental thereto and to the issuance of the Bonds.

3. The Bonds shall be secured by a first and prior pledge of a city-wide 0.75% sales and use tax (the "Tax"), levied by Ordinance No. 1-12 of the Issuer, adopted January 3, 2012 (the "Tax Ordinance"), and approved by the voters of the Issuer for the payment of the Bonds at a special election held March 13, 2012.

4. The Bonds shall be dated May 1, 2012. Interest on the Bonds shall be payable on May 1 and November 1 of each year, commencing November 1, 2012. The Bonds shall be authorized in the principal amount of \$_____ bearing interest at the rates per annum and maturing on May 1 in each of the years and in the amounts as set forth in the schedule attached

hereto, Exhibit A. BancorpSouth Bank, Stuttgart, Arkansas shall be Trustee and Paying Agent for the Bonds (the "Trustee").

5. The Bonds shall be subject to redemption prior to maturity, shall be payable, and shall be as otherwise described in the Bond Ordinance and the Official Statement (identified in paragraph 7 below).

6. The Underwriter hereby agrees to purchase all of the Bonds from the Issuer and the Issuer hereby agrees to sell all of the Bonds to the Underwriter at a price of \$_____ (principal amount less Underwriter's discount of \$_____ plus net original issue premium of \$_____), plus interest accrued thereon from May 1, 2012 to the date of Closing as hereinafter defined. The sale and purchase of the Bonds shall take place at a closing (the "Closing") at 10:00 a.m., prevailing local time, on May 22, 2012, or at such other time or on such earlier or later date as is mutually agreed upon, and at the offices of Friday, Eldredge & Clark, LLP, 400 West Capitol Avenue, Suite 2000, Little Rock, Arkansas. The Issuer will cause the Trustee to authenticate and deliver the Bonds with CUSIP numbers to the Depository Trust Company, New York, New York ("DTC"), with instructions to place the Bonds in safekeeping and await further instructions from the Trustee. The Bonds shall be received by DTC not later than 1:15 P.M. Eastern Daylight Time on the last business day preceding the date of Closing. There shall be delivered to DTC one fully-registered, typewritten Bond certificate for each maturity and interest rate of the Bonds, in the aggregate principal amount of such maturity and interest rate, registered in the name of Cede & Co. At the Closing, and subject to satisfaction (or proper waiver by the Underwriter) of the conditions to its obligations to purchase the Bonds, the Underwriter will pay the purchase price of the Bonds by wire transfer of immediately available funds to the order of the Trustee for the account of the Issuer. Upon receipt of the purchase price, the Trustee shall authorize DTC to release the Bonds to the Underwriter.

7. The Issuer has delivered to the Underwriter, prior to the date of this Agreement, a Preliminary Official Statement relating to the Bonds dated April 11, 2012 (the "Preliminary Official Statement"). In accordance with Rule 15c2-12 of the Securities Exchange Act of 1934, as amended (the "Rule"), the Issuer deems the Preliminary Official Statement final as of its date, except for omissions of no more than the following information: the offering prices, interest rates, Underwriter's discount, aggregate principal amount per maturity, rating, delivery date, and other terms of the Bonds depending on such matters.

8. Should the Issuer fail to cause the Trustee to deliver the Bonds to DTC as provided herein, or should the Issuer be unable to satisfy the conditions set forth in this Agreement (unless waived by the Underwriter), or should any obligation of the Underwriter hereunder be terminated for any reason permitted by this Agreement, except as set forth in Paragraph 16 hereof, neither party hereto shall have any further rights against the other hereunder. The Underwriter and the Issuer understand that in any of such events the Issuer's and

the Underwriter's actual expenses, costs, or damages may be unequal, and any such amounts incurred by either party may be greater or may be less than those amounts incurred by the other. Accordingly, and subject to Paragraph 16, the Underwriter hereby waives any right to claim that the Underwriter's actual expenses, costs, or damages are or will be greater than the actual expenses, costs, or damages incurred or suffered by the Issuer, and the Issuer hereby waives any right to claim that the Issuer's actual expenses, costs, or damages are or will be greater than any actual expenses, costs, or damages incurred or suffered by the Underwriter, and neither party shall be entitled to claim any damages from the other.

9. The Issuer will sell the Bonds to the Underwriter and the Underwriter will make a public offering thereof in reliance upon representations and agreements herein set forth solely pursuant to the Official Statement hereinafter described at the initial offering price or yields set forth in the Official Statement, reserving, however, the right to change such initial offering prices as the Underwriter shall deem necessary in connection with the marketing of the Bonds. The Issuer shall deliver or cause to be delivered to the Underwriter, within seven (7) business days after acceptance of this Agreement, at least 100 copies of the Official Statement, substantially in the form of the Preliminary Official Statement, with only such changes therein as shall be accepted by us (such Official Statement with such subsequent modifications and changes, if any, and including the cover page and all appendices, exhibits, reports and statements included therein or attached thereto being herein called the "Official Statement"), signed on behalf of the Issuer by its Mayor. The Issuer authorizes the use of copies of the Official Statement and Bond Ordinance in connection with the public offering and sale of the Bonds. The Issuer ratifies the lawful use by the Underwriter prior to the date hereof of the Preliminary Official Statement.

10. The Issuer represents and warrants to, and agrees with, the Underwriter that:

(a) The Issuer is a city of the first class, duly organized and existing under the laws of the State of Arkansas, and has, and at the date of Closing will have, full legal right, power, and authority (i) to enter into this Agreement, (ii) to adopt the Bond Ordinance and the Tax Ordinance (the "Ordinances"), (iii) to issue, sell, and deliver the Bonds to the Underwriter as provided herein, (iv) to levy and pledge the Tax, and (v) to carry out and consummate the transactions contemplated by this Agreement, the Ordinances, and the Official Statement;

(b) The Issuer has complied, and will at the Closing be in compliance, in all respects, with 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");

(c) By adoption of the Bond Ordinance, pursuant to the Authorizing Legislation, the Issuer has duly authorized and approved the Official Statement, has duly authorized and approved the execution and delivery of, and the performance by the Issuer of the obligations

contained in the Bonds and this Agreement and has duly authorized the consummation by it of all other transactions contemplated by the Official Statement. When delivered to and paid for by the Underwriter at the Closing in accordance with the provisions of this Agreement, the Bonds will have been duly authorized, executed, authenticated, issued, and delivered and will constitute valid and binding obligations of the Issuer in accordance with their terms, in conformity with the Authorizing Legislation, entitled to the benefit and security of the Bond Ordinance;

(d) The execution and delivery of this Agreement, the Bonds, the adoption of the Ordinances, the levy of the Tax and the carrying out and consummation of the transactions contemplated by the Official Statement, will not conflict with or constitute a breach of or default under any applicable law of administrative regulation of the State of Arkansas or the United States or any judgment or decree or any agreement or other instrument to which the Issuer is a party or is otherwise subject;

(e) At the time of the Issuer's acceptance hereof and at all times subsequent thereto, to and including the time of the Closing, the Official Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(f) The Issuer will immediately notify the Underwriter of any adverse change of a material nature in the financial or economic condition of the Issuer;

(g) There is no action, suit, proceeding, or investigation involving the Issuer before or by any court, public board, or body pending or, to the knowledge of the Issuer, threatened wherein an unfavorable decision, ruling, or finding would: (i) affect the creation, organization, existence or powers of the Issuer or the titles of its officials to their offices, (ii) enjoin or restrain the issuance, sale, and delivery of the Bonds or the collection of the Tax or the pledge thereof, (iii) in any way question or affect any of the rights, powers, duties, or obligations of the Issuer with respect to the Tax, (iv) in any way question or affect any authority for the issuance of the Bonds or the validity or enforceability of the Bonds or the Ordinances, or (v) in any way question or affect this Agreement or the transactions contemplated by this Agreement, the Official Statement, the Bond Ordinance or any other agreement or instrument relating thereto to which the Issuer is a party;

(h) The Issuer shall enter into a Continuing Disclosure Agreement (the "Disclosure Agreement") with the Trustee, as Dissemination Agent, as required by the Rule, and as described in the Official Statement;

(i) The Issuer is now, and will on the date of the Closing be, in compliance with its obligations under the continuing disclosure undertakings to which it is a party with respect to its bonds pursuant to the Rule. For the past five years, the Issuer has been in

compliance in all material respects with its continuing disclosure undertakings to which it is a party with respect to its bonds pursuant to the Rule;

(j) The Tax has been duly levied under the Tax Ordinance, and the collections of such Tax have been duly pledged to the payment of the Bonds under the Bond Ordinance pursuant to the authority granted by the Authorizing Legislation; and

(k) The Issuer will furnish such information, execute such instruments, and take such other action in cooperation with Underwriter, as the Underwriter may reasonably request, to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States of America as the Underwriter may designate and will assist, if necessary therefor, in the continuance of such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that Issuer shall not be required to qualify as a foreign corporation or to file any general consents to service of process under the laws of any state.

11. The Issuer covenants and agrees with the Underwriter that:

(a) It will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement or any part thereof. If between the date of this Agreement and twenty-five (25) days after the end of the underwriting period an event occurs which is materially adverse to the purpose for which the Official Statement is to be used and is not disclosed in the Official Statement, or if there shall exist any event which in the reasonable judgment of the Underwriter makes untrue or incorrect in any material respect any statement or information contained in the Official Statement, or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect, the Issuer will supplement or amend the Official Statement in a form and in a manner approved by the Underwriter, the expense of which shall be paid by the Issuer. The "end of the underwriting period" shall mean the later of (i) the date of the delivery of the Bonds by the Issuer to the Underwriter, or (ii) the date the Underwriter no longer retains (directly or as a syndicate member) an unsold balance of the securities for sale to the public. The Underwriter agrees to notify the Issuer in writing when the underwriting period has ended and if no such notification is given within twenty-five (25) days after the date of the Closing, the Issuer may assume that the underwriting period ended on the day of the Closing;

(b) It will indemnify and hold harmless the Underwriter and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) the Underwriter against any and all losses, claims, damages, and liabilities of any kind, including the expenses of defense thereof, (i) arising out of any statement or information contained in the Official Statement relating to the Issuer, the Bond Ordinance, the Bonds, security for the Bonds, the Tax and use of Bond proceeds that is untrue or incorrect in any material respect or the omission from the Official Statement of any statement or information relating to the Issuer, the

Bonds, security for the Bonds, the Tax, use of Bond proceeds and the Bond Ordinance, which is necessary to make the statements therein not misleading in any material respect, and (ii) to the extent of the aggregate amount paid in settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or omission if such settlement is effected with the written consent of the Issuer (which consent shall not be unreasonably withheld). In case any claim shall be made or action brought against the Underwriter or any controlling person (as aforesaid) based upon the Official Statement, in respect of which indemnity may be sought against the Issuer, the Underwriter shall notify the Issuer in writing within 15 days of the claim being received in writing by the Underwriter, setting forth the particulars of such claim or action, and the Issuer shall assume the defense thereof, including the retaining of counsel and the payment of all expenses. The Underwriter or any such controlling person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the Underwriter's expense or the expense of such controlling person unless the retaining of such counsel has been specifically authorized by the Issuer.

12. The Underwriter has entered into this Agreement in reliance upon the representations and agreements of the Issuer herein and the performance by the Issuer of its obligations hereunder, both as of the date hereof and as of the Closing. The Underwriter's obligations under this Agreement are and shall be subject to the following further conditions:

(a) At the Closing, the Ordinances shall be in full force and effect and shall not have been amended, modified or supplemented after the date hereof except as may have been agreed to by the Underwriter, and the Issuer shall have duly adopted and there shall be in full force and effect such other ordinances and resolutions as, in the opinion of Friday, Eldredge & Clark, LLP, Little Rock, Arkansas ("Bond Counsel"), and the Underwriter, shall be necessary in connection with the transactions contemplated hereby;

(b) The representations and warranties of the Issuer contained herein shall be true, complete, and correct on the date hereof and on and as of the date of the Closing, as if made on and as of the date of the Closing;

(c) At or prior to the Closing, the Underwriter shall have received the following:

(1) The Official Statement of the Issuer executed on behalf of the Issuer by its Mayor;

(2) The Ordinances, certified by the Issuer under its seal as having been duly adopted and as being in full force and effect, with only such amendments as may have been agreed to by the Underwriter;

(3) An unqualified approving opinion, dated the date of the Closing, of Bond Counsel, in form and substance satisfactory to the Underwriter, and a supplemental opinion of Bond Counsel, dated the date of the Closing, in form and substance satisfactory to the Underwriter, to

the effect that, (i) this Agreement has been duly authorized, executed, and delivered by the Issuer and, assuming due execution by the Underwriter, and subject to the extent that (A) the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and (B) that the rights to indemnification hereunder may be limited by federal or state securities laws or public policy underlying such laws and may not be enforceable, constitutes a valid and binding agreement in accordance with its terms, (ii) the Issuer has ratified the distribution of the Preliminary Official Statement; (iii) the Bond Ordinance conforms as to form and tenor with the terms and provisions thereof as summarized and set out in the Official Statement, (iv) that the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Bond Ordinance is exempt from qualification under the Trust Indenture Act of 1939, as amended, and (v) the Disclosure Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due execution by the Trustee, and subject to the extent that (A) the enforceability of the rights and remedies set forth therein might be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and (B) that the right to indemnification thereunder may be limited by federal and state securities laws or public policy underlying such laws and may not be enforceable, constitutes a valid and binding agreement in accordance with its terms. In addition, such counsel shall state in the opinion or in a separate letter, or letters, dated the date of the Closing and addressed to the Underwriter, that based upon the examinations which they have made as Bond Counsel, which shall be specified, nothing has come to their attention which would lead them to believe that the Official Statement (except for the statistical data included in the Official Statement, as to which no view need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(4) A certificate dated the date of the Closing and signed by the Mayor, City Administrator and City Clerk of the Issuer to the effect that, (i) the representations and warranties of the Issuer contained herein are true and correct in all material respects on and as of the date of the Closing as if made on the date of the Closing, (ii) there is no action, suit, proceeding, or investigation involving the Issuer before or by any court or public board or body pending or, to the knowledge of the Issuer, threatened wherein an unfavorable decision, ruling, or finding would: (A) affect the creation, organization, existence, or powers of the Issuer or the titles of its officials to their respective offices, (B) enjoin or restrain the issuance, sale, and delivery of the Bonds, the collection of the Tax or the pledge thereof or the accomplishment of the Project or the refunding of the Refunded Bonds, (C) in any way question or affect any of the rights, powers, duties, or obligations of the Issuer with respect to the Tax, (D) in any way question or affect any authority for the issuance of the Bonds or the validity or enforceability of the Bonds, the Tax or the Ordinances, or (E) in any way question or affect this Agreement or the transactions contemplated hereby, or by the Official Statement, or any other agreement or instrument to which the Issuer is a party and relating to the Bonds, (iii) the Issuer has complied with all agreements and covenants and satisfied all conditions on its part to be complied with or

satisfied at or prior to the Closing, and (iv) to the best of their knowledge, neither the Official Statement nor any amendment or supplement thereto, as of their issue dates, contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading;

(5) An opinion of Daily & Woods, P.L.L.C., dated the date of Closing, in form and content satisfactory to the Underwriter;

(6) The Disclosure Agreement shall have been executed by the Issuer and the Trustee, with only such amendments as may have been agreed to by the Underwriter;

(7) A verification report from an accountant acceptable to the Underwriter regarding the defeasance of the Refunded Bonds;

(8) Evidence that as of the Closing, the Bonds are rated "_____" by Standard & Poor's; and

(9) Such additional legal opinions, certificates, proceedings, instruments, and other documents as Bond Counsel or the Underwriter may reasonably request to evidence compliance by the Issuer with legal requirements, the truth and accuracy, as of the time of Closing, of the representations of the Issuer herein contained, and the due performance or satisfaction by the Issuer at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer.

All of the opinions, letters, certificates, instruments, and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter and its counsel. The performance of any and all obligations of the Issuer under this Agreement and the performance of any and all conditions contained herein for the benefit of the Underwriter may be waived by the Underwriter in its sole discretion.

If the Issuer shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of, and to pay for the Bonds contained in this Agreement, or if the obligations of the Underwriter to purchase, to accept delivery of, and to pay for the Bonds shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Underwriter nor the Issuer shall be under further obligation hereunder, except that the obligations of the Issuer and the Underwriter set forth in Paragraph 16 hereof shall continue in full force and effect.

13. The Underwriter and the Issuer shall each have the right to cancel and terminate its obligations under this Agreement at any time before the Closing if any of the following occurs (except only the Underwriter may cancel under (e) below):

(a) Legislation shall have been enacted by the Congress of the United States, or adopted by either House or any committee thereof, or a decision shall have been rendered by a court of the United States or the Tax Court of the United States, or a ruling shall have been made or regulations shall have been proposed or made by the Treasury Department of the United States, the Internal Revenue Service or any other governmental agency with respect to federal taxation upon revenues or other income of the general character to be derived by the Issuer or by any similar body, or upon interest received on obligations of the general character of the Bonds which, in the opinion of the Underwriter, materially adversely affects the market price of the Bonds or the market price generally of obligations of the general character of the Bonds; or

(b) Any legislation, ordinance, rule or regulation shall be enacted or be actively considered for enactment by any governmental body, department or agency of the State of Arkansas (excluding the Issuer), or a decision by any court of competent jurisdiction within the State of Arkansas shall be rendered which, in the opinion of the Underwriter, materially adversely affects the market price of the Bonds; or

(c) A stop order, ruling, regulation or official statement by or on behalf of the Securities and Exchange Commission shall be issued or made to the effect that the issuance, offering or sale of the Bonds, or of obligations of the general character of the Bonds, as contemplated hereby, is in violation of any provisions of the Securities Act of 1933, as amended, or the Trust Indenture Act of 1939, as amended; or

(d) (i) Any restriction on, or general suspension of, trading in securities on the New York Stock Exchange or any banking moratorium, or the establishment by the New York Stock Exchange, by the Securities and Exchange Commission, by any federal or state agency, or by the decision of any court, of any limitation on prices for such trading or (ii) any new outbreak of hostilities or other national or international calamity or crisis, the effect of which on the financial markets of the United States shall be such as to make it impracticable, in the reasonable judgment of the Underwriter, for the Underwriter to enforce contracts for the sale of the Bonds; or

(e) Any event or condition which, in the judgment of the Underwriter, renders untrue or incorrect, in any material respect as of the time the same purports to speak, the information, including the financial statements, contained in the Official Statement, or which requires that information not reflected in the Official Statement should be reflected therein in order to make the statements and information contained therein not misleading in any material respect as of such time; provided the Issuer and the Underwriter will use their best efforts to

amend or supplement the Official Statement to reflect, to the satisfaction of the Underwriter, such changes in or additions to the information contained in the Official Statement.

14. All notices, demands and formal actions hereunder will be in writing mailed, telegraphed or delivered to:

The Issuer: City of Fort Smith, Arkansas
Post Office Box 1908
Fort Smith, Arkansas 72902
Attention: Mayor

The Underwriter: Stephens Inc.
Post Office Box 3507
Little Rock, Arkansas 72203
Attention: Dennis R. Hunt

15. All representations, warranties and covenants of the Issuer contained herein shall remain operative and in full force and shall survive (a) the execution and delivery of this Agreement, (b) any investigation made by or on behalf of the Underwriter, (c) the purchase of the Bonds hereunder, and (d) any disposition of or payment for the Bonds.

16. (a) The Underwriter shall be under no obligation to pay, and the Issuer shall pay (from proceeds of sale of the Bonds or otherwise), any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to: (i) the fees and disbursements of Bond Counsel, (ii) the fees and disbursements of the Issuer's counsel or accountants, and of any other experts or consultants retained by the Issuer, (iii) charges for obtaining CUSIP numbers for the Bonds, (iv) the cost of preparation and printing of this Agreement, the Bonds, the Preliminary Official Statement, and the Official Statement, (v) the Trustee's fees and expenses, (vi) legal publication costs, (vii) the Underwriter's fees payable to DTC relating to the underwriting of the Bonds; (viii) the Underwriter's ticket and day loan charges and other costs of the Closing and delivering the Bonds; (ix) fees of the escrow agents and trustees for the Refunded Bonds and (x) rating fees of Standard & Poor's.

(b) The Underwriter shall pay: (i) the cost of preparation and printing of Blue Sky and Legal Investment Surveys, (ii) all advertising expenses in connection with the public offering of the Bonds, (iii) the cost of the preparation and printing of any amendment or supplement to the Official Statement resulting from a determination by the Underwriter to change the initial offering prices or yields set forth in the Official Statement, and (iv) other expenses associated with the public offering and distribution of the Bonds except as described above.

17. This Agreement may be executed in any number of counterparts with each executed counterpart constituting an original but all of which together shall constitute one and the same instrument.

18. This Agreement will inure to the benefit of and be binding upon the parties hereto and their successors and will not confer any rights upon any other person. This Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas.

STEPHENS INC.
MORGAN KEEGAN _____

By STEPHENS INC.

By _____
Authorized Representative

ACCEPTED this ____ day of _____, 2012.

CITY OF FORT SMITH, ARKANSAS

By _____
Mayor

EXHIBIT A

Year
(May 1)

Amount

Interest Rate

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the "Disclosure Agreement") is executed and delivered by the City of Fort Smith, Arkansas (the "Issuer") and BancorpSouth Bank, Stuttgart, Arkansas (the "Trustee") in connection with the issuance of the Issuer's Sales and Use Tax Refunding and Improvement Bonds, Series 2012 (the "Bonds"). The Bonds are being issued pursuant to Ordinance No. _____ of the Issuer, adopted _____, 2012 (the "Authorizing Ordinance"). The Issuer and the Trustee covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer and the Trustee for the benefit of the Beneficial Owners of the Bonds and in order to assist the Participating Underwriter in complying with the Securities and Exchange Commission, Rule 15c2-12(b)(5).

SECTION 2. Definitions. In addition to the definitions set forth in the Authorizing Ordinance, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

"Beneficial Owner" of a Bond shall mean any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

"Dissemination Agent" shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

"EMMA" shall mean the Electronic Municipal Market Access system as described in 1934 Act Release No. 59062 and maintained by the MSRB for purposes of the Rule.

"Listed Events" shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

"MSRB" shall mean the Municipal Securities Rulemaking Board.

"Official Statement" shall mean the Official Statement of the Issuer describing the Bonds, dated April 24, 2012.

"Participating Underwriter" shall mean any of the original underwriter of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Rule" shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as modified by Rule 15c2-12(d)(2), as the same may be amended from time to time.

"Tax" shall mean the 0.75% sales and use tax levied by the Issuer and pledged to the Bonds within the Authorizing Ordinance.

SECTION 3. Provision of Annual Report. (a) The Issuer shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the Issuer's fiscal year (presently December 31), commencing with the 2012 fiscal year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date, but shall be submitted within 30 days of becoming available. If the fiscal year of the Issuer changes, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5(b).

(b) Not later than fifteen (15) days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Issuer shall provide the Annual Report to the Dissemination Agent and the Trustee (if the Trustee is not the Dissemination Agent). If by such date, the Trustee has not received a copy of the Annual Report, the Trustee shall contact the Issuer and the Dissemination Agent to determine if the Issuer is in compliance with the first sentence of this subsection (b).

(c) If the Trustee is unable to verify that an Annual Report has been provided to the MSRB by the date required for such part in subsection (a), the Trustee shall send a notice to the MSRB in substantially the form as prescribed by the MSRB.

(d) The Dissemination Agent shall file a report with the Issuer and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Report has been provided pursuant to this Disclosure Agreement and stating the date it was provided.

(e) As and to the extent an Annual Report or Notice of Listed Event is required to be filed under this Disclosure Agreement, the Issuer shall submit such Annual Report or Notice of Listed Event to the MSRB through its continuing disclosure service portal provided through EMMA at <http://www.emma.msrb.org>, or any other similar system that is acceptable to the Securities and Exchange Commission. All documents provided to the MSRB pursuant to this Disclosure Agreement shall be in an electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

SECTION 4. Content of Annual Reports. The Issuer's Annual Report shall contain or incorporate by reference the following:

1. Information of the type set forth in the Official Statement under the caption "THE CITY AND THE COUNTY" with respect to (i) the Issuer and County population in the latest year for which available and the four previous years for which figures are available; (ii) unemployment rates in the latest year for which available and the four previous years; and (iii) major employers at the Issuer on the date of the report.

2. Tax receipts for the latest calendar year and the four (4) previous years, if available.

3. The annual audit of the Issuer prepared in accordance with Government Auditing Standards issued by the Comptroller General of the United States and applicable state law.

Any or all of the items above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or related public entities, which are available to the public on the MSRB's internet website or filed with the Securities and Exchange Commission. The Issuer shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Significant Events.

(a) This Section 5 shall govern the giving of notices of the occurrence of any of the following events:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults.
3. Unscheduled draws on debt service reserves reflecting financial difficulties.
4. Unscheduled draws on credit enhancements reflecting financial difficulties.
5. Substitution of credit or liquidity providers, or their failure to perform.

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax-exempt status of the security.

7. Modification to rights of security holders, if material.
8. Bond calls (excluding mandatory sinking fund redemptions), if material.
9. Defeasances and tender offers.

10. Release, substitution, or sale of property securing repayment of the securities, if material.

11. Rating changes.

12. Bankruptcy, insolvency, receivership or similar event of the obligated person.

13. The consummation of a merger, consolidation or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

14. Appointment of a successor or additional trustee or the change of name of a trustee, if material.

(b) After the occurrence of a Listed Event (excluding an event described in (a)8 above), the Issuer shall promptly notify the Dissemination Agent (if other than the Issuer) in writing. Such notice shall instruct the Dissemination Agent to report the occurrence.

(c) After the occurrence of a Listed Event (excluding an event described in (a)8 above), whether by notice from the Trustee or otherwise, the Issuer shall file (or cause the Dissemination Agent to file), in a timely manner not in excess of ten (10) business days after the occurrence of such Listed Event, a notice of such occurrence with the MSRB, through its continuing disclosure service portal provided through EMMA at <http://www.msrb.emma.org> or any other similar system that is acceptable to the Securities and Exchange Commission, with a copy to the Trustee (if the Trustee is not the Dissemination Agent). Each notice of the occurrence of a Listed Event shall be captioned "Notice of Listed Event" and shall be filed in electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB. In the event of a Listed Event described in (a)8 above, the Trustee shall make the filing and notice thereof need not be given under this subsection any earlier than the notice for the underlying event is given to registered owners of affected Bonds pursuant to the terms of the Authorizing Ordinance.

SECTION 6. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Agreement shall terminate upon the defeasance, prior redemption or payment in full of all the Bonds.

SECTION 7. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent. The initial Dissemination Agent shall be the Trustee.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Issuer and the Trustee may amend this Disclosure Agreement, and any provisions of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5, it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Beneficial Owners of the Bonds in the same manner as provided in the Authorizing Ordinance for amendments to the Authorizing Ordinance with the consent of Beneficial Owners, or (ii) does not, in the opinion of the Trustee, materially impair the interests of the Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason of the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

SECTION 10. Default. In the event of a failure of the Issuer or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee, the Issuer or any Beneficial Owner

may (and the Trustee, at the request of the Participating Underwriter or the Beneficial Owners of at least 25% aggregate principal amount of outstanding Bonds, shall) take such actions as may be necessary and appropriate, including seeking mandamus or specific performance by court order, to cause the Issuer, the Dissemination Agent or the Trustee, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed a default under the Authorizing Ordinance, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer, the Dissemination Agent or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties of Trustee and Dissemination Agent and Right of Indemnity. The Dissemination Agent (if other than the Trustee) and the Trustee in its capacity as Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent and the Trustee, their officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of their powers and duties hereunder, including the costs and expenses (including attorney's fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's or the Trustee's negligence or omissions. The obligations of the Issuer under this Section shall survive resignation or removal of the Trustee or the Dissemination Agent and payment of the Bonds.

SECTION 12. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Trustee, the Dissemination Agent, the Participating Underwriter and the Beneficial Owners and shall create no rights in any other person or entity.

SECTION 13. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated: May 1, 2012.

CITY OF FORT SMITH, ARKANSAS

By _____
Mayor

BANCORPSOUTH BANK
Stuttgart, Arkansas

By _____
Authorized Officer

ORDINANCE NO. _____

2

**AN ORDINANCE REPEALING AND REPLACING
SECTION 2-44(b) OF THE FORT SMITH MUNICIPAL CODE**

BE IT ORDAINED AND ENACTED by the Board of Directors of the City of Fort Smith, Arkansas, that:

SECTION 1: Section 2-44(b) of the Fort Smith Municipal Code is hereby repealed in its entirety and replaced with the following language:

Following adjournment of the regular board meeting held on the first Tuesday of each month (or, if applicable, to its rescheduled date), the board shall conduct an informal town hall meeting at which citizens may introduce matters involving city government to the board of directors. If a matter presented by a citizen requires consideration of possible action by the board of directors or the city administrator, the matter shall be handled in accordance with subsection 2-44(a).

SECTION 2: Emergency Clause. The immediate effectiveness of this Ordinance establishing procedures for the governing body of the City is required to provide for the orderly conducting of the affairs of the governing body and the City. Therefore, an emergency is declared, and this Ordinance shall be in full force and effect immediately upon its passage and approval.

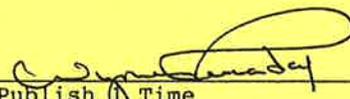
PASSED and APPROVED this _____ day of April, 2012.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



Publish () Time



MEMORANDUM

April 12, 2012

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Citizens Forum

Attached is an ordinance which deletes section 2-44(b) of the municipal code, citizens forum, and replaces it with an informal town hall meeting. The informal town hall meeting would be held following adjournment of regular board meetings on the first Tuesday of each month.

This new format will allow for dialogue between citizens and board members about issues of concern to citizens. Matters requiring follow up would be referred to the city administrator and scheduled for a future board meeting, if necessary. The staff recommends approval of the ordinance.

A handwritten signature in cursive script that reads "Ray".

Attachment

1

MEMORANDUM

To: Ray Gosack, City Administrator
From: Sherri Gard, City Clerk
Date: April 4, 2012
Re: Citizen Participation at Board Meetings

At the February 7, 2012 regular meeting, Director Settle requested information be gathered from other cities regarding citizen participation at board meetings. A survey was forwarded to the six (6) largest populated cities in Arkansas, i.e. Little Rock, Fayetteville, Springdale, Jonesboro, North Little Rock and Conway. A spreadsheet has been prepared with the responses received and is attached for review.

Also attached are excerpts from the Fort Smith Municipal Code regarding citizen participation at regular or special meetings of the Board of Directors. Section 2-37(b) relates to citizen comment on agenda items for regular and special meetings. Section 2-37(b) relates to the Citizens Forum, which occurs only at regular meetings.

If you have any questions, please let me know.

Citizen Participation and Televised Meeting Survey

March 2012

- Revised -

Survey Questions		Little Rock Pop. 193,524	Fayetteville Pop. 73,580	Springdale Pop. 69,797	Jonesboro Pop. 67,263	North Little Rock Pop. 62,304	Conway Pop. 58,908
1	Citizens allowed to speak on agenda items?	Yes	Yes	Yes	Yes	Yes	Yes
1A	If so, set time limit?	No	No	No	5 minutes, 15 total	3 minutes	No
2	Citizens allowed to speak on non-agenda items?	Yes	No	Yes	Yes	Yes	No
2A	If so, set time limit?	3 minutes	N/A	No	5 minutes, 15 total	3 minutes	N/A
2B	If so, beginning or end of meeting?	End of meeting	N/A	Beginning of meeting	End of meeting	End of meeting	N/A
2C	If not, other public opportunity provided?	N/A	Quarterly town hall meeting	N/A	Committee meetings	N/A	No
3	Meetings televised?	Yes	Yes	Yes	Yes	Yes	Yes
3A	If so, gavel to gavel coverage?	Yes	Yes	Yes	Yes	Yes	Yes
3B	If so, broadcast live and/or rebroadcast?	Live & rebroadcast	Live & rebroadcast online	Rebroadcast only	Live only	Live & rebroadcast online	Live & rebroadcast
3C	If so, city funded or other entity?	City (franchise fees)	City	City	City	City & cable provider	City (publicly owned cable company)
4	Allow private recording of meetings by citizens?	Yes	Yes	Yes	Yes	Yes	Yes
4A	If so, rules or guidelines established?	No	No	No	Being developed	No	No

Sec. 2-37. Agenda consideration at opening of meeting; public comment on agenda items.

- (a) After each regular or special meeting of the board of directors is called to order and the roll is called, the mayor shall inquire of the members of the board of directors if any director desires to present any item of business or other matter to the board during the meeting, or which is not already on the agenda of a regular or special meeting. If the mayor receives an affirmative response, the subject of all such items of business or matters for consideration shall be promptly determined. No person, except a member of the board of directors, shall be permitted by the mayor to discuss any item of business or other matter presented at the meeting for a place on the agenda until the item of business is placed on the agenda, or other matter is approved by the board for presentation at the meeting. The mayor shall submit separately to the board for vote without motion each item of business or other matter proposed by a director. A director presenting items requiring board action, but not placed on the agenda of the meeting at which presented, shall be told by the mayor that the item will be on the agenda for the next regular meeting of the board, unless removed by a majority of the board. At each regular or special meeting of the board the mayor may then ascertain the number of persons present for each item on the agenda and shall rearrange the order of the agenda subject to the approval of the board, so that the business of the largest groups of people present is first on the agenda.
- (b) After a motion is made and seconded for approval of each item on the agenda of any regular or special meeting of the board, and before such item is discussed by members of the board, the mayor shall inquire of those present if anyone has a statement to make concerning the item under consideration. An applicant before the board may have up to five (5) minutes to make an opening presentation. If a group of citizens opposes the applicant, they may have up to five (5) minutes to make an opposing presentation. Each side shall have up to three (3) minutes to make a rebuttal presentation. All other comments from citizens shall be limited to no more than two (2) minutes per citizen. Any of these time limits may be extended by a consensus of the members of the board. Citizen comments must be relevant to the agenda item under consideration.

(Ord. No. 24-10, § 1, 5-18-10)

Sec. 2-44. Citizen complaints and citizen initiated items of business.

(a) Any citizen having a complaint or an item of business with the city should present the complaint or the item of business to the city administrator's office for action prior to presentation of the complaint or item of business to the board of directors at a meeting. Before presentation of the complaint or item of business to the board of directors, the aggrieved citizen shall first notify the city administrator, or his designated representative, of the nature of the complaint, and the city administrator shall immediately cause an investigation to be made of the complaint or requested item of business and notify the citizen and board of directors of the results of the investigation and recommended action, if any. A citizen who remains aggrieved by the action of the city administrator may then present the matter to the board of directors at any subsequent regular meeting after giving notice to the city administrator at least seven (7) days before the regular meeting. The matter shall be scheduled as an item of business on the regular meeting agenda. The city administrator shall provide the board of directors with a briefing report on the citizen's request, any action taken by the city administrator or his staff, and other information deemed relevant by the city administrator. The citizen shall have up to three (3) minutes to present his or her request at the regular meeting. The board of directors may extend this time limit by its concurrence. After considering the citizen's request, the board of directors may:

- (1) Take any action it deems appropriate, consistent with applicable law;
- (2) Determine to not consider the matter any further;
- (3) Request additional information from the citizen or the city administrator;
- (4) Defer the matter for further consideration at a study session meeting or a subsequent regular meeting.

If the board of directors determines to not consider the matter any further, the city administrator shall not schedule on a regular, special or study session meeting agenda any identical or substantially similar request made by any citizen within one (1) year of the board of directors' determination to not consider the matter any further.

(b) At each regular meeting, there shall be an item on the agenda immediately preceding adjournment of the meeting, which item shall allow citizens to introduce matters to the board of directors. Each citizen shall have up to two (2) minutes to present his or her matters, which matters shall be limited to those involving the city government and shall not be directly related to items considered on that meeting's agenda. If a matter presented by a citizen requires consideration of possible action by the board of directors or the city administrator, the matter shall be handled in accordance with subsection 2-44(a).

(Ord. No. 24-10, § 1, 5-18-10)

RESOLUTION NO. _____

**A RESOLUTION REGARDING TELEVISIONING OF
BOARD OF DIRECTORS MEETINGS**

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

The City Administrator and his staff are hereby directed to take all steps necessary to accommodate the live telecasting of Board of Directors' regular meetings on the cable television government access channel; by delayed replays on said channel and the Internet; and by live-streaming on the Internet and live broadcast of the audio on KFPW radio, subject to the approval of Cox Communications to re-transmit the live signal on the Internet and on KFPW radio. The Board further determines that the recordings for replays shall not be edited.

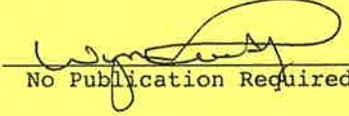
This Resolution passed this _____ day of April, 2012.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



No Publication Required



MEMORANDUM

April 12, 2012

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Televising Board Meetings

At the April 10th study session, the board determined to resume televising board meetings and for the city to bear the expense. The board was also interested in streaming the meetings live over the Internet and the audio on KFPW radio.

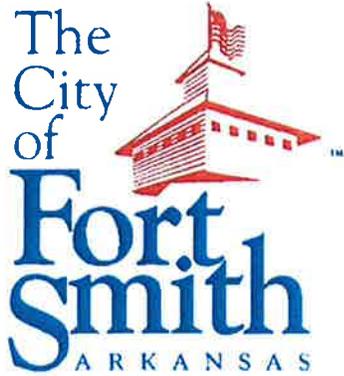
Attached is the following legislation to implement the board's directive.

- A) A resolution directing the city administrator to take all actions necessary to resume televising meetings, and to provide for live Internet streaming and for live broadcast of the audio on KFPW radio (subject to approval of Cox Communications). The resolution also provides that the recordings for replays won't be edited.
- B) An ordinance appropriating the funds needed for production company expenses for the remainder of 2012.
- C) An ordinance which amends the policies and procedures for the government access channel to recognize the televising of board meetings. The policy addresses the retention of video recordings of the board meetings.

777 Productions has said that they're available to provide production services beginning at the May 1st board meeting. Upon passage of the above legislation, the staff will contract with 777 Productions for its services to televise the board meetings.

Attachment

A handwritten signature in cursive script that reads "Ray".



April 10, 2012

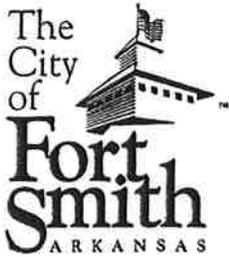
Interoffice Memorandum

To: Ray Gosack, City Administrator
From: Kara Bushkuhl, Director of Finance *KB*
Re: Televising Board Meetings

In order to provide funding to reinstate televising the Board of Directors meetings for the remainder of 2012, an appropriation is necessary. The attached ordinance will provide for a supplemental appropriation of \$18,000 for the Board of Directors program.

The ordinance states that the appropriation will be made from the General Fund because it is the "home" fund for the Board's program. The actual allocation will be: \$7,740 from the General Fund; \$1,440 from the Street Maintenance Fund; \$6,660 from the Water and Sewer Operating Fund; and \$2,160 from the Sanitation Operating Fund.

Please let me know if you require more information.



MEMORANDUM

April 4, 2012

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Televising Board Meetings

At the February 28th study session, directors Tyler and Catsavis asked for a study session to consider an offer from a local business to pay the cost of televising city board meetings. The interested sponsor was identified as Jerry Hamel. The televising of board meetings began in 2009. Funding for televising meetings was removed from the 2012 budget during the board's budget review meetings.

On March 15th, director Catsavis, Sherri Gard and I met with Jerry Hamel of Hamel Properties to discuss Mr. Hamel's offer to pay for televising the meetings. A summary of that meeting is attached. Mr. Hamel subsequently provided a written proposal to which I responded with additional inquiries. Mr. Hamel responded a few days later. Copies of those letters are attached.

We've also received a proposal from Pharis Broadcasting to air the board meetings live on KFPW radio for a cost of \$500 per meeting (\$12,000 per year). Pharis Broadcasting's proposal is attached.

REVIEW OF PROPOSALS

As the board reviews these proposals, questions and issues the board may wish to consider include:

- ▶ Is it appropriate to have sponsors for televising meetings of a governmental legislative body? Would the board's impartiality be called into question if one of the sponsors had a controversial item (such as a rezoning case) before the board?

- ▶ Mr. Hamel has said that in return for underwriting the cost of televising meetings, he expects to use that sponsorship in his advertising. However, it hasn't been stated which of his businesses would include this in its advertising. The proposal is from Hamel Properties, LLC. However, Mr. Hamel also owns C & H Tire Company. If the board proceeds with Mr. Hamel's offer, it should be clear which companies will be advertising the sponsorship of televising city board meetings. The board may also want to know the particulars of how this advertising will be done, e.g., which media, content, frequency, etc.
- ▶ Mr. Hamel has proposed that he will hire the production company. Is this arrangement acceptable to the board? Or, does the board prefer that the production company be under the city's direction? If this is the preferred approach, then satisfactory arrangements would need to be made with the sponsor for advance payment of the production costs to the city.
- ▶ The staff has contacted the production company, 777 Productions. The production company reports that Mr. Hamel has discussed with them paying the cost of production with 1 camera. When the city was paying the cost of televising meetings, 3 cameras were used. Is it acceptable to the board to have only 1 camera used to televise the meetings?

OPTIONS

The board may wish to consider the following options:

- 1) Proceed with televising board meetings as Mr. Hamel has proposed.
 - 1 camera
 - Hamel Properties employs the production company
 - sponsorship of televising meetings mentioned in business advertising
- 2) Proceed with televising board meetings with different arrangements with Mr. Hamel. The number of cameras, arrangements for payment, and the parameters of sponsorship advertising would need to be determined.
- 3) Restore to the 2012 budget funding by the city for televising board meetings. Cost options are attached.

Our most significant General Fund revenue, sales tax, is 6.95% higher than budgeted for the first 2 months of 2012. If this trend continues throughout the year, we will see an additional \$1,060,000 in sales tax revenue above what was budgeted. However, the trend may not continue for the remaining 10 months of 2012.

- 4) Consider restoring funding by the city to the budget in July as decided at the January 10th study session. This would allow time to see if the trend of increased sales tax revenue continues, make certain other significant General Fund revenues aren't below budget, and gauge how rising fuel prices will affect the 2012 budget.
- 5) Accept the proposal of Pharis Broadcasting to air the meetings on KFPW radio at a cost of \$500 per meeting.

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

Attachments

cc: Jerry Hamel, Hamel Properties, LLC
Bill Pharis, Pharis Broadcasting

Gosack, Ray

From: Gosack, Ray
Sent: Thursday, March 15, 2012 10:58 AM
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: Gard, Sherri
Subject: Televising Board Meetings

George Catsavis, Sherri Gard, and I met this morning with Jerry Hamel to discuss his interest in paying for televising city board meetings. Mr. Hamel will submit a written proposal by April 1st, which is scheduled for consideration at the April 10th board study session.

Mr. Hamel said that 5-6 business people have approached him about sharing the cost of televising board meetings. Mr. Hamel didn't identify those businesses; I advised him that the board would likely want to know the identities of those businesses. Mr. Hamel will identify these businesses in his proposal letter. Their interest is in paying the entire cost of televising the meetings (approx. \$27,000 annually) and not just the General Fund portion of this cost.

I asked if the businesses had any expectations in exchange for "sponsoring" the televising of the meetings. Mr. Hamel understands that no recognition may be given on the government access channel. He said the only expectation is that some of the businesses may mention in their advertising that they sponsor the televising of city board meetings.

We also discussed the mechanics of who would hire the production company, how the city would be compensated if it hires the production company, cancellation terms, and the expectations for production quality. I advised Mr. Hamel that I thought the best arrangement would be for the city to hire the production company, the businesses to pay the city up front for the costs (probably on an annual basis) so that the city would be assured of having the funds to pay the costs, and that the city would need at least 70 days notice if the businesses wanted to cancel or not renew the arrangement (we have to give the production company 60 days notice of cancellation). Mr. Hamel responded that the businesses may prefer contracting with the production company, subject to the city's approval, and paying the production company directly. He thought the businesses would be able to negotiate a more favorable cost with the production company. Mr. Hamel will discuss these options with the businesses and address their preferred approach in his proposal letter.

I advised Mr. Hamel that at this past Tuesday's study session, there was a brief discussion about possibly eliminating citizens forum from regular board meetings. I told him that if this discussion continues, it would likely do so at the April 10th study session.

Please let me know if you have any questions or need more information.

Ray

**HAMEL PROPERTIES, LLC.
4618 WHEELER AVENUE
FORT SMITH, ARKANSAS, 72901**

March 19, 2012

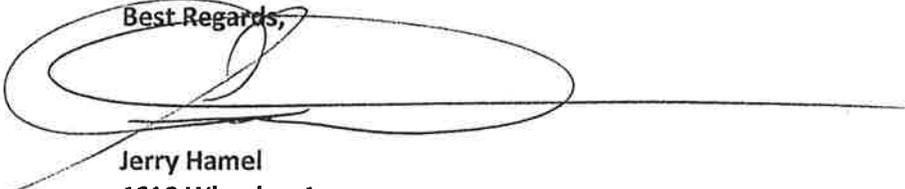
**Ray Gosack
City Administrator
P.O. Box 1908
Fort Smith, Ar. 72902**

Dear Mr. Gosack,

We are excited to bring TV coverage of the Board of Directors Meetings in Fort Smith back to the people of the city on the city information channel. Hamel Properties believes that transparency in government is of great importance and we're pleased that you have made that clear that you advocate transparency also.

Have an agreement in place with TV Production Company, and we are ready to move forward. We are aware that the city channel will not allow advertising, and will respect that covenant, but reserve the right to acknowledge that we support government transparency in our advertising for our company under separate cover. It is my understanding that we can be ready to provide TV coverage the first week of April 2012, and would be pleased with your confirmation of agreement thru year 2012, ASAP.

Best Regards,

A large, stylized handwritten signature in black ink, appearing to read 'Jerry Hamel', is written over the 'Best Regards,' text and extends horizontally across the page.

**Jerry Hamel
4618 Wheeler Ave.
Fort Smith, Ar. 72901
(479)646-0270**



VIA FAX: 646-0293

March 19, 2012

Mr. Jerry Hamel
Hamel Properties, LLC
4618 Wheeler Ave.
Fort Smith, Arkansas 72901

Dear Mr. Hamel:

Thank you for your letter of March 19th regarding the televising of board of directors meetings. As we've previously discussed, the televising of board meetings must be approved by the board of directors. Until this approval is given, there shouldn't be any arrangements made to televise the meetings. Discussion of your proposal is scheduled for the April 10th board study session.

During our meeting last week, you mentioned that there were 5 or 6 businesses who were interested in sponsoring the televising of board meetings. Your March 19th letter doesn't identify any other businesses who will be sharing the cost. Are there other businesses involved in your proposal? If so, who are they?

Your March 19th letter states that you "... reserve the right to acknowledge that we support government transparency in our advertising for our company..." Is the company who would be mentioning this in its advertising Hamel Properties, LLC, or another company?

Your letter also states that you "(h)ave an agreement in place with TV Production Company,..." Could you identify this production company and the particulars of how they would televise the board meetings, e.g., how many cameras they would use, other production capabilities, ability to provide a DVD of the meeting in a format compatible for re-broadcast on the cable TV government access channel. If you prefer, you may have a representative of your proposed TV Production Company contact Sherri Gard to discuss these particulars.

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

Mr. Jerry Hamel

-2-

March 19, 2012

Thank you for your attention to these inquiries. If you have any questions or need further clarification, feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style with a large, stylized "R" and "G".

Ray Gosack
City Administrator

E-mail: rgosack@fortsmithar.gov

cc: Mayor and Board of Directors
Sherri Gard, City Clerk

**HAMEL PROPERTIES, LLC.
4618 WHEELER AVENUE
FORT SMITH, ARKANSAS, 72901**

March 22, 2012

**Ray Gosack
City Administrator
P.O. Box 1908
Fort Smith, Ar. 72902**

Dear Mr. Gosack,

Thank you for your response and commitment for transparency in government. Per our past discussion and your pledge to cooperate in bringing TV broadcasts of Directors meetings back to the citizens of Fort Smith. We have an agreement with your former TV production company to resume broadcasts of the City Directors meetings on the first week of April of 2012.

I am sure that you agree that this is not an item that requires Board approval because transparency in government is a civil right protected by the Constitution of The United States of America.

Same TV production company as was used by the City in the past

Paid for by Hamel Properties, LLC.

No changes in format

We only make this offer to pay the TV cost because of your claim of a budget shortfall at City Hall.

Again, same format as in the past that was paid by the taxpayers of the city, except Hamel Properties, LLC. will pay the cost.

Thanks again for meeting with us and we are excited that you share our feelings that transparency in government is the most important issue.

Best Regards,



**Jerry Hamel
4618 Wheeler Ave.
Fort Smith, Ar. 72901
(479)646-0270**

**HAMEL PROPERTIES, LLC.
4618 WHEELER AVENUE
FORT SMITH, ARKANSAS, 72901**

March 26, 2012

**Ray Gosack
City Administrator
P.O. Box 1908
Fort Smith, Ar. 72902**

Dear Mr. Gosack,

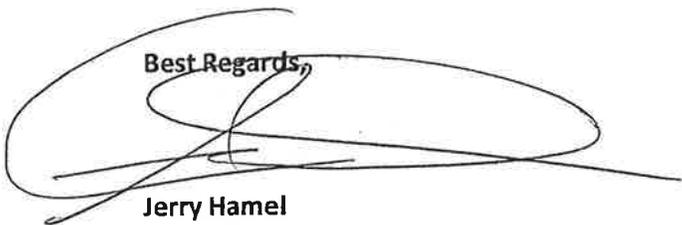
We know that you have stated many times that transparency in government is you most important goal, and we fully support your view and will do everything possible to help you accomplish this end. We also understand that city finances have been hit hard by the huge downturn in the economy, and wish to help the city with its promise for transparency by providing the funds to reestablish TV broadcasts of the City Directors meetings as a public service. I spoke with George Catsavis last week and he indicated that a majority of the City Directors were in favor of resuming the TV broadcast, but it should be approved by the Board. We agree, and think that all Board of Directors will approve the issue because it would be "the kiss of death" politically, for any Director to oppose the return of TV broadcasts.

Could you imagine any responsible City Director not wanting to have the people see the government at work and making decisions that will improve the quality of life in Fort Smith?

With this in mind, we have contacted the TV production company and advised them to wait until the proposal can be discussed and approved by you and the Board of Directors.

Thanks again for your great attitude regarding the absolute need for more transparency in our city government.

Best Regards,



**Jerry Hamel
4618 Wheeler Ave.
Fort Smith, Ar. 72901
(479)646-0270**

[Faint, illegible text at the bottom of the page, likely bleed-through from the reverse side.]



Pharis Broadcasting, Inc.

March 20, 2012

To: Ray Gossack
Fort Smith City Administrator

From: Bill Pharis
Fort Smith Radio Group

In a recent discussion among members of our staff and later with various city officials, suggestions were made about how city Board of Directors meetings might be accessed by local citizens unable to attend in person. The following proposal resulted from those talks.

KFPW-AM, Fort Smith, which has been operating here since 1930, would carry the live audio of the twice-monthly meetings. We would take the audio output of the Board's sound system and relay it through our Cellcast audio system to the KFPW-AM studio for broadcast. KFPW has an excellent signal over Fort Smith and does not reduce power at night as other AM stations in the market do. We could also feed the audio over the internet on our website, if that is desired.

To let the citizens know of the broadcasts, we would run 100 announcements per month on KFPW (which has a news/talk format and features the Arkansas Today local morning show) announcing that the meetings are heard on the station. We would also include announcements on the four other Fort Smith Radio Group stations informing listeners that the meetings are heard on KFPW-AM.

We would have a person at each meeting and another at the station during the broadcasts. The charge for providing these services would be \$1,000 per month.

Please understand that this proposal is made as a suggestion only. From our standpoint, any action or lack of action on it by the City of Fort Smith will have no effect on the good relationship we enjoy with you and city personnel.

Fort Smith Radio Group
ArkansasToday.com

P.O. Box 908 • 321 North Greenwood Avenue • Fort Smith, AR 72902
479-783-5379 • Fax 479-785-2638

TELEVISED MEETINGS

	Cost Per Meeting	Number of Meetings	Base Annual Cost	Avg. Cost for Meeting Over 2 Hrs	TOTAL ESTIMATED		COST TO GENERAL FUND
					Annual Cost	ANNUAL COST	
3 Cameras *	\$1,100	24	\$26,400	\$375.00	\$26,775	\$7,497	
2 Cameras **	\$700	24	\$16,800	\$375.00	\$17,175	\$4,809	
1 Camera **	\$500	24	\$12,000	\$375.00	\$12,375	\$3,465	

* Proposed by 777 Productions for 2012 - submitted August 2011

** Proposed by 777 Productions as options to reduce cost - submitted December 2011

ORDINANCE NO.

3B

AN ORDINANCE AUTHORIZING THE APPROPRIATION OF FUNDS
FROM THE UNRESERVED BALANCE OF THE GENERAL FUND

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

There is hereby authorized an appropriation in the amount of \$18,000 from the
unreserved balance of the General Fund to program and account 4101-219 to provide
funding to reinstate televising Board of Directors regular meetings during 2012.

THIS ORDINANCE ADOPTED THIS _____ DAY OF _____, 2012.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved to form.
W. J. [Signature]
NPR

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING POLICIES AND PROCEDURES
FOR OPERATION OF THE CITY OF FORT SMITH
GOVERNMENT ACCESS CHANNEL AND REPEALING ORDINANCE NO. 9-12**

Whereas, the City of Fort Smith operates a cable television channel providing public service programming; and,

Whereas, it is in the best interest of the City and its residents to establish policies and procedures governing the use of the City's cable television facilities;

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

Section 1: The Policies and Procedures for the operation of the City of Fort Smith Government Access Channel attached hereto and made a part hereof are hereby approved and adopted.

Section 2: Ordinance No. 9-12 is hereby repealed in its entirety.

Section 3: This ordinance shall be in full force and effect from and after its passage.

PASSED AND APPROVED this _____ day of _____, 2012.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form


npr

**POLICIES AND PROCEDURES
FOR THE OPERATION OF
CITY OF FORT SMITH
GOVERNMENT ACCESS CHANNEL**

Mission

The mission of the City of Fort Smith Government Access Channel 6 (“access channel”) is to provide quality programming for residents within the Fort Smith area concerning local government, community organizations, schools, and other information of local public interest.

Policies

The access channel provides 24 hour programming on Cox Cable Channel 6. All programming of said channel is the responsibility of the City Clerk’s Office. The access channel is not a public forum. The City of Fort Smith (“The City”) restricts the channel’s use to local government and advertising of meetings and fund raising/special events at no charge for civic and social organizations, schools, political organizations or church sponsored activities.

Program Restrictions

The following categories of information **shall not** be cablecast:

- a. Advertising that promotes a political issue or a candidate for political office.
- b. Religious worship services or announcement of same.
- c. Advertising material designated to promote the sale of commercial products or services.
- d. Technically unusable material as determined by the City Clerk’s Office will not be shown.
- e. Copyrighted material without appropriate written releases or permissions.

Program Guidelines

- 1. The City will have first priority for all programming, after which, all others will run on a first come, first served basis.
- 2. The bulletin-board feature related to City government announcements will operate when other programming is not scheduled.
- 3. Bulletin-board announcements from community groups must be received in the City Clerk’s Office at least two (2) weeks prior to the event date.

4. Announcements will run for a period of 7-10 days prior to an event.
5. Announcements must contain the name of the sponsoring agency or organization, a contact person, and telephone number for further information.
6. Photographs, logos, etc., will be accepted to include with announcements.
7. The City Clerk's Office shall review each announcement, and conform it to screen format and style where necessary.
8. The City reserves the right to exercise editorial control regarding the content of announcements received.

Live and Delayed Coverage of Board of Directors Regular Meetings

Live 'gavel-to-gavel' coverage of the regular meetings of the Board of Directors (excluding executive sessions) is provided. The meetings are replayed on the access channel, and on the City's website beginning on Thursday during the same week of the meeting. The rebroadcast schedule for the access channel is determined by the City Clerk's Office and published accordingly.

Video Telecast

1. All programs should be submitted on a DVD to the City Clerk's Office at least one (1) week in advance of requested air time for technical screening. The City Clerk's Office will advise as to the specified DVD format.
2. Copyrighted materials, including but not limited to music, film or print media will not be accepted without the prior written consent of the appropriate entity.

Retention of ~~Tapes~~ Video Recordings

Video recordings of the board of directors regular meetings ~~Any videotape of regular meetings of the Board of Directors on file in the City Clerk's Office~~ shall not be considered an official record; and there shall be no liability for inadvertent erasure or omissions. All video recordings will be retained in the City Clerk's Office. Copies requested by the public will cost \$20.00 per meeting.

Copies of Programs

Viewers who wish to make copies of the City's programming for individual home viewing may do so, without charge or fee, by using their own home audio/video recording device. Any copyright on programs broadcast on the Access Channel remains in effect and no commercial use is permitted.

Audio Entertainment

Quality background music is provided by Cox Communications, Inc.

Complaints and Appeals

Complaints regarding a decision and/or action of the City Clerk's Office may be made by filing a written complaint with the City Administrator, or his designee, within five (5) working days.

Modification

It is expected that experience and unusual circumstances will show a need to modify these policies and procedures; therefore, these policies and procedures will be reviewed periodically by the City Administrator and City Clerk for consideration of revisions.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE
A FIBER OPTICS NETWORK FRANCHISE AGREEMENT WITH
WINDSTREAM COMMUNICATIONS, INC.**

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

The Mayor is authorized to execute, his signature being attested by the City Clerk, the attached non-exclusive fiber optics network franchise agreement with Windstream Communications, Inc.

This Resolution adopted this _____ day of April, 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

*Approved as to form.
Wynne
NPR*

MEMORANDUM

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: April 12, 2012
Subject: Fiber-Optic Franchise Agreement

The City staff has been in discussions with representatives of Windstream Communications regarding the installation of a fiber-optic installation in the street rights-of-way.

The fiber optic installation in Fort Smith is part of a larger statewide project that is described as follows:

The Arkansas Healthcare, Higher Education, Public Safety, & Research Integrated Broadband Project (Arkansas e-Link) is funded through the Department of Commerce, National Technology and Infrastructure Agency (NTIA), Broadband Technology Opportunity Program (BTOP) Grant.

This BTOP project will upgrade, expand, and integrate fragmented, limited bandwidth broadband networks by offering approximately 166 community anchor institutions substantial broadband upgrades, added broadband equipment, and connectivity to a fiber backbone to meet broadband needs in healthcare, higher education, public safety, and research in unserved, underserved, and economically distressed areas in Arkansas.

A complete description is attached to this memorandum.

The proposed fiber optic project has been reviewed and discussed with the franchise utility companies and the applicable City departments.

Windstream's attorney and Rick Wade, Assistant City Attorney, and City Staff have agreed upon the terms within the attached agreement. A copy of the proposed franchise agreement is attached.

A resolution authorizing the Mayor to execute the agreement will be presented to the Board of Directors at the April 17, 2012, meeting.

Please contact me if you have any questions.

PART I: GENERAL INFORMATION FOR BIDDERS

1.0 INTRODUCTION

The Arkansas Healthcare, Higher Education, Public Safety, & Research Integrated Broadband Project (Arkansas e-Link) is funded through the Department of Commerce, National Technology and Infrastructure Agency (NTIA), Broadband Technology Opportunity Program (BTOP) Grant.
<http://www.broadbandusa.gov/>

Initiative

This BTOP project will upgrade, expand, and integrate fragmented, limited bandwidth broadband networks by offering approximately 166 community anchor institutions substantial broadband upgrades, added broadband equipment, and connectivity to a fiber backbone to meet broadband needs in healthcare, higher education, public safety, and research in unserved, underserved, and economically distressed areas in Arkansas.

Arkansas e-Link will integrate isolated community anchor networks to expand the broadband capabilities and geographic reach of the Arkansas Telehealth Network (ATN) —a group of community anchor institutions with limited bandwidth and equipment that offer healthcare, public safety, and research services—and the Arkansas Research & Education Optical Network (AREON), the state's only public-owned fiber optic network currently serving four-year universities. For AREON, the project will expand the network's fiber connectivity to reach all 22 state-supported two-year colleges and one 4 year university. Additionally, this project will permit high-speed delivery and transmission of the following broadband applications at the approximately 166 "integrated network" sites.

Key Organizations represent the interests of the approximately 166 community anchor institutions comprising the BTOP-funded project. Organizations represented in the Arkansas Telehealth and Oversight Management (ATOM) Board and Advisory Council are notated below as they will contribute to the governance of the ATN by making decisions and directing the proposed network. Organizations represented are Arkansas Department of Health, ATOM Board & Advisory Council, Arkansas Hospital Association, Baptist Health Hospital, University of Arkansas for Medical Sciences, UAMS Area Health Education Centers and Centers of Aging, Arkansas Department of Human Services, Community Health Centers of Arkansas, Mental Health Council of Arkansas, St. Vincent's Health System, Arkansas State Library, HomeCare Association of Arkansas, Metropolitan Emergency Management System, Arkansas Research and Education Optical Network (AREON), Arkansas Center for Health Improvement, Arkansas Department of Information Systems, and Arkansas Foundation for Medical Care.

UAMS will provide the administration of grant funding, centralized management of the network, and all required training and deployment activities directly related to the substantial upgrade of the approximately 166 Arkansas e-Link sites.

Goals of this project:

A. Consolidate Arkansas' existing public and private non-profit Arkansas Telehealth Network and the Arkansas Higher Education's publically owned network into one statewide Arkansas e-Link Network.

B. Expand the Arkansas Telehealth Network to strategically enhance access to rural, underserved areas and populations of Arkansas to include a special emphasis on the Delta region.

C. Unite the Arkansas Telehealth Network to Arkansas' Educational Video Network.

D. Connect the Arkansas Telehealth Network to Internet2 and Arkansas' fiber backbone.

E. Provide managed services for the Arkansas e-Link Network.

The proposed Arkansas e-Link Network will connect to Arkansas Research and Education Optical Network's (ARE-ON) dark fiber network, thus providing statewide access to Internet2 with the future possible availability of connection to the National LambdaRail. This expansion of the dark fiber network is in the process of being planned and installed between the four corners of the state.

The University of Arkansas for Medical Sciences (UAMS) plans to acquire telehealth network broadband connectivity and managed services for the Arkansas e-Link Network.

NON-EXCLUSIVE

FIBER OPTICS NETWORK FRANCHISE AGREEMENT

This Agreement is entered into this 17 day of April, 2012 between the City of Fort Smith, Arkansas ("the City"), a municipal corporation duly organized pursuant to the laws of the State of Arkansas, and Windstream Communications, Inc. (the "Franchisee"), a corporation authorized to do business in the State of Arkansas.

WITNESSETH

WHEREAS, the City recognizes that fiber optic telecommunications services for the purpose of providing information services is essential to the creation and maintenance of an information network within the City that can connect to the information superhighway; and

WHEREAS, Franchisee, has requested a franchise to use the hereinafter specified public rights-of-way, which may include streets, alleys, sidewalks and public utility easements available for telecommunications purposes that belong to or are controlled by the City or which are held in trust for the public by the City, hereinafter referred to as the "public rights-of-way," to install conduit or other cased fiber optic facilities that will facilitate the connection of the businesses, residences and public agencies to an information network; and

WHEREAS, the parties agree that these information services are a telecommunications service and, therefore, a utility for which a written franchise agreement may be entered pursuant to Ark. Code Ann. § 14-200-101 or pursuant to the rights of the City to control the subject public rights-of-way; and,

WHEREAS, the City intends to exercise the full scope of its municipal powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City.

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS SET FORTH BELOW, THE PARTIES DO HEREBY CONTRACT AND AGREE AS FOLLOWS:

Section 1. (a) Subject to the provision of this Ordinance, a non-exclusive fiber optic franchise is hereby granted to Franchisee for the placement and maintenance of fiber optic communication cable in the public rights-of-way at the locations specified in Exhibit "A" hereto.

(b) It is agreed by the parties that this franchise shall have a limited term commencing on April 17, 2012, and shall expire on April 17, 2032, unless the Agreement is renewed by written agreement of the parties at least 120 days prior to the end of the primary term, or unless the Franchise is earlier terminated by abandonment or due to breach by the Franchisee.

(c) The failure of the Franchisee to meet any of the terms of this Agreement shall, after a reasonable time to cure, constitute cause for termination of this franchise by the City. Any termination will be declared in writing by the City Administrator and shall be subject to due process review by the Board of Directors.

(d) This franchise is nonexclusive and nothing in this Agreement shall limit or otherwise impact the right of the City to enter into other franchise agreements with other parties.

(e) All references to the City Administrator shall be deemed to refer to the City Administrator or the employees of the City designated by the City Administrator to perform the referenced function.

Section 2. (a) All work involved in the construction operation, maintenance, repair, upgrade, and removal of the fiber optic communication cable shall be performed by the Franchisee in a manner and using material in accordance with the City standards as determined by the City Administrator. Franchisee shall bore streets whenever possible. Where street cuts are unavoidable, as determined by the City Administrator, they shall be approved by the City Administrator and performed in accordance with the City's Street Cut Ordinance.

(b) Any construction project, including initial installation pursuant to this franchise, will be completed by the Franchisee within 90 days from the date of commencement (if any City permit is necessary, the date of the permit shall be the "date of commencement"), provided that the City Administrator may allow reasonable extensions due to unexpected weather, acts of God or other reasonable circumstances that in the sole discretion of the City Administrator justify an extension of the project target completion date. Failure to complete the project by the completion date will result in the assessment of liquidated damages in an amount determined in writing by the City Administrator at the time the City issues any permit or authorizations for the construction project (or the sum of \$100.00 per day if other sum is not so established).

Section 3. The City shall have no responsibility for the maintenance of the said fiber optic communication cable. If the same is damaged so as to be inoperable in any manner, it shall be removed or abandoned by Franchisee, at Franchisee's sole cost and expense and in a manner meeting with the approval of the City Administrator.

Section 4. Franchisee shall hold the City harmless from and indemnify the City from all expenses, losses, costs, causes of action and judgments, including legal fees and expenses, arising from the placement, maintenance, operation, repair and removal of said fiber optic communication cable.

Section 5. Franchisee shall be member of and shall conform to the requirements of the Arkansas One Call system for all purposes including field locations of utilities prior to placement of the fiber optic communication cable and any maintenance or repair work thereto.

Section 6. Franchisee shall place a \$ 50,000.00 performance bond with the City to cover the cost of repairs or other incidental costs to the City associated with service interruption to the City's utility facilities or road facilities resulting from the initial installation of the fiber optic

communications cable by Franchisee. The performance bond shall cover the period of installation of the fiber optic communication cable. The bond shall be secured by a corporate surety. A similar bond shall be required for subsequent construction projects utilizing the subject public rights-of-way.

Section 7. Franchisee shall procure and maintain in effect the following insurance policies in amounts determined appropriate by the City Administrator at the time of issuance of permits or authorizations for construction activities: Commercial General Liability insurance, Automobile Liability Insurance, Environmental Impairment Liability including Pollution Liability Insurance, and Worker's Compensation Insurance.

Section 8. (a) The franchise fee in the amount of \$3,000.00 for each year or part thereof this Franchise is in effect. The Franchisee may, to the extent allowed by law, bill its subscribers within the corporate limits of the City such Franchise fee and reflect such charge on its invoices to subscribers within the corporate limits of the City.

(b) The Franchise fee for the initial annual period shall be paid to the City at the time of execution of this franchise. The annual franchise fee shall be due by the tenth day of each subsequent annual period. The payment of the franchise fees in no way limits the right of the City to charge fees for any permits required for construction projects or any applicable taxes.

Section 9. The Franchisee shall, at its expense, protect, support, temporarily disconnect, relocate or remove from the subject public rights-of-way any property of the Franchisee when required at the sole discretion of the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, a change or establishment of street grade, installation or construction of sewers, drains, water pipes, or any other type of structures or improvements by the City, provided that such activities are carried out pursuant to the City's police powers; but, the Franchisee shall have the right of abandonment of its property, subject to prior written approval of the City Administrator. If federal or state funds are available at no expense to the City (including actual cost or the cost of a pro-rata obligation of the City where a project is funded partially by the State or federal funds and partially by the City funds) for the purpose of defraying the costs to any utility company of any of the foregoing, such funds shall also be made available to the Franchisee if the federal or state regulations permit.

Section 10. Neither the City nor its officers, employees, agents, attorneys, consultants or independent contractors shall have any liability to the Franchisee as a result of any disruption or damage to the Franchisee's network that occurs as a result of, or in connection with, any breaking through, movement, removal, alteration, or relocation of any part of the network by or on behalf of the Franchisee or the City in connection with construction, relocation, improvement to, or alteration of any City structure, street or utility facility carried out under the City's police powers; except, however, the City shall reasonably attempt to avoid any damage to the Franchisee's network and shall, except in any emergency situation, provide reasonable notice to the Franchisee so as to allow the Franchisee to protect its network.

Section 11. Any notice of communication required in the administration of this Agreement shall be sent by any method that ensures overnight delivery and shall be addressed as follows:

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

Notice to the Franchisee in regard to Engineering will be sent to:
Windstream Communications, Inc.
4001 Rodney Parham
Little Rock, AR 72212
Attention: Mike Skudin, VP Planning & Engineering

Notice to Franchisee in regard to invoices or payment of Fees will be sent to:
Windstream Communications, Inc.
4001 Rodney Parham
Little Rock, AR 72212
Attention: Vicki Anger, Staff Manager, Tax Accounting

or to such other address as the Franchisee and the City may, in writing, designate from time to time, provided that notice is accomplished by overnight delivery to only one designated person for the City or Franchisee.

WHEREUPON, the City and Franchisee, acting through their duly authorized officers and pursuant to appropriate authority granted by their respective Board of Directors, do hereby execute this Franchise.

CITY OF FORT SMITH, ARKANSAS

By: _____

By: _____

Date: _____

Date: _____

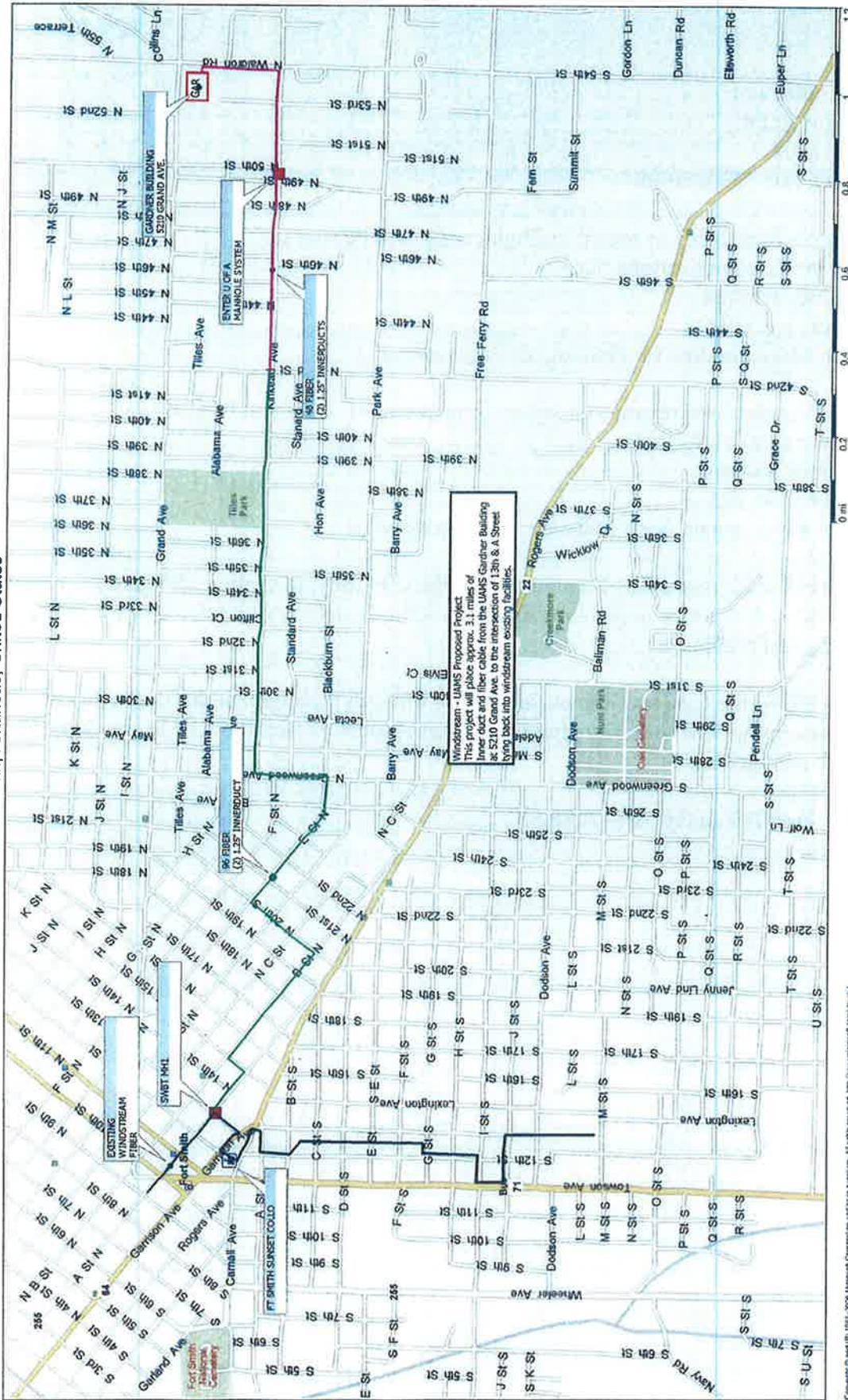
ATTEST: _____

ATTEST: _____

Date: _____

Date: _____

Fort Smith, Arkansas, United States



Windstream - UAMS Proposed Project
 This project will place approx. 3.1 miles of fiber optic and fiber cable from the UAMS Gairinger Building at 5210 Grand Ave. to the intersection of 13th & A Street going back into windstream existing facilities.

Copyright © 2005 by Telia America, Inc. All rights reserved. This map is provided for informational purposes only. It is not intended to be used as a legal document. The data for this map is derived from various sources, including the UAMS and NAVTEQ. All rights reserved. Telia America, Inc. is a registered trademark of Telia America, Inc. NAVTEQ and NAVTEQ ON BOARD are trademarks of NAVTEQ. © 2005

RESOLUTION _____

**A RESOLUTION AUTHORIZING ADDITIONAL WORK AND
A TIME EXTENSION FOR THE CONSTRUCTION OF THE
GARRISON AVENUE STREETScape
9TH ST. – 13TH ST. (GARRISON AVE.)
(FT. SMITH) (S) F.A.P. STP – TCSP-9150 (23)
PROJECT NO. 09-90-B, JOB 040545**

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

SECTION 1: The Mayor is authorized to execute a contract addition with Forsgren, Inc. which increases the contract amount by \$51,445 to an adjusted contract amount of \$2,490,850.50 and increases the contract time by 40 calendar days.

SECTION 2: Payment for the amount authorized in Section 1 is hereby authorized from the Downtown Development Program (4111-301).

This resolution adopted this _____ day of April, 2012.

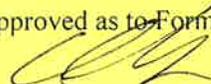
APPROVED:

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., Director of Engineering 

DATE: April 12, 2012

SUBJECT: Garrison Avenue Streetscape,
9th St. - 13th St. (Garrison Ave.)
(Ft. Smith) (S), F.A.P. STP - TCSP-9150(23)
City Project No. 09-90-B, Job 040545

This project is a continuation of streetscaping along both sides of Garrison Avenue from 9th Street to 13th Street. Work is ongoing with an estimated contract completion date of January 3, 2013. The project also includes reconstruction of the street section and sidewalk for North 9th Street between Garrison Avenue and North A Street. A project location map and project summary sheet is attached.

The current project does not include any streetscape work along this section of North 9th Street. However, the 2012 budget for the Downtown Development department included \$60,000 for 9th Street Streetscape. Plans have been developed for this streetscape work which include widening the sidewalk approximately four feet by installing a brick accent band, installation of decorative pedestrian lighting and associated curb/gutter/drainage work to accommodate this streetscape work. We are recommending adding the streetscape work to this project as the contractor is already working in this area of 9th Street and it would be more cost effective to install the streetscaping items while this section of street is being reconstructed.

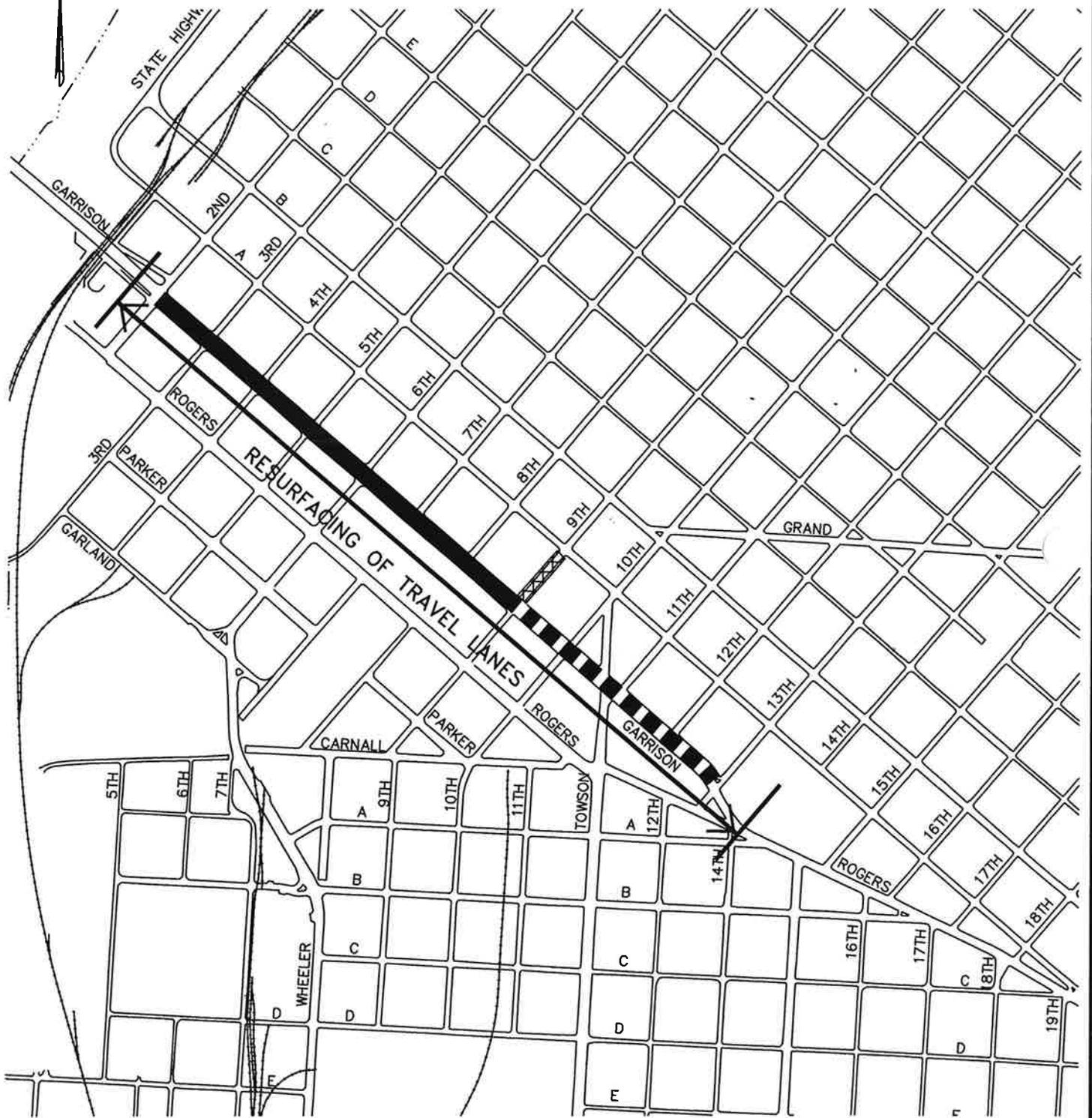
The estimated cost for the 9th Street streetscape work is approximately \$51,445 and a time extension of 40 days is needed. The actual costs will be billed at the current contract unit prices for each particular item of work.

Attached is a Resolution to authorize the addition of this work to the existing Garrison Avenue Streetscape contract. Funds are available in the Downtown Development Program (4111-301) for this work. I recommend approval of the Resolution.

c: Jayne Hughes

G:\DRAWINGS\CIP\00-00 CIPALL\2012\ STREETSCAPES.dwg 04/11/12-08:34 RBR STREETScape 9th ST

-  COMPLETED
-  GARRISON STREETScape PROJECT
-  9TH STREET STREETScape PROJECT



GARRISON STREETSAPES
FORT SMITH, ARKANSAS



Project:	09-09-B
Date:	APRIL 2012
Scale:	N/A
Drawn By:	RBR

PROJECT SUMMARY

City of Fort Smith
 Project Status: 21% Complete
 Today's Date: 4/12/2012
 Staff Contact Name: Stan Snodgrass
 Staff Contact Phone: 784-2225
 Contract Time (no of days): 360
 Notice to Proceed Issued: 1/9/2012

Project Name: Garrison Avenue Streetscape
 Project Number: 09-90-B
 Project Engineer: MWC
 Project Contractor: Forsgren Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$2,439,405.50	9/20/2011	1/3/2013
Contract Revision:			
1 Continuation of Streetscaping along North 9th St. from Garrison Ave. to North A St. including a 40 day time extension	\$51,445.00		
Adjusted contract amount	<u>\$2,490,850.50</u>		
Payments to date (as negative):	\$525,887.31		
Amount of this payment		N/A	
Contract balance remaining	\$1,964,963.19		
Retainage held	\$45,402.59		
Final payment			
Amount over original contract as a percentage		2.1%	

Final Comments:

RESOLUTION _____

**A RESOLUTION AUTHORIZING A CHANGE ORDER
FOR THE CONSTRUCTION OF
STREET OVERLAYS/RECONSTRUCTION
PROJECT NO. 11-03-D**

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

SECTION 1: Change Order No. 1 with Forsgren, Inc., for the Street Overlays/Reconstruction, Project No. 11-03-D, which increases the contract amount by \$3,314.88 to an adjusted contract amount of \$1,748,688.60, is hereby approved.

This resolution adopted this _____ day of April, 2012.

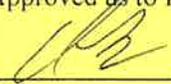
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



- No Publication Required
- Publish ____ Times

RESOLUTION _____

**A RESOLUTION ACCEPTING COMPLETION OF AND
AUTHORIZING FINAL PAYMENT
FOR THE CONSTRUCTION OF
STREET OVERLAYS/RECONSTRUCTION
PROJECT NO. 11-03-D**

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

SECTION 1: The City of Fort Smith hereby accepts the construction of Street Overlays/Reconstruction, Project No. 11-03-D, as complete.

SECTION 2: Final payment is hereby authorized in the amount of \$35,914.58 to the contractor, Forsgren, Inc., for the Street Overlays/Reconstruction, Project No. 11-03-D.

This resolution adopted this _____ day of April, 2012.

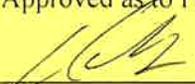
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



 No Publication Required
 Publish _____ Times

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

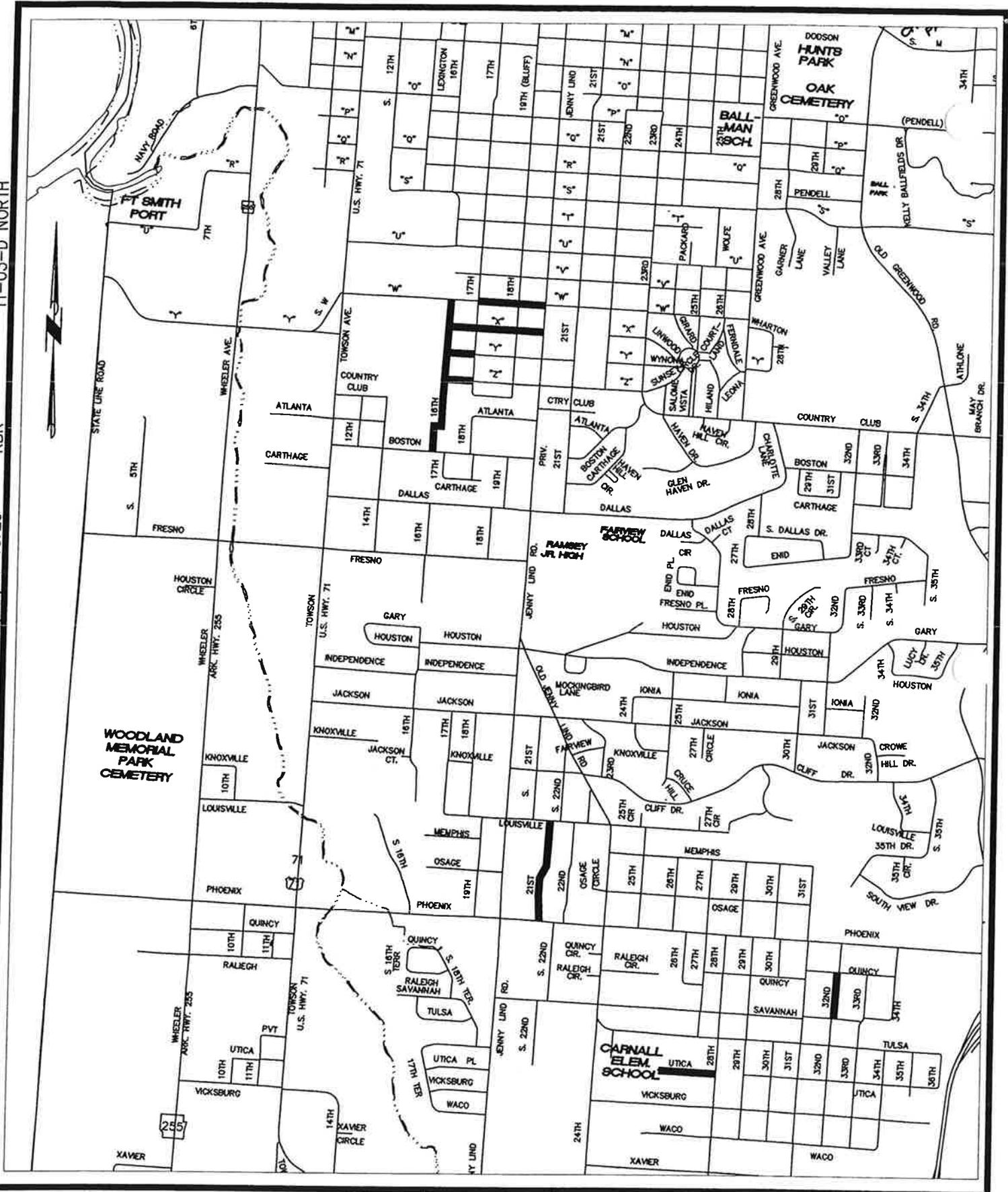
FROM: Stan Snodgrass, P.E., Director of Engineering 

DATE: April 10, 2012

SUBJECT: Street Overlays/Reconstruction
Project No. 11-03-D

The above subject project consisted of asphalt street overlays, reconstruction and minor drainage improvements to the streets listed on the attached sheet and shown on the attached exhibit. The total length of streets improved was approximately 2.8 miles. Project location maps and a project summary sheet are attached.

Change Order No. 1 increases the contract amount by \$3,314.88 to a total contract amount of \$1,748,688.60. The increase in the contract amount is due to additional utility and driveway modifications that were required as a result of the street work. Attached are Resolutions to accept the project as complete and authorize final payment to the contractor. I recommend that these Resolutions be accepted by the Board at the next regular meeting.

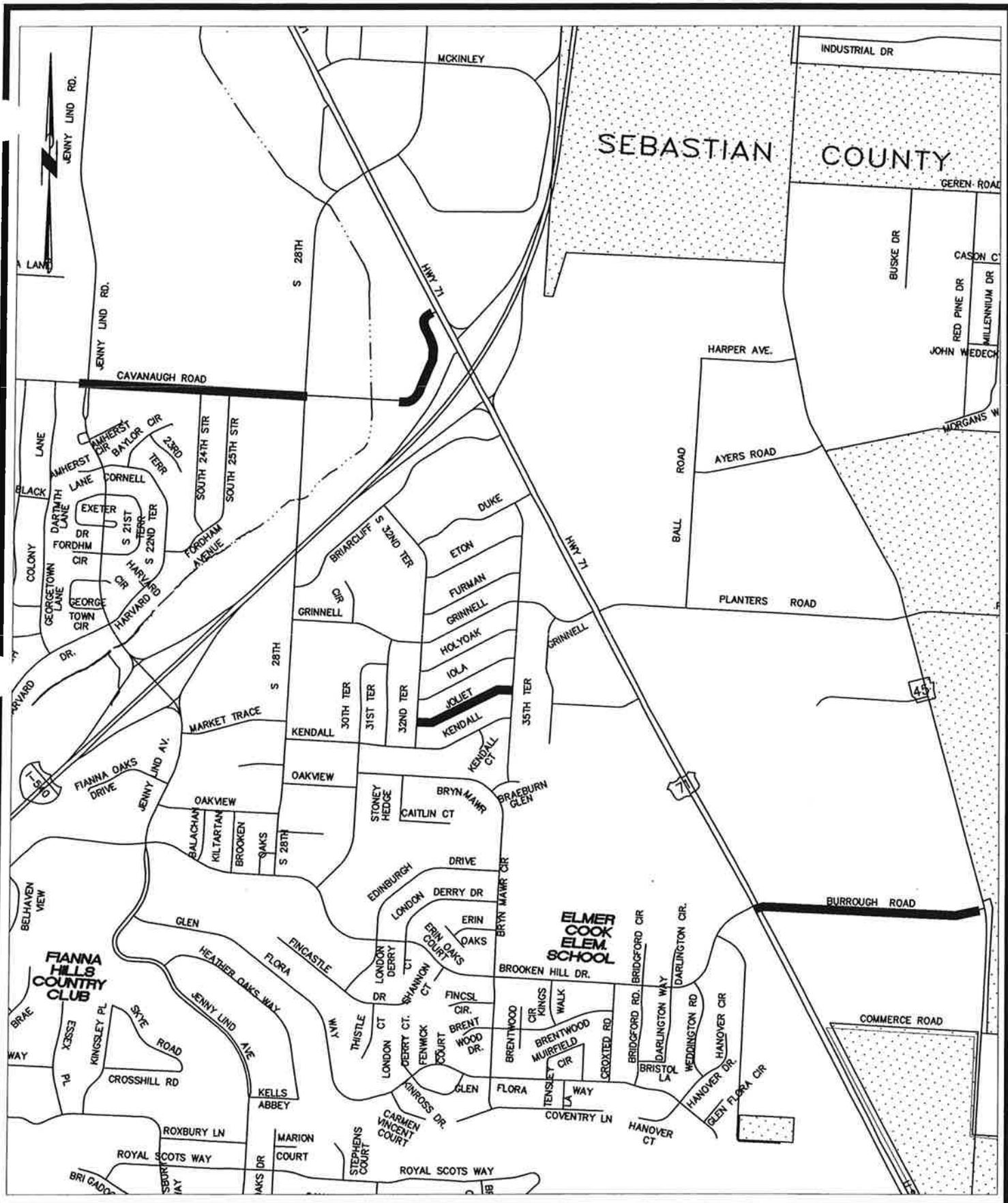


2011 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project:	11-03-D
Date:	OCT. 2010
Scale:	NONE
Drawn By:	RBR

C:\DRAWING\00-00 CIPALL\2011\CIPALL 2011 DIVIDED.dwg 06/15/11-13:55 RBR 11-03-D SOUTH



2011 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project:	11-03-D
Date:	OCT. 2010
Scale:	NONE
Drawn By:	RBR

SUMMARY SHEET

City of Fort Smith
 Project Status: Complete
 Today's Date: 4/10/2012
 Staff contact name: Stan Snodgrass
 Staff contact phone: 784-2225
 Contract time (no of days): 210
 Notice to proceed issued: 07/11/2011

Project Name: 2011 Street Overlay/Reconstruct
 Project Number: 11-03-D
 Consultant Engineer: Morrison & Shipley Engineering
 Project Contractor: Forsgren, Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$1,745,373.72	6/7/2011	2/5/2012
Contract Revisions:			
1 Change Order No. 1	\$3,314.88		
2			
3			
Adjusted contract amount	<u>\$1,748,688.60</u>		
Payments to date (as negative):	\$1,712,774.02		
Amount of this payment	\$35,914.58		
Contract balance remaining	\$0.00		
Retainage held	0%		
Final payment	\$35,914.58		
Amount over original as a percentage	0.2%		

Final Comments:

RESOLUTION NO. _____

**A RESOLUTION APPROVING AUTOMOBILE AND PROPERTY INSURANCE
COVERAGE FOR THE CITY'S FLEET AND BUILDINGS FOR 2012-2013**

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

SECTION 1: The renewal agreement with Brown Hiller Clark and Associates to act as insurance agent for the City and to provide insurance coverage through Travelers Insurance as the underwriter of the insurance policy for property and automobiles owned by the City of Fort Smith, Arkansas for the year 2012-2013, is accepted.

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

This Resolution adopted this _____ day of April 2012.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Daily + Woods staff is out and unable to get resolution signed. A signed copy will be provided at Tuesday's board meeting

Interoffice Memorandum

TO: Ray Gosack, City Administrator
FROM: Alie Bahsoon, Purchasing Manager 
SUBJECT: 2012/2013 Property & Automobile Insurance Renewal
DATE: April 12, 2012



Pursuant to the discussions and recommendations made by the Board at the March 27th Study Session, the attached email from Brown Hiller Clark & Associates reflects the reduction in premiums for the automobile insurance since the City has elected to lower its liability limits from \$1 million to \$100,000.

The new automobile insurance premiums were lowered by \$105,105 to reflect a new premium of \$385,969. As for the property, the renewal premiums are \$322,848 which represents an increase of less than 10% from last year's premiums.

I am recommending approval of the attached resolution in order to proceed with binding coverage for the City's fleet and property, effective April 1st.

Please let me know if you should have any questions.

Bahsoon, Alie

From: Gosack, Ray
Sent: Friday, April 13, 2012 10:13 AM
To: Bahsoon, Alie
Cc: Bushkuhl, Kara
Subject: RE: City of FS -: Insurance Update

Alie,

Yes. Be sure to include the effective date of the change.

Ray

From: Bahsoon, Alie
Sent: Friday, April 13, 2012 10:10 AM
To: Gosack, Ray
Subject: FW: City of FS -: Insurance Update
Importance: High

Good morning Ray.

Is this enough information to proceed with the board packet? Let me know and I will proceed accordingly.

Thanks.
Alie

Mr. Alie Bahsoon, Purchasing Manager
City of Fort Smith, AR
479-784-2267 Phone
479-784-2484 Fax
abahsoon@fortsmithar.gov
www.fortsmithar.gov

From: Tonya Wennberg [<mailto:twennberg@bhca.com>]
Sent: Friday, April 13, 2012 9:12 AM
To: Bahsoon, Alie
Cc: Scott Clark
Subject: City of FS -: Insurance Update

Alie:

Good Morning.

In regards to lowering your Liability limit to \$100,000, we are still waiting on the final endorsement from Travelers. However we have an estimated figure, and feel it should be accurate or close to accurate.

Total Auto Premium	\$491,074
Endorsement Credit "lowering Liability Limits to \$100,000"	<u>-\$105,105</u>
Revised Auto Premium	<u>\$385,969</u>

Please let me know if you need anything further. We hope to have the final endorsement by the first of next week.

Tonya Wennberg, CIC

Account Manager

Brown Hiller Clark & Associates

Phone: 479-452-4000 X108

Fax: 479-484-5185

twennberg@bhca.com

RESOLUTION NO. _____

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

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 Alma, 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.

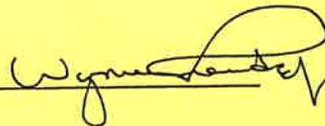
THIS RESOLUTION ADOPTED this _____ day of _____, 2012.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form: 

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF FORT SMITH, ARKANSAS AND
THE CITY OF ALMA, ARKANSAS

This agreement is made and entered into this ____ day of ___, 2012, by and between the City of Alma and City of Fort Smith, AR (City of FS).

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

WHEREAS, the Alma 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 Alma 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 City of Alma;

NOW, THEREFORE, the CITY of FORT SMITH and CITY of ALMA 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 Alma 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 Alma PD;
5. Alma 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 Alma PD will ensure that only authorized Law Enforcement personnel operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;

7. The Alma PD will notify the Hosting Agency Network Manager within 24 hours of a status change concerning the eligibility of any Alma PD Law Enforcement personnel to operate a Alma 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 Alma 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 Alma PD MDC equipment requires service, the Alma 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 Alma PD of any planned or discovered un-planned interruption of the Mobile Data services.

Section 2

Arkansas Crime Information Center (ACIC)

1. The Alma 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 Alma PD Law Enforcement personnel or staff members is subject to review during these audits;
2. If a Alma 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 Alma PD Chief of Police or his/her designee and make notification of the violation;
3. The Hosting Agency Chief of Police will provide the Alma PD Chief of Police or a designated member, upon request, audits of Alma 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 Alma 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 Alma PD agrees to provide to the Hosting Agency the installation date for all Alma PD MDC equipment. The Hosting Agency Network Manager will notify a member designated by the Alma PD, at least ninety days in advance, that the Alma PD equipment is approaching the obsolescence date. No connectivity will be permitted for MDC equipment beyond the equipment obsolescence date. The Alma 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 2011 and each year thereafter total support fees for 10 MDCs will total \$10,400.00

Terms:

- a. The Alma PD has requested support for 10 MDCs in 2008 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 \$2,400.00
- c. A support fee of \$800 per MDC unit per year totaling \$8,000.00

This equates to a total annual fee of \$10,400.00

Section 7

Renewal

1. This agreement shall have a term of one year from the date of its enactment and shall be deemed to renew automatically on a yearly basis, provided all parties are in continued agreement. Either party not wishing to renew the agreement shall provide 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.



JOHN R. BALLENTINE, MAYOR

ALMA PD

SANDY SANDERS, MAYOR

CITY OF FORT SMITH

DATE: 3-23-12

DATE: _____

ATTEST:



City Clerk

DATE: 3-23-12

ATTEST:

City Clerk

DATE: _____

APPROVED AS TO LEGAL FORM:



City Attorney

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 City of Alma, Arkansas
Date: April 11, 2012

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 renew a Memorandum of Understanding that would allow the Department to collect revenue from the City of Alma, Arkansas for Mobile Data services. This Memorandum of Understanding includes language that will automatically renew on a yearly basis, provided all parties are in continued agreement. If either party desires to discontinue this service they must provide written notice at least ninety days in advance of the termination date. 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 Departments IT and communications goals.

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

"Pride and Progress"

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 UNIVERSITY OF ARKANSAS, FORT SMITH

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 University of Arkansas, Fort Smith, 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:

Wynne Lindsey
NPR

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE CITY OF FORT SMITH, ARKANSAS AND

THE UNIVERSITY OF ARKANSAS FORT SMITH

This agreement is made and entered into this _____ day of _____, 2012, by and between the University of Arkansas Fort Smith, acting by and through its governing body, the Board of Trustees, hereinafter referred to as UNIVERSITY, 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 University of Arkansas Fort Smith, the University, concerning use of Mobile Data Computers (MDC) connected to the Fort Smith Police Mobile Data network; and

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

WHEREAS, the University 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 University;

NOW, THEREFORE, the CITY of FORT SMITH and UNIVERSITY 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 University;
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 University;
5. University 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 University will ensure that only authorized Law Enforcement personnel operate MDCs connected to the Hosting Agency Mobile Data Infrastructure;
7. The University will notify the Hosting Agency Network Manager within 24 hours of a status change concerning the eligibility of any University Law Enforcement personnel to operate a University 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 University 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 University MDC equipment requires service, the University 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 University of any planned or discovered un-planned interruption of the Mobile Data services.

Section 2

Arkansas Crime Information Center (ACIC)

1. The University 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 University Law Enforcement personnel or staff members is subject to review during these audits;
2. If a University member is identified as having violated established Hosting Agency use policies, the Host Agency Chief of Police, or his/her designee, will contact the University Chief of Police or his/her designee and make notification of the violation;
3. The Hosting Agency Chief of Police will provide the University Chief of Police or a designated member, upon request, audits of University 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 University 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 University agrees to provide to the Hosting Agency the installation date for all University MDC equipment. The Hosting Agency Network Manager will notify a member designated by the University, at least ninety days in advance, that the University equipment is approaching the obsolescence date. No connectivity will be permitted for MDC equipment beyond the equipment obsolescence date. The University 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 4 MDCs will total \$4,160.00

Terms:

- a. The University has requested support for 4 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 \$960.00
- c. A support fee of \$800.00 per MDC unit per year totaling \$3,200.00

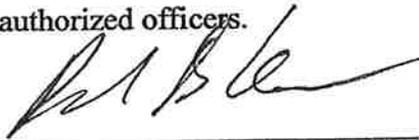
This equates to a total annual fee of \$4,160.00

Section 7

Renewal

- 1. This agreement shall have a term of one year from the date of its enactment and shall be deemed to renew automatically on a yearly basis, provided all parties are in continued agreement. Either party not wishing to renew the agreement shall provide 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.



PAUL B. BERAN, Chancellor

University of Arkansas Fort Smith,

Sandy Sanders, Mayor

CITY OF FORT SMITH

DATE: 2/27/12

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 University of Arkansas – Fort Smith concerning Mobile Data Terminals
Date: April 11, 2012

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 renew a Memorandum of Understanding that would allow the Department to collect revenue from the University of Arkansas, Fort Smith for Mobile Data services. This Memorandum of Understanding includes language that will automatically renew on a yearly basis, provided all parties are in continued agreement. If either party desires to discontinue this service they must provide written notice at least ninety days in advance of the termination date. 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 Departments IT and communications goals.

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

"Pride and Progress"

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AUTHORIZATION WITH BRIXEY ENGINEERING & LAND SURVEYING FOR ENGINEERING SERVICES FOR THE NEIGHBORHOOD WATER SYSTEM IMPROVEMENTS - JACK FREEZE SERVICE AREA

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

SECTION 1: An Authorization with Brixey Engineering & Land Surveying, for engineering construction phase services associated with the Neighborhood Water System Improvements - Jack Freeze Service Area, Project Number 10-02-E2, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute an Authorization for an amount of \$107,076.25, for construction phase services.

This Resolution adopted this _____ day of April 2012.

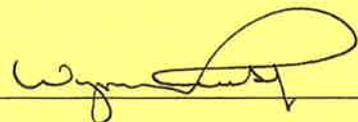
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

_____
npr

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH FORSGREN, INC., FOR CONSTRUCTION OF THE NEIGHBORHOOD WATER SYSTEM IMPROVEMENTS - JACK FREEZE SERVICE AREA

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

SECTION 1: The bid of Forsgren Inc., for the performance of the Neighborhood Water System Improvements - Jack Freeze Service Area, Project Number 10-02-C1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute a contract with Forsgren Inc., for an amount of \$1,040,933.31, for performing said services.

This Resolution adopted this _____ day of April 2012.

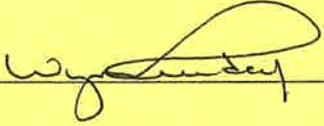
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 4, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: Neighborhood Water System Improvements - Jack Freeze Service Area
Project Number 10-02-C1

This project consists of installing approximately 9,850 feet of new 6-inch water mains to replace old 2-inch galvanized water lines for improved service and water quality. The project will also provide better fire protection in these areas. The attached exhibit shows the locations of these improvements.

The low bid for the project was submitted by Forsgren Inc., in the amount of \$1,040,933.31. A bid tabulation sheet showing the bidders & their bid amounts is attached.

Resolutions authorizing a contract with Forsgren, Inc., in the amount of their bid and approving the construction phase services with Brixey Engineering & Land Surveying, Inc., for construction observation in the amount of \$107,076.25, are attached. Funding for this work is available from the Water and Sewer Capital Improvement Fund.

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

attachment

pc: Jeff Dingman



CHERYL ST

ALLICE LN

CAVANAUGH RD

JENNY LIND RD

BARTSCH ST

JOSEPH ST

SCHOOL ST

WILLIAMS LN

TEXAS RD

MEADOW CIR

HERMITAGE DR

COLONY LN

MESA DR

HWY 271

HARVARD DR

I-540

Legend
— Proposed Water Line

**NEIGHBORHOOD WATER IMPROVEMENTS
JACK FREEZE SERVICE AREA**

PROJECT NO. 10-02-C1
PROJECT VICINITY MAP

Tabulation of Bids Received

Page 1 of 1

Project Name:

Neighborhood Water System Improvements - Jack Freeze Service Area

Project No:

10-02-C1

Bid Opening:

March 28, 2012

2:00p.m.

Bids Received:

Forsgren, Inc.

Fort Smith, Arkansas

\$ 1,040,933.31

Crawford Construction Company

Van Buren, Arkansas

\$ 1,075,554.85

Goodwin & Goodwin

Fort Smith, Arkansas

\$ 1,149,100.80

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN IMPLEMENTING AGREEMENT WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE ARKANSAS BROWNSFIELD PROGRAM FOR THE ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS

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

The Mayor is hereby authorized to execute an Implementing Agreement with the Arkansas Department of Environmental Quality for participation in the Arkansas Brownsfield Program for property located at 5501 Jenny Lind Road, Fort Smith, Arkansas, for the Zero Street Pump Station Wet Weather Improvements, Project Number 09-17-E1.

This Resolution adopted this _____ day of April 2012.

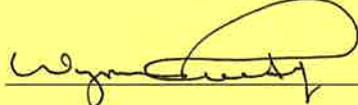
APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

_____
npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 5, 2012

FROM: Steve Parke, Director of Utilities

SUBJECT: Zero Street Pump Station Wet Weather Improvements
Project Number 09-17-E1

The city's Wet Weather Management Plan identified that capacity improvements were required within the Zero Street sewer basin to reduce collection system overflows. The recommended improvements included a combination of relief sewers to convey greater volumes of collection system flows, upgrading the Zero Street pump station capacity along with flow equalization storage. The equalization storage for this project is proposed to be contained in enclosed tankage; similar to that used in our water system.

Hawkins-Weir Engineers is the design firm for the Zero Street pump station wet weather improvements. Their work provided for the review of site location options for the flow equalization storage and was presented to the Board at an August 2011 study session. The sites evaluated included the undeveloped land area on Jenny Lind Road immediately adjacent to the existing pump station and the earlier bonded warehouse site on Xavier Street immediately north of the Zero Street Wal-Mart super center.

The Board selected the undeveloped land area on Jenny Lind Road as its preferred location for the project's construction. This site is the former location of a zinc smelter operation and is registered under the Arkansas Brownsfield Program with the Arkansas Department of Environmental Quality (ADEQ). If the property is to be purchased, in order for the city to acquire protection from future liability which may be raised due to the contamination left from the earlier smelter operation, the city must proceed under the Arkansas Brownsfield Program by entering into an Implementing Agreement with ADEQ and remediate the site. The site to be acquired in fee consists of approximately 14.59 acres. It is now the appropriate time under the Brownsfield Program to enter into the Implementing Agreement for the site. Entering into the Implementing Agreement at this time does not bind the city to any future actions to acquire this site. An exhibit of the needed property and copy of the Implementing Agreement is attached.

Staff will present the land owner's formal offer and acceptance document for the Board's consideration after ADEQ verifies it will allow the material removed from the site as part of the remediation process to be placed within the city's landfill for disposal. Staff has been in negotiations with the property owners to acquire the site for the appraised value of \$704,000.00. After extensive negotiations, the property owners have offered to sell the property for \$709,000.00. A sewer and drainage easement containing 2.62 acres adjacent to the site's south boundary is also needed and is being granted at no additional cost as part of the offer.

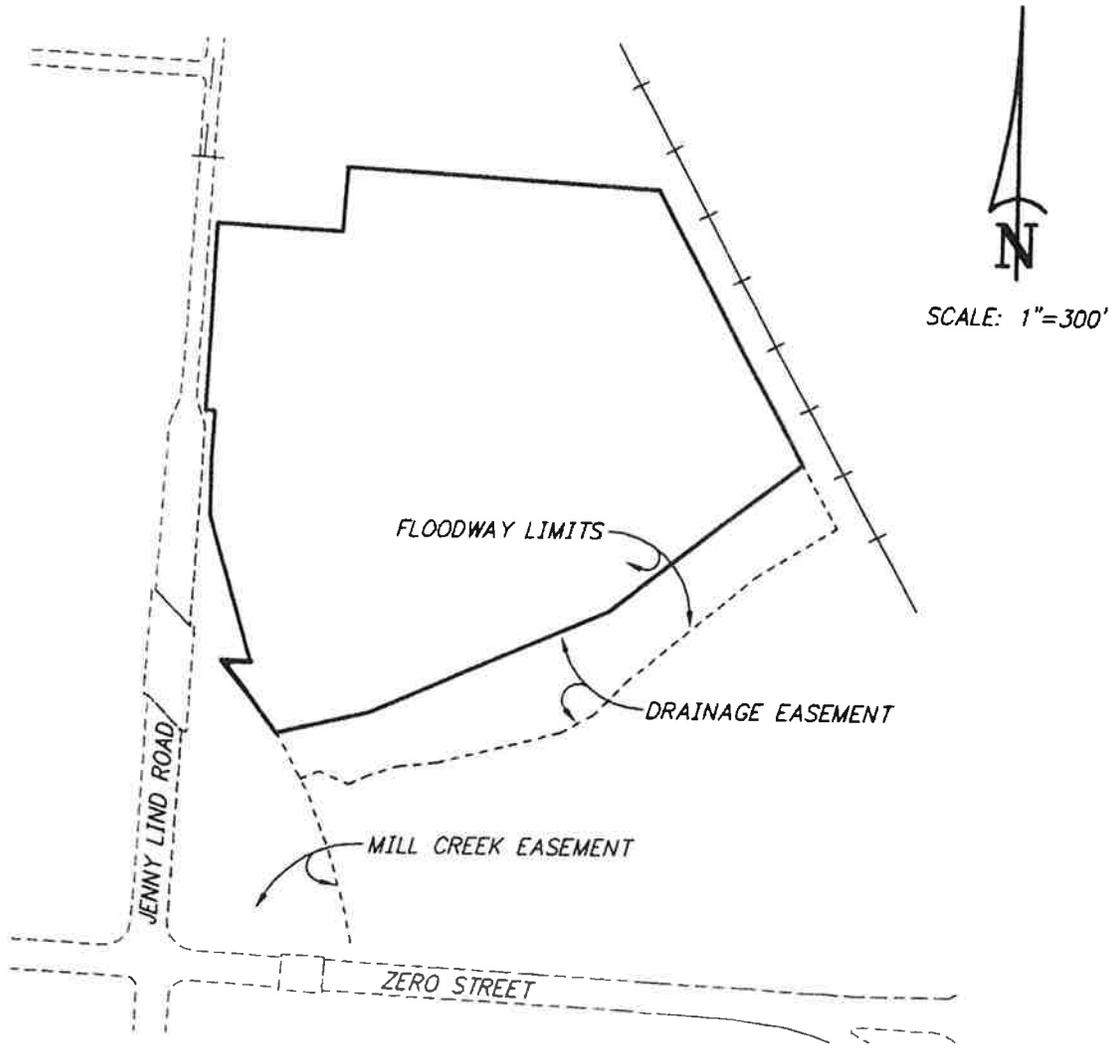
Staff recommends that the Board approve the attached Resolution authorizing the Mayor to execute the Implementing Agreement with ADEQ. Should you or members of the Board have

any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

U:\DRAWINGS\PROJECTS\2009\09-17-E1-ZERO ST. EQ BASIN\PROPERTY DESCRIPTION.DWG. 10/11 9:33 AM, MATT WEIR, LAYOUT



Property Description

Part of the SW/4, SE/4 of Section 33, T-8-N, R-32-W, Fort Smith, Sebastian County, Arkansas, being more particularly described as follows:

Commencing at the NW corner of said SW/4, SE/4, Section 33; thence S86°29'34"E along the north line of said SW/4, SE/4, 230.35' to the Point of Beginning; thence continuing S86°29'34"E 503.28' along the south line of Lot 1, Southern Systems Addition a subdivision to the City of Fort Smith (filed for record May 15, 1985), to the SE corner of said Lot 1, Southern Systems Addition on the westerly right of way line of the Union-Pacific Railroad; thence S27°38'29"E along said railroad right of way, 507.42'; thence S50°20'28"W 394.11'; thence S65°40'46"W 418.97'; thence S76°17'20"W 153.80' to the easterly line of Mill Creek Drainage Easement; thence N34°45'00"W along said easement, 82.65'; thence N38°00'00" W along said easement, 65.90' to the easterly right of way line of Jenny Lind Road; thence along said Jenny Lind Road right of way the next (6) courses: S87°00'00"E 45.15'; N15°45'23"W 252.61'; N00°09'22"W 100.12'; N02°42'23"E 75.00'; N87°17'37"W 15.00'; N02°30'42"E 312.22'; thence S86°29'34"E 200.00'; thence N03°31'08"E 105.00' to the Point of Beginning, containing 14.59 acres more or less.

HW HAWKINS & WEIR
ENGINEERS, INC.

South 7th St. • P.O. Box 648 • Van Buren, AR 72957 • (479) 474-1227
River Market Ave. • Suite 250 • Little Rock, AR 72201 • (501) 374-4846

www.hawkins-weir.com

**PROPERTY BOUNDARY AND
LEGAL DESCRIPTION
ZERO STREET EQ BASIN**

FOR: THE CITY OF FORT SMITH

DATE: 10/26/11

SCALE: 1"=300'

JOB NO. 09-17-E2

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CITY OF FORT SMITH

PARTICIPANT

REGARDING:

THE JENNY LIND EQUALIZATION BASIN
FORT SMITH, SEBASTIAN COUNTY, ARKANSAS
AFIN: 66-01555

LIS No. -

IMPLEMENTING AGREEMENT

This Implementing Agreement (hereinafter "IA") shall establish remedial requirements and financial liabilities of the City of Fort Smith (hereinafter the "PARTICIPANT") associated with the Jenny Lind Equalization Basin Property (the former zinc smelter site), Fort Smith, Sebastian County, Arkansas (hereinafter the "Property"). This IA is entered into by the PARTICIPANT and the Arkansas Department of Environmental Quality (hereinafter "ADEQ") pursuant to the authority of the Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A. §§ 8-7-201 et. seq.), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; A.C.A. §§ 8-7-501 et. seq.), the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation Number 23, Hazardous Waste Management, (hereinafter "Regulation 23"), the Arkansas Voluntary Cleanup Act (Act 1042 of 1997) (as amended), (A.C.A. §§ 8-7-1101 et. seq.) (hereinafter the "Arkansas Brownfields Program"), and the APC&EC Regulation Number 29, Brownfields Redevelopment.

FINDINGS OF FACT

1. The Property is located at 5501 Jenny Lind Road, Fort Smith, Sebastian County, Arkansas. The legal description of which is:

Part of the Southwest ¼ of the Southeast ¼ of Section 33, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, lying east of Jenny Lind Road, west of the Union Pacific Railroad and north of a floodway running in a northeasterly and a southwesterly direction, less and except a parcel lying in the Northwest corner of the said Southwest ¼ of the Southeast ¼, running 105 feet north and south and 200 feet east and west, containing 15 acres, more or less.
2. PARTICIPANT is a municipality endowed with the rights and obligations described at Ark. Code Ann. §14-54-101 and is competent and authorized to execute this IA.

3. The Property is approximately 15 acres, which consists of open land with remnants of concrete footings and rubble remaining from demolished buildings that were part of the former Fort Smith Zinc Smelter.
4. The site was formerly used for operations associated with a zinc smelter.
5. The Property is an abandoned site as defined at Ark. Code Ann. §8-7-1102 (a)(1) and § 29.301 of Regulation 29.
6. On November 9, 2007, the PARTICIPANT submitted a letter of intent, which set forth the Participant's desire to take title to the Property and retain eligibility for participation in the Brownfields Program as described in A.C.A. § 8-7-1101 (8).
7. On December 7, 2007, ADEQ sent a letter declaring the PARTICIPANT's eligibility for participation in the Arkansas Brownfields Program as described in A.C.A. § 8-7-1104 (a), therefore authorizing the PARTICIPANT to acquire title to the Property and still retain its eligibility for the Arkansas Brownfields Program.
8. The PARTICIPANT warrants it is not responsible for any preexisting pollution at or contamination on any of the Property. Additionally, the PARTICIPANT did not, by act or omission, cause or contribute to any release or threatened release of hazardous substance on or from the Property or is not otherwise considered to be a responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4).
9. The PARTICIPANT agrees the Property will not, at any time, be transferred to any party responsible for such pollution or contamination on the Property. If such transfer is made, the IA and any certificate of completion issued hereunder shall be null and void.
10. In July 1997 Bentley Environmental Engineering, Inc. performed a Phase II Site Assessment as part of a potential real estate transaction at the property. In September 2008 EnSafe, Inc., on behalf of the ADEQ, conducted a Comprehensive Site Assessment (CSA) as part of the requirements of the Arkansas Brownfields Program.

The CSA indicated elevated levels of metals are present in the surface soil, subsurface soil, sediment and groundwater on the property. Smelter ash and slag is at the surface or buried to depths up to approximately three (3) feet, extending to the western edges of the property and to the south of the property. Continuous potential threats for present and future releases associated with the waste on site exist for both human health and the environment.

11. The ADEQ Hazardous Waste Division personnel reviewed the CSA, dated September 15, 2008, and the findings and report were approved January 6, 2009.
12. Consequently, the PARTICIPANT has committed to a particular future land use of the Property, specifically intending to develop the Property for use as an equalization basin and other wet weather improvements for the City's wastewater system.

AGREEMENT

The issues herein, as they pertain to the Property, having been settled by the agreement of the PARTICIPANT and ADEQ, it is hereby agreed and stipulated by all Parties the IA be entered herein and that the PARTICIPANT comply with the following provisions.

1. The PARTICIPANT, within ten (10) days of the effective date of this IA, shall public notice this IA in a newspaper of general circulation that serves the City of Fort Smith area. The notice shall identify the Property, the intended future land use, and the nature of the activities to be conducted on the Property. The PARTICIPANT shall provide proof of this publication to ADEQ within thirty (30) days of the effective date of this IA.
2. The PARTICIPANT shall submit a Property Development Plan to ADEQ within forty-five (45) days of the effective date of the IA for review and approval. The approved Property Development Plan shall become an amendment to this IA.
3. ADEQ shall issue a Property Development Decision Document (PDDD), as necessary, to address any contamination identified in the CSA. Pursuant to Ark. Code Ann. §8-4-1104(h)(1), ADEQ shall provide public notice and opportunity for hearing on the PDDD.

4. ADEQ shall issue a final PDDD, considering all comments submitted, pursuant to the public notice discussed in paragraph 3 above. The approved final PDDD shall become an amendment to this IA.
5. The PARTICIPANT shall complete remedial action activities, as addressed in the final PDDD.
6. The PARTICIPANT shall place a notice on the deed for the Property, within thirty (30) business days of acquiring legal title to the site, in a manner deemed suitable by ADEQ, which alerts future Property owners of this IA and that the Property shall not be subsequently redeveloped without consultation with ADEQ. Any subsequent redevelopment will be in accordance with local zoning requirements and will be in a manner which is protective of human health and the environment.
7. The PARTICIPANT shall file, within thirty (30) days of the effective date of this IA, or within thirty (30) days of acquiring legal title to the site, a notice of the IA with the clerk of the Circuit Court in Sebastian County, Real Estate Section. Notice of any amendments to this IA also shall be filed by PARTICIPANT with the clerk of the Circuit Court in Sebastian County within thirty (30) days after their effective dates. The clerk of the Circuit Court shall docket and record the notices so they appear in the purchaser's chain of title. A file marked copy shall be submitted to ADEQ, within forty-five (45) days of this IA.
8. The PARTICIPANT shall submit a completion report to ADEQ within forty-five (45) days of completing the remediation work associated with the Property Development Plan and the PDDD. The completion report should include information to document the site has been redeveloped according to the provisions mutually agreed upon in the IA and the approved Property Development Plan and the PDDD. After ADEQ receives this information and verifies the work has been completed, a Certificate of Completion will be issued.
9. The PARTICIPANT shall file a deed restriction for the Property, if necessary, as determined by ADEQ, to restrict the use of the Property to activities and compatible uses which will protect the integrity of any remedial action measures implemented on the Property.
10. The PARTICIPANT shall provide a copy of this IA to all prospective owners or successors before the Property is transferred to the prospective owner or successor.

11. The PARTICIPANT shall take all steps necessary to prevent aggravating or contributing to the contamination of the air, land or water, including downward migration of contamination, from any existing contamination on the site. The term existing contamination shall include any contamination set forth in the CSA approved by ADEQ.
12. The PARTICIPANT shall not use or redevelop the site in a manner that differs from the terms or procedures established under this IA.
13. The PARTICIPANT shall not be responsible for paying any fines or penalties related to the past contamination of the Property. The term "past contamination" shall include any contamination set forth in the CSA approved by ADEQ.
14. Nothing in this IA shall be construed as a waiver of liability for future contamination of the Property by PARTICIPANT, subsequent owners, or third-parties.
15. This IA, including all rights and clean-up liabilities, is transferable, with written approval by ADEQ, to any and all subsequent owners of the Property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the Property.
16. Subsequent owners shall receive a copy of the IA from the Property owner and shall not develop or use the Property in a manner which is inconsistent with the terms or procedures contained herein unless agreed to by all Parties to this IA, including ADEQ. In the event the intended use of the Property is to be altered from the use described herein, ADEQ will evaluate the protectiveness of the remedial action to determine if the proposed use would be protective of human health and the environment.

Absent such a determination by ADEQ, any liability assurances contained in this IA, and amendments thereto or certificates of completion issued hereunder, shall be null and void.
17. Participation in the Arkansas Brownfields Program can be withdrawn by the PARTICIPANT at any time upon written notification to ADEQ. In turn, if the PARTICIPANT fails to complete the terms and conditions set forth in this IA, and at the time of withdrawal has acquired the property and is considered to be the legal owner of the property, the ADEQ reserves the right to deem the PARTICIPANT in

violation of this IA and PARTICIPANT will be notified in writing that their enrollment in the Arkansas Brownfields Program is no longer valid and the PARTICIPANT will be liable for any past contamination found on the site.

18. This IA shall become effective upon the signature of the Director of ADEQ.

IT IS SO AGREED.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____

Date: _____

Director
Teresa Marks

PARTICIPANT
CITY OF FORT SMITH

By: _____

Date: _____



MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Beshears, Administrative Assistant

DATE: April 13, 2012

SUBJECT: Outside Agency Review Panel

The term of Ms. Amy Manley (Arts and Humanities) of the Outside Agency has expired March 31, 2012. Ms. Manley is interested in being reappointed to this panel.

There are no applicants available at this time for Arts and Humanities.

Appointments are **by the Board of Directors**. One appointment is needed; the term will expire March 31, 2014.

Outside Agency Review Panel

This review panel will review applications for outside agency services and recommending award amounts for approval by the Board of Directors. Members of this panel will be appointed by the **Board of Directors**.

Core Committee shall be comprised of three citizens who are knowledgeable of the city's nonprofit organizations and services they provide, and are not directly related to any agencies that are applying for funds available through this program, nor board of directors of the City of Fort Smith. (3 year terms)

Arts & Humanities comprised of two citizens who are knowledgeable of arts and humanities and are not directly related to any agencies that are applying for funds under this line item nor the Board of Directors of the City of Fort Smith. (1 year term and 1 two-year term initially, and two year terms thereafter).

Recreation Panel comprised of two citizens who are knowledgeable of recreation and are not directly related to any agencies that are applying for funds under this line item nor the Board of Directors of the City of Fort Smith. (1 one year term and 1 two-year term initially and two-year terms thereafter). The panel meets on call.

Note: at the first full meeting of the 9-member panel, each appointee will draw a number, which will determine the length of service. Terms will expire on March 31st of each year.

	<u>Date Appointed</u>	<u>Term Expires</u>
<u>Core:</u>		
Peggy Weidman Retired 5701 Free Ferry Rd #5 (03) 452-4252 (h) peggyweidman@gmail.com	01/19/10	03/31/12
Barbara Peterson Bancorp South 7912 Valley Forge Rd (03) 484-0101 (h) 649-1015 (w) WK-BARBARA.PETERSON@BXS.COM	01/19/10	03/31/13
Kathy Davis Western Arkansas Counseling 3700 Heather Ridge Court (03) 650-6039 (h) 452-6650 (w) Davis6418@sbcglobal.net	04/19/11	03/31/14

Arts and Humanities:

Amy Manley 05/17/11 03/31/12
Kimmons Band Director
114 North 25 Street (01)
785-2626 (w)
478-6196 (h)
amanley@fortsmithschools.org

Elizabeth Momand 01/19/10 03/31/14
UAFS
3208 Village Rd (03)
452-2169 (h)
788-7540 (w)
emomand@gmail.com

Recreation:

Derrick Joe 01/19/10 03/31/12
ABF
10016 Foxboro Rd (03)
650-8165 (h)
784-8537 (w)
derrick-joe@data-tronics.com

Jim Geels 09/20/11 03/31/12
Littlefield Oil Co.
2017 South 68 Street (03)
646-6595 (h)
646-0595 (w)
jimg@littlefieldoil.com

Social/Community Services:

Jonathan Fry President of Home Instead Senior Care 7905 Bridgewood Lane (16) 479-957-7192 (h) 479-434-6960 (w) jonathan.fry@homeinstead.com	01/19/10	03/31/12
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Susan Krafft Domestic Engineer 8700 Harvard Drive (08) 459-6819 (h) susan.krafft@gmail.com	04/19/11	03/31/14
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CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 2-6-2012

Name: Amy Manley Home Telephone: 479-478-6196

Home Address: 114 N. 25th Work Telephone: 479-785-2626

Zip: 72901 Email: amanley@usa.net

Occupation: Kimmons Jr. High Band Director
 (If retired, please indicate former occupation or profession)

Education: Master of Education

Professional and/or Community Activities: Arkansas School Band + Orchestra Association, Arkansas Bandmaster Association, Kimmons Jr. High Focus Team Member

Additional Pertinent Information/References: Dr. Elizabeth Momand

Are you a registered voter in the City of Fort Smith? Yes No

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense? Yes NO

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consider

Drivers License information will t

[Signature]

Date of Birth

[Signature]

(found check of all applicants)

I am interested in serving on the (please check):

- | | |
|---|--|
| <input type="checkbox"/> Audit Committee | <input type="checkbox"/> Library Bd of Trustees |
| <input type="checkbox"/> Advertising & Promoting Commission | <input type="checkbox"/> Mechanical Bd of Adjustments and Appeals |
| <input type="checkbox"/> Airport Commission | <input type="checkbox"/> Oak Cemetery Commission |
| <input type="checkbox"/> Animal Services Advisory Board | <input checked="" type="checkbox"/> Outside Agency Review Panel |
| <input type="checkbox"/> Arkansas Fair & Exhibition Facilities Bd | <input type="checkbox"/> Parking Authority |
| <input type="checkbox"/> Benevolent Fund Board | <input type="checkbox"/> Parks & Recreation Commission |
| <input type="checkbox"/> Bldg. Bd. Of Adjustment and Appeals | <input type="checkbox"/> Planning Commission |
| <input type="checkbox"/> Central Business Improvement District | <input type="checkbox"/> Plumbing Advisory Board |
| <input type="checkbox"/> Convention Center Commission | <input type="checkbox"/> Port Authority |
| <input type="checkbox"/> Civil Service Commission | <input type="checkbox"/> Property Owners Appeals Board |
| <input type="checkbox"/> Community Development Advisory Com. | <input type="checkbox"/> Sebastian County Reg. Solid Waste Mgmt. Bd. |
| <input type="checkbox"/> County Equalization Board | <input type="checkbox"/> Sister Cities Committee |
| <input type="checkbox"/> Electric Code Board of Appeals & Appeals | <input type="checkbox"/> Transit Advisory Commission |
| <input type="checkbox"/> Fire Code Board of Appeals & Adjustments | <input type="checkbox"/> Residential Housing Facilities Board |
| <input type="checkbox"/> Historic District Commission | |
| <input type="checkbox"/> Housing Assistance Board | |
| <input type="checkbox"/> Housing Authority | |



MEMORANDUM

TO: Mayor and Board of Directors
FROM: Wendy Beshears, Administrative Assistant
DATE: April 13, 2012
SUBJECT: Housing Assistance Board

Mr. Joe Hardin of the Housing Assistance Board has resigned. His term will need to be filled.

The applicant available at this time is:

John P. Ross 10109 Seven Oaks Road

Appointments are **by the Board of Directors**. One appointment is needed; the term will expire April 30, 2013.

Housing Assistance Board

The Housing Assistance Board was established by the Board of Directors April 6, 1976 to review applications and approve grants to owners of housing units in the City to repair and rehabilitate private residential structures. Grants are available through the Community Development Program.

The Board consists of seven persons serving two-year terms. The Board of Directors make the appointments from names submitted to them by various citizens, community groups, etc. The Board meets on call monthly.

	<u>DATE APPOINTED</u>	<u>TERM EXPIRE</u>
Hazel Brown Realtor (term expires 4/30/12) 6711 Riviera Drive (03) 452-9406 (h) 452-5252 hbrown1409@aol.com	04/18/06	04/30/12
Jim Rose Retired 2204 Carleton Place (08) 648-9120	05/20/03	04/30/13
Gary Campbell 2711 Reeder (01) 783-0030 (h)	12/22/10	04/30/13
Allene Stafford Retired 1420 N. 55 Terrace (04) 452-5742 (h) 783-6830 (w)	03/15/05	04/30/13

Joe Hardin Retired 1524 Rockhurst Dr (08) 719-7356	04/20/11	04/30/13
Karen V. Wuthrich Vice-President 4115 Gascony Way (03) 452-1952 (h) 478-4425 (w) karen.wuthrich@bxs.com	05/18/10	04/30/14
Jim Harris Retired 525 North 39 Street (03) 783-4530 (h) jharris39@sbcglobal.net	05/18/10	04/30/14
Sara Edmiston Retired (starts 4/30/12) 8404 Hannah Court (03) 452-3334 wedmiston@sbcglobal.net	03/20/12	04/30/14

Housing asst.

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: March 8, 2012

Name: John P. (Pat) Ross

Home Telephone: 479-646-7272

Home Address: 10109 Seven Oaks Rd. Work Telephone: 479-973-2759

Zip: 72908

Email: jprn62vw@sbcglobal.net

Occupation: civiation / Real Estate Agent
(if retired, please indicate former occupation or profession)

Education: High School, Westark, UAES

Professional and/or Community Activities: Flight instructor CFI, CFI, Real Estate agent

Past Chairman FS BOR 2 years MLS Committee MLS Committee, Board of Director Gateway House, Flanna Hill Property Owners Board of director

Additional Pertinent Information/References:

Bernard raised in Fort Smith References upon request

Are you a registered voter in the City of Fort Smith? Yes X No
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.

Drivers License information will be

[Signature]

Date of Birth check of all applicants)

[Signature]

I am interested in serving on the (please check):

- () Audit Committee
() Advertising & Promoting Commission
[X] Airport Commission
() Arkansas Fair & Exhibition Facilities Bd
() Benevolent Fund Board
() Bldg. Bd. Of Adjustment and Appeals
() Central Business Improvement District
() Convention Center Commission
() Civil Service Commission
() Community Development Advisory Com.
() County Equalization Board
() Electric Code Board of Appeals & Appeals
() Fire Code Board of Appeals & Adjustments
() Historic District Commission
[X] Housing Assistance Board
() Housing Authority
() Library Bd of Trustees
() Mechanical Bd of Adjustments and Appeals
() Oak Cemetery Commission
() Outside Agency Review Panel
() Parking Authority
[X] Parks & Recreation Commission
[X] Planning Commission
() Plumbing Advisory Board
() Port Authority
() Property Owners Appeals Board
() Sebastian County Reg. Solid Waste Mgmt. Bd.
() Sister Cities Committee
() Transit Advisory Commission
() Residential Housing Facilities Board