

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**

**November 6, 2012 ~ 6:00 P.M.**

**Fort Smith Public Schools Service Center**

**3205 Jenny Lind Road**

***THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT ACCESS CHANNEL 6***

**INVOCATION & PLEDGE OF ALLEGIANCE**

**ROLL CALL**

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

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

**APPROVE MINUTES OF THE OCTOBER 16, 2012 REGULAR MEETING**

**ITEMS OF BUSINESS:**

1. Presentation: Rick Wade, City Attorney - Outstanding Lawyer Citizen Award
2. Presentation of proposed 2013 City Budget
3. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan - General Commercial to Residential Detached; Rezoning - Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL) to Residential Single-Family Medium High Density (RS-3) by extension located at 8750 South 36th Terrace*)
4. Ordinance rezoning identified property and amending the zoning map (*Not Zoned to Residential Multi-Family High Density (RM-4) by classification located at 7803, 7805, 7807 & 7809 Wells Lake Road*)

5. Resolution of the Board of Directors of the City of Fort Smith certifying local government endorsement of business to participate in the Tax Back Program (as authorized by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003) (*Arkansas Refrigerated Services, Inc.*)
6. Consent Agenda
  - A. Resolution authorizing the acquisition of real property interests for Jenny Lind Road and Ingersoll Avenue Widening, Project No. 07-01-A, AHTD Job No. 040471 (\$511,300.00 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
  - B. Resolution accepting bid for lighting replacement to all fire stations (\$51,235.00 / *Fire Department / Not Budgeted - American Recovery and Reinvestment Act of 2009, EECBG Program*)
  - C. Resolution accepting bid for uniform rental services (*3 year bid / Various City Departments / Budgeted - General, Street, Water & Sewer, and Sanitation Operating Funds*)
  - D. Resolution accepting a gift and exchange agreement with a special warranty deed with William H. Hanna for property located at Carol Ann Cross Park
  - E. Resolution approving a termination agreement regarding a lease of property between the City of Fort Smith and Sebastian County Girls' Softball League, Inc.
  - F. Resolution authorizing the Mayor to execute a memorandum of understanding with the National Park Service - Fort Smith National Historic Site to provide fire protection on lands within the park's boundaries
  - G. Resolution authorizing the City Administrator to accept an offer made by property owners for the acquisition of easements in connection with the Lake Fort Smith 48-Inch Water Transmission Line Project (\$24,000.00 / *Utility Department / Budgeted - 2008 Revenue Bonds*)
  - H. Resolution authorizing the Mayor to execute easements with the Department of the Army at the William O. Darby Reserve Center
  - I. Resolution authorizing acquisition of easements in connection with the Lake Fort Smith 48-Inch Water Transmission Line and the Chaffee Crossing Pump Station and Force Main Projects (\$9,300.00 / *Utility Department / Budgeted - 2008 Revenue Bonds*)
  - J. Resolution to accept settlement offer from a property owner for the acquisition of real property interests for the Lake Fort Smith Water Treatment Plant Improvements (\$2,100.00 / *Utility Department / Budgeted - 2008 Revenue Bonds*)

- K. Resolution authorizing the Mayor to execute Authorization No. 2 to the agreement with Mickle Wagner Coleman, Inc. for engineering services for Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines (\$149,820.00 / Utility Department / Budgeted - 2012 Sales Tax Bonds)
- L. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Diamond Construction Company, Inc. for Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines (\$910,833.40 / Utility Department / Budgeted - 2012 Sales Tax Bonds)
- M. Resolution authorizing the Mayor to execute trail and land use agreements with the Arkansas Department of Parks and Tourism in conjunction with the Lake Fort Smith State Park
- N. Resolution authorizing the Mayor to execute Amendment No. 1 to the agreement with CDM Smith, Inc. for providing engineering services for the Wastewater Management Plan Update (\$59,925.00 / Utility Department / Budgeted - 2012 Sales Tax Bonds)
- O. Resolution authorizing the Mayor to execute an amended agreement with Arkansas Valley Electric Cooperative Corporation and Arkansas Electric Cooperative Corporation for terms and conditions for interconnection and parallel operation of the Lee Creek Hydro-Generation facility

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

- ▶ Mayor
- ▶ Directors
- ▶ City Administrator

**ADJOURN**



2.

October 31, 2012

## *MEMORANDUM*

**TO:** Ray Gosack, City Administrator

**FROM :** Kara Bushkuhl, Director of Finance

**SUBJECT:** 2013 Proposed Budget

The 2013 proposed budget will be delivered to the Mayor, Board of Directors, and yourself on Tuesday, November 6, 2012. Copies for media representatives will also be available. The proposed budget will be posted on the city's website on Thursday November 8, 2012.

If you have any questions, please let me know.

ORDINANCE NO. \_\_\_\_\_

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

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**WHEREAS**, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on October 9, 2012, that said change be made; and,

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

**WHEREAS**, the City Planning Commission has heretofore held a public hearing to consider request No. 15-7-12 to rezone certain properties hereinafter described, and, having considered said request, recommended on October 9, 2012, that said change be made;

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

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

PART OF THE WEST HALF (W ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 32 WEST, CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET ½” REBAR MARKING THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF SAID SE ¼ OF SECTION 10, SAID POINT ALSO MARKING THE SOUTHEAST CORNER OF KINGSWOOD SOUTH, PHASE II, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE N03°17'57”E, ALONG THE WEST LINE OF SAID NW ¼

SE ¼ OF SECTION 10 AND SAID EAST LINE OF KINGSWOOD SOUTH, PHASE II, 331.97 FEET TO AN EXISTING REBAR (RLS #773) MARKING THE SOUTHWEST CORNER OF COMMERCIAL PARK SOUTH, PHASE II, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE S86°42'03"E, LEAVING SAID WEST LINE OF NW ¼ SE ¼ OF SECTION 10 AND ALONG THE SOUTH LINE OF SAID COMMERCIAL PARK SOUTH, PHASE II, 700.00 FEET TO A SET ½" REBAR; THENCE S03°11'03"W, LEAVING SAID SOUTH LINE OF COMMERCIAL PARK SOUTH, PHASE II, 500.00 FEET TO A SET ½" REBAR; THENCE S32°34'53"E 540.04 FEET TO A SET ½" REBAR; THENCE S03°11'03"W 730.00 FEET TO A SET ½" REBAR ON THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW ¼) OF SAID SE ¼ OF SECTION 10 AND THE NORTH LINE OF ELMER H. COOK SCHOOL SUBDIVISION, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE N86°14'25"W, ALONG SAID NORTH LINE OF ELMER H. COOK SCHOOL SUBDIVISION, 1016.35 FEET TO A SET ½" REBAR MARKING THE SOUTHWEST CORNER OF SAID SW ¼ SE ¼ OF SECTION 10 AND THE NORTHWEST CORNER OF SAID ELMER H. COOK SCHOOL SUBDIVISION, SAID POINT ALSO BEING LOCATED ON THE EAST LINE OF SAID REPLAT FIANNA HILLS I; THENCE N03°11'03"E, ALONG SAID WEST LINE OF SW ¼ SE ¼ OF SECTION 10 AND SAID EAST LINE OF REPLAT FIANNA HILLS I, 1327.42 FEET TO THE POINT OF BEGINNING, CONTAINING 33.59 ACRES, MORE OR LESS, BEING SUBJECT TO PUBLIC ROAD RIGHTS-OF-WAY AND ANY EASEMENTS OF RECORD.

more commonly known as 8750 South 36<sup>th</sup> Terrace.

**SECTION 2:** The hereinafter described property is hereby rezoned from Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL) to Residential Single Family Medium/High Density (RS-3) by Extension.

PART OF THE WEST HALF (W ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 32 WEST, CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET ½" REBAR MARKING THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF SAID SE ¼ OF SECTION 10, SAID POINT ALSO MARKING THE SOUTHEAST CORNER OF KINGSWOOD SOUTH, PHASE II, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE N03°17'57"E, ALONG THE WEST LINE OF SAID NW ¼ SE ¼ OF SECTION 10 AND SAID EAST LINE OF KINGSWOOD SOUTH, PHASE II, 331.97 FEET TO AN EXISTING REBAR (RLS #773) MARKING THE SOUTHWEST CORNER OF COMMERCIAL PARK SOUTH, PHASE II, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE S86°42'03"E, LEAVING SAID WEST LINE OF NW ¼ SE ¼ OF SECTION 10 AND ALONG THE SOUTH LINE OF SAID COMMERCIAL PARK SOUTH, PHASE II, 700.00 FEET TO A SET ½" REBAR; THENCE S03°11'03"W, LEAVING SAID SOUTH LINE OF COMMERCIAL PARK SOUTH, PHASE II, 500.00 FEET TO A SET ½" REBAR; THENCE S32°34'53"E 540.04 FEET TO A SET ½" REBAR; THENCE S03°11'03"W 730.00 FEET TO A SET ½" REBAR ON THE SOUTH LINE OF THE SOUTHWEST

QUARTER (SW ¼) OF SAID SE ¼ OF SECTION 10 AND THE NORTH LINE OF ELMER H. COOK SCHOOL SUBDIVISION, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE N86°14'25"W, ALONG SAID NORTH LINE OF ELMER H. COOK SCHOOL SUBDIVISION, 1016.35 FEET TO A SET ½" REBAR MARKING THE SOUTHWEST CORNER OF SAID SW ¼ SE ¼ OF SECTION 10 AND THE NORTHWEST CORNER OF SAID ELMER H. COOK SCHOOL SUBDIVISION, SAID POINT ALSO BEING LOCATED ON THE EAST LINE OF SAID REPLAT FIANNA HILLS I; THENCE N03°11'03"E, ALONG SAID WEST LINE OF SW ¼ SE ¼ OF SECTION 10 AND SAID EAST LINE OF REPLAT FIANNA HILLS I, 1327.42 FEET TO THE POINT OF BEGINNING, CONTAINING 33.59 ACRES, MORE OR LESS, BEING SUBJECT TO PUBLIC ROAD RIGHTS-OF-WAY AND ANY EASEMENTS OF RECORD.

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.**

**APPROVED:**

\_\_\_\_\_  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**City Clerk**

Approved as to form:



\_\_\_\_\_  
**City Attorney**  
**Publish One Time**

October 17, 2012

City of Fort Smith Board of Directors  
623 Garrison Avenue  
Fort Smith, Arkansas 72901

City of Fort Smith Planning Department  
623 Garrison Avenue  
Fort Smith, Arkansas 72901

Re: 8750 South 36<sup>th</sup> Terrace  
Fort Smith, Arkansas

Dear Board of Directors and Planning Department,

We request that you table the Master Land Use Plan Amendment and Property Rezoning request for the property located at 8750 South 36<sup>th</sup> Terrace, Fort Smith, Arkansas, being developed by ERC Land Development Group, LLC. We request that no action be taken on this project at the November 6, 2012 meeting.

We would like to table this approval to the December 4, 2012 meeting, where action can be taken at that time.

If you have any questions, please let us know.

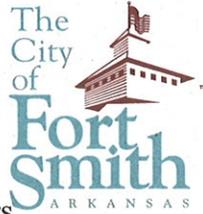
Regards,



Pat Mickle  
Mickle Wagoner Coleman Inc.  
Agent for ERC Land Development Group, LLC



Bob Cooper  
R.H. Ghan Commercial Properties  
Agent for Stephens Production Company



October 29, 2012

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

Re: A request by Pat Mickle, agent, for a Master Land Use Plan Amendment from General Commercial to Residential Detached and a zone change from Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL) to Residential Single Family Medium High Density (RS-3) by Extension located at 8750 South 36<sup>th</sup> Terrace.

On October 9, 2012, the City Planning Commission held a public hearing to consider the above rezoning request.

Mr. Wally Bailey read the staff reports indicating that the purpose of these requests is to facilitate the development of a 108 lot single family subdivision.

Mr. Pat Mickle and Mr. Rob Coleman was present to speak on behalf of these requests. Mr. Coleman stated that they are requesting a lower density and asking for a variance in order to provide larger homes in the proposed subdivision.

Mr. David Harris, 2025 South "V", questioned the Commission as to whether a particular residential zoning district such as R-4 can have wider lots with fewer houses.

Chairman Griffin stated that he felt from a marketability standpoint, it makes sense since it gives a potential buyer flexibility as to what can be put on the lot. Mr. Griffin noted that he felt this was a reasonable request.

No one was present to speak in opposition to this request.

Chairman Griffin called for the vote on the Master Land Use Plan Amendment and the rezoning request. The vote on the Master Land Use Plan Amendment was 8 in favor, 0 opposed and 1 abstention (Griffin). The vote on the rezoning request was 8 in favor, 0 opposed and 1 abstention (Griffin).

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

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File  
City Administrator

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

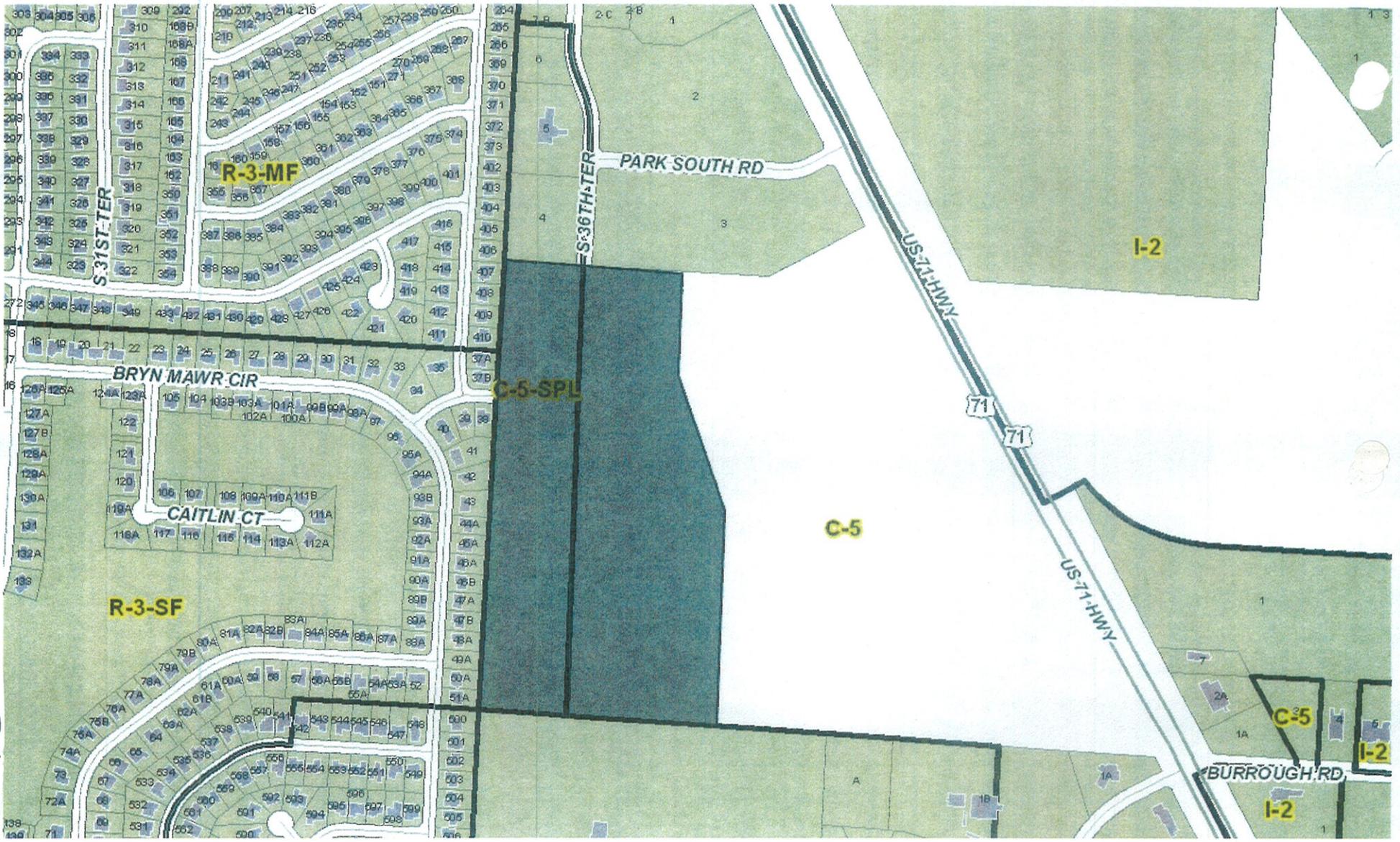
# Master Land Use Map Amendment: From General Commercial to Residential Detached

8750 South 36th Terrace



# Rezoning #15-7-12: From Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SSPL) to Residential Single Family Medium/High Density (RS-3)

8750 South 36th Terrace





# Memo

**To:** City Planning Commission  
**From:** Planning Staff  
**Date:** September 18, 2012  
**Subject:** Proposed Master Land Use Plan Amendment at 8750 South 36<sup>th</sup> Terrace from General Commercial to Residential Detached

The Planning Department is in receipt of an application from Pat Mickle, agent for Stephen's Production Company, to amend the *Master Land Use Plan* from General Commercial to Residential Detached to accommodate a proposed Residential Single Family Medium/High Density (RS-3) zoning designation. The subject property is located east of Bryn Mawr Circle, south of South 36<sup>th</sup> Terrace and north of Cook Elementary School on Brooken Hill Drive. The site contains approximately 33.81 acres and is proposed as a 108-lot single-family subdivision with minimum lot widths at building line ranging from approximately 65' to 70'.

The existing zoning of the site is Commercial Heavy (C-5) and Commercial Heavy SPL (C-5-Special). Companion application (items #3, #4, and #14) proposes a change in the zoning classification to Residential Single Family Medium/High Density (RS-3) by extension, a subdivision variance from street connectivity, and a variance from 7.5 feet to 5 feet side yard setback. The *Master Land Use Plan* is a guide to zoning and development and must be considered with the companion application.

## ADJACENT LAND USE CLASSIFICATIONS AND USES

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

The areas to the north are classified as General Commercial and are is a dental office and undeveloped.

The area to the south is classified as Public Institutional and is developed as Cook Elementary School.

The area to the east is classified as General Commercial and is undeveloped.

The area to the west is classified as Residential Detached and is developed as single family homes.

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

IA

**Purpose:** To create and maintain stable neighborhoods, provide safe, attractive family environments, and protect property values.

**Characteristics and Use:** Single-family residential development from zero lot line developments up to one unit per acre.

**Criteria for Designation:**

**Compliance Noted**

- |   |      |
|---|------|
| • Located within stable, predominantly single-family neighborhood | Yes  |
| • Adjacent to low impact industry and commercial developments     | Yes* |

\*Subdivision is within proximity of U.S. Highway 71 South

**MASTER STREET PLAN CLASSIFICATIONS**

The Master Street Plan classifies South 36<sup>th</sup> Terrace, Braeburn Glen, and Edinburgh Road as a Local Roads.

**STAFF COMMENTS**

The proposed Residential Detached classification would facilitate the requested Residential Single Family Medium/High Density (RS-3) zone. Staff recommends approval contingent upon approval of the companion items.

113

**Application Type**

**Minor Amendment**     **Standard Amendment**     **Major Amendment**  
*(See Section 27-328-5 C. (Criteria))*

**Request to Amend Map**        **Request to Amend Text**   

Applicant Name: Pat Mickle

Firm Name: Mickle Wagner Coleman, Inc.

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

Phone # (day): 479-649-8484    Phone # (cell):    Fax #: 479-649-8486

Owner Name: Stephens Production Company

Owner Address: 623 Garrison Avenue, Fort Smith, AR 72901

Phone # (day): 479-782-4191    Phone # (cell):    Fax #:

Property Address (subject property): 8750 South 36<sup>th</sup> Terrace

**Subject Property**

Current Land Use: Undeveloped, pasture

Existing MLUP Classification: General Commercial

Proposed MLUP Classification: Residential Detached

Existing Zoning Classification: C-5 and C-5-Special

Proposed Zoning Classification: RS-3

**Surrounding Property**

Current Land Use: north- Park South Commercial Park – professional offices/motel/bank

south- Cook Elementary School

east- Undeveloped, pasture

west- Single Family Residential

Existing MLUP Classification: north: General Commercial

south: Public/Institutional

east: General Commercial

west: Residential Detached

Existing Zoning Classification: north: C-5 and C-5 Special

south: R3MF

east: C-5

west: R3SF and R3MF

Pre-Application Meeting Date:

1C

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

1. A legal description of the subject property that is to be amended (reclassified).  
Attachment #1
2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location.  
Attachment #2 – Preliminary Subdivision Layout (11 x 17)
3. The area dimensions of the property in square feet or acres.  
33.59 acres
4. Describe existing road conditions and new roads to be included in the development and the effect of the proposed development on existing roads and traffic conditions:

A 37' asphalt, curb and gutter street serves the property on its northern side. A new street will be extended to the west to the intersection of Bryn Mawr and Edinburgh, both of which are 27' wide curb and guttered asphalt streets. All internal streets will be 27' wide, curb and guttered. It is anticipated that 75% of the traffic generated by the development will use South 36<sup>th</sup> Terrace for ingress & egress. From South 36<sup>th</sup> Terrace, either Grinnell to the east and its traffic at Hwy 71 can be accessed, or Grinnell to the west and South 28<sup>th</sup> Street can be accessed. About 25% of the traffic (ADT270) will utilize Edinburgh / Bryn Mawr intersection.

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

A storm drain system and sewer system serve the property at its northwestern corner. Water service is provided by an 8-inch line at the north boundary and by a 20-inch line along the south and part of the west sides. The nearest fire station is on Burrough Road approximately 1 mile away. No additional offsite utilities should be needed.

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

The development plan calls for 108 single family dwelling units on 33.6 acres; this is 3.2 dwelling units per acre. Maximum density by code for RS-3 is 6.7 DU/acre.

.1D

7. Identify any known or anticipated environmental concerns:

None known.

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

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

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

This amendment does not have an impact on the regional development pattern. It is simply an adjustment of the boundary between the commercial and residential land uses.

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

The subject site is vacant land. It sits on the boundary between a detached single family development and regional commercial zoned, but undeveloped, property. The expansion of the RS-3, and reduction in C-5, is consistent with the designated land uses and zones.

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

After a lull of four years, the market for new homes is increasing. Very little property in this area is available for a single family development of this size.

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

It is anticipated that the property to the east of subject property will develop commercially within the next 10-20 year period. That traffic will be principally handled by Hwy 71 which runs along its eastern boundary. The basic infrastructure for both the subject property and the commercial property to the east has been in place for over fifteen years.

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

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

IF

# Memo

To: City Planning Commission

From: Planning Staff

Date: September 18, 2012

Subject: Rezoning #15-7-12; A request by Pat Mickle, agent for Stephens Production Company, for Planning Commission consideration of a zone change from Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL) to Residential Single Family Medium/High Density (RS-3) by extension at 8750 South 36<sup>th</sup> Terrace

## LOT LOCATION AND SIZE

The subject property is located east of Bryn Mawr Circle, south of South 36<sup>th</sup> Terrace and north of Cook Elementary School on Brooken Hill Drive. The site contains approximately 33.81 acres.

## EXISTING ZONING

The property is currently zoned Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL).

## REQUESTED ZONING

The requested zoning on this tract is Residential Single Family Medium/High Density (RS-3). Characteristics of this zone are as follows:

### **Purpose:**

To provide for medium-to-high density, compact single family detached development on new sites or as infill construction. Adequate public services and facilities shall be available with sufficient capacity to serve the proposed development. This zoning district is intended to serve as a transition between the lower density single family-duplex districts and the multi-family or commercial districts. The RS-3 zoning district is appropriate in the Residential Detached classification of the Master Land Use Plan.

**Permitted Uses:** Single family and family group-home.

**Conditional Uses:** Commercial communication towers, amateur radio transmitting towers, utility substations, and country clubs.

2.A

**Bulk & Area Regulations:**

- Minimum Lot Size – 6,500 s.f.
- Maximum Density – 6.7 Dwelling Units/Acre
- Front Yard Setback - 25 feet
- Side Yard on Street Side of Corner Lot - 25 feet
- Side Yard Setback – 7.5 feet
- Rear Yard Setback - 10 feet
- Minimum Lot Width at Building Line – 60 feet
- Minimum Street Frontage – 20 feet
- Distance between Buildings - 10 feet
- Maximum Height - 35 feet (1+1)
- Maximum Lot Coverage - 60%

**SURROUNDING ZONING AND LAND USE**

The area to the north is zoned Commercial Heavy (C-5) and C-5 SPL and is undeveloped.

The area to the south is zoned Residential Multifamily Medium Density (RM-3) and developed as an elementary school.

The area to the west is zoned Residential Single Family Medium/High Density (RS-3) and Residential Multifamily Medium Density (RM-3) and developed as single family homes.

The area to the east is zoned Commercial Heavy (C-5) and is undeveloped.

**PROPOSED REZONING**

The proposed zoning will facilitate the development of a 108-lot single-family subdivision.

**LAND USE PLAN COMPLIANCE**

The Master Land Use Plan classifies this property as General Commercial. A companion Master Land Use Plan Amendment application requests a classification change to Residential Detached (companion item #2).

**MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies South 36th Terrace, Braeburn Glen, and Edinburgh Road as a Local Roads.

ZB

## **STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held July 31, 5:30 p.m., at the Guesthouse Inn meeting room, located at 3600 Grinnell Avenue. Three neighboring property owners attended the meeting. Pat Mickle facilitated the meeting and described the proposed residential development and the purpose of the subdivision variance. Mr. Mickle answered questions regarding drainage and traffic. A copy of the meeting minutes and attendance records are attached.

Staff recommends approval of the rezoning contingent upon the following:

1. Approval of the companion item Master Land Use Plan.
2. Approval of the companion item for the Subdivision Variance (Item # 3-8-12)
3. Approval of the companion item for the Variance (Item #24-8-12).
4. The rezoning is conditioned upon the preliminary plat/development plan. The density or number of lots can vary by 5% from the submitted plan.

ZC

**Neighborhood Meeting Minutes**  
**Park Meadow**  
**July 31, 2012 5:30 PM**  
**Guesthouse Inn Meeting Room**  
**3600 Grinnell Avenue, Fort Smith, Arkansas**

A neighborhood meeting to discuss the Park Meadow subdivision project was held Tuesday, July 31, 2012 at 5:30 p.m. at the Guesthouse Inn Meeting Room, 3600 Grinnell Avenue, Fort Smith, Arkansas. Pat Mickle & Bob Cooper were present representing the developer and land owner. Mr. Mickle conducted the meeting. There were a total of six people in attendance, three of which were area neighbors.

Mr. John Sauter, 9117 Bryn Mawr Circle noted the extension of Edinburgh Road into the subdivision. His lot is immediately south of this street extension. He noted the street light located at the corner of the existing Edinburgh and Bryn Mawr roads. He asked for confirmation that the light would remain in service. Mr. Mickle stated yes. Mr. Sauter indicated he liked the landscaping as shown on the Edinburgh entry into the subdivision.

Also present were Mr. & Mrs. Simmons who own the residence at 9009 Bryn Mawr Circle. They asked what was planned for the property. After Mr. Mickle explained they had no objections. They stated they had an issue with standing water in their backyard. Mr. Mickle indicated that part of the construction plans included a storm drain behind their property. The proposed subdivision drainage would be directed to this storm drain. The subdivision construction would have no adverse impact on their property; but could possibly provide better drainage for them.

Neither property owner provided positive or negative comments concerning the proposed termination of Braeburn Glen at the subdivision boundary. Mr. Mickle also provided an explanation of the request for variance to a 5' sideyard setback. There were no objections.

There being no other comments, the meeting adjourned at 6:10 p.m.



Patrick J. Mickle

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

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

Meeting Location Guesthouse Inn, 3600 Grinnell Avenue, Fort Smith, AR.

Meeting Time & Date Tuesday, July 31, 2012 at 5:30 p.m.

Meeting Purpose To discuss preliminary layout and proposed zoning & subdivision variances - Park Meadow

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1. Ron Simmons	20752 River View Ln. <sup>spiral OK</sup>	74959 918 9622907
2. John Sauter	9117 Bryn Mawr Cir	479-646-4471
3. Bob Cooper	4611 Rogers Ave. Ste 200	478-6161
4. Ron Brundage	Fort Smith Planning Dept	784-2216
5. Pat Mean	3434 Country Club, FSA	649-2484
6.		
7.		
8.		
9.		
10.		
11.		

ZE

**PETITION FOR CHANGE IN ZONING MAP**

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

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

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

See Attached

2. Address of property: 8750 South 36<sup>th</sup> Terrace

3. The above described property is now zoned: Commercial 5 and Commercial 5 Special

4. Application is hereby made to change the zoning classification of the above described property to RS-3 by Extension.  
(Extension or classification)

5. Why is the zoning change requested?

To permit development of a single-family residential subdivision.

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

Signed:

Mickle Wagner Coleman, Inc.  
Owner or Agent Name  
(please print)

\_\_\_\_\_  
Owner .

P.O. Box 1507, Ft. Smith, AR. 72902  
Owner or Agent Mailing Address

OR  
Pat Mear  
Agent

479-649-8484  
Owner or Agent Phone Number

ZF

June 13, 2012

PARK MEADOW  
ZONING & LAND USE DESCRIPTION

PART OF THE WEST HALF (W ½) OF THE SOUTHEAST QUARTER (SE ¼) OF SECTION 10, TOWNSHIP 7 NORTH, RANGE 32 WEST, CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A SET ½" REBAR MARKING THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF SAID SE ¼ OF SECTION 10, SAID POINT ALSO MARKING THE SOUTHEAST CORNER OF KINGSWOOD SOUTH, PHASE II, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE N03°17'57"E, ALONG THE WEST LINE OF SAID NW ¼ SE ¼ OF SECTION 10 AND SAID EAST LINE OF KINGSWOOD SOUTH, PHASE II, 331.97 FEET TO AN EXISTING REBAR (RLS #773) MARKING THE SOUTHWEST CORNER OF COMMERCIAL PARK SOUTH, PHASE II, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE S86°42'03"E, LEAVING SAID WEST LINE OF NW ¼ SE ¼ OF SECTION 10 AND ALONG THE SOUTH LINE OF SAID COMMERCIAL PARK SOUTH, PHASE II, 700.00 FEET TO A SET ½" REBAR; THENCE S03°11'03"W, LEAVING SAID SOUTH LINE OF COMMERCIAL PARK SOUTH, PHASE II, 500.00 FEET TO A SET ½" REBAR; THENCE S32°34'53"E 540.04 FEET TO A SET ½" REBAR; THENCE S03°11'03"W 730.00 FEET TO A SET ½" REBAR ON THE SOUTH LINE OF THE SOUTHWEST QUARTER (SW ¼) OF SAID SE ¼ OF SECTION 10 AND THE NORTH LINE OF ELMER H. COOK SCHOOL SUBDIVISION, AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS; THENCE N86°14'25"W, ALONG SAID NORTH LINE OF ELMER H. COOK SCHOOL SUBDIVISION, 1016.35 FEET TO A SET ½" REBAR MARKING THE SOUTHWEST CORNER OF SAID SW ¼ SE ¼ OF SECTION 10 AND THE NORTHWEST CORNER OF SAID ELMER H. COOK SCHOOL SUBDIVISION, SAID POINT ALSO BEING LOCATED ON THE EAST LINE OF SAID REPLAT FIANNA HILLS I; THENCE N03°11'03"E, ALONG SAID WEST LINE OF SW ¼ SE ¼ OF SECTION 10 AND SAID EAST LINE OF REPLAT FIANNA HILLS I, 1327.42 FEET TO THE POINT OF BEGINNING, CONTAINING 33.59 ACRES, MORE OR LESS, BEING SUBJECT TO PUBLIC ROAD RIGHTS-OF-WAY AND ANY EASEMENTS OF RECORD.

Mr. Alan Love  
Fort Smith Public Schools  
P. O. Box 1948  
Fort Smith, AR 72902

City of Fort Smith, AR

Celena Taylor  
9301 Bryn Mawr Circle  
Fort Smith, AR 72908

Robert White & Wendy Wilburn  
6304 Fallstone Road  
Fort Smith, AR 72916

Charles Fawcett  
P. O. Box 3912  
Fort Smith, AR 72913

VJF Properties, LLC  
P. O. Box 10248  
Fort Smith, AR 72917

James & Aydee Saunders  
3418 Londonderry Street  
Fort Smith, AR 72908

Jennifer Lynn Kistler Living Trust  
9209 Bryn Mawr Circle  
Fort Smith, AR 72908

Charles & Mary Roberts  
9200 Bryn Mawr Circle  
Fort Smith, AR 72908

Janene & Daniel Dorman  
3419 Londonderry Street  
Fort Smith, AR 72908

Roberto & Bonita Mendoza  
9201 Bryn Mawr Circle  
Fort Smith, AR 72908

Jim & Virginia Pruett  
3398 Shade Tree Drive  
Batesville, AR 72501

John Francis & Cynthia Sauter  
9117 Bryn Mawr Circle  
Fort Smith, AR 72908

Dorothy Allen Revocable Trust  
5710 Jenny Lind  
Fort Smith, AR 72908

Garland & Sharon Mott  
3420 Edinburg Drive  
Fort Smith, AR 72908

Stephens Production Company  
P. O. Box 2407  
Fort Smith, AR 72902

Stacy & Jerry Lee Baldogo  
225 Crescent Drive  
Fort Smith, AR 72916

Kealy & Shawn Hicks  
9100 Bryn Mawr Circle  
Fort Smith, AR 72908

Shawn & Misty Rogers  
3417 Edinburg Drive  
Fort Smith, AR 72908

Blake Decker  
9030 Bryn Mawr Circle  
Fort Smith, AR 72908

Leanne Canak  
21538 Awbrey Place  
Broadlands, VA 20148

Devin Surls  
9024 Bryn Mawr Circle  
Fort Smith, AR 72908

John & Erin Barker  
9025 Bryn Mawr Circle  
Fort Smith, AR 72908

Richard & Janice Wade  
9016 Bryn Mawr Circle  
Fort Smith, AR 72908

Mark & Vadona Maxwell  
9017 Bryn Mawr Circle  
Fort Smith, AR 72908

Larry Shields  
9008 Bryn Mawr Circle  
Fort Smith, AR 72908

Ronald & Joan Simmons  
20752 River View Lane  
Spiro, OK 74959

Jackie Wik  
9008 Bryn Mawr Circle  
Fort Smith, AR 72908

Joseph Armer  
9001 Bryn Mawr Circle  
Fort Smith, AR 72908

Robert Moore  
8924 Bryn Mawr Circle  
Fort Smith, AR 72908

Kralicek Investments, LLC  
2300 South 57<sup>th</sup> Street-Suite 4  
Fort Smith, AR 72908

Thanh Tran  
3112 Carrington Pointe  
Fort Smith, AR 72903

George & Mary Seahorn  
8917 Bryn Mawr Circle  
Fort Smith, AR 72908

LNH Properties, Inc.  
2704 Shadow Lake Drive  
Greenwood, AR 72936

Kyle & Amy Barnhill  
8909 Bryn Mawr Circle  
Fort Smith, AR 72908

Martha & Heyward Jackson  
10604 Kingsley Court  
Fort Smith, AR 72908

Benny Lee & Tisha Scott  
8901 Bryn Mawr Circle  
Fort Smith, AR 72908

Alaric Leblanc  
3416 Bryn Mawr Circle  
Fort Smith, AR 72908

Katherine Gregory  
3529 Brentwood Drive  
Fort Smith, AR 72908

Natasha Hilton  
3430 Braeburn Glen Street  
Fort Smith, AR 72908

Delana Ross  
3436 Braeburn Glen Street  
Fort Smith, AR 72908

Thomas & Gola Clark  
3409 Bryn Mawr Circle  
Fort Smith, AR 72908

James Howell  
3417 Bryn Mawr Circle  
Fort Smith, AR 72908

Paul Dean Sparks  
3425 Braeburn Glen Street  
Fort Smith, AR 72908

Ricky & Donna White  
8813 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Donald & Zelinda Baker  
8809 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Terry & Shere Tuell  
8801 Kendall Court  
Fort Smith, AR 72908

Vance & Teresa Leffert  
8800 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Scotty Bates  
8805 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Eugene & Charlene Hannaman  
8802 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Tam Ngoc Ho  
8801 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Larry & Frances Wilhelm  
8715 Kendall Court  
Fort Smith, AR 72908

Paula Betnar  
8714 South 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Helen Harrison & Ala Valentine  
8715 South 35<sup>th</sup> Street  
Fort Smith, AR 72908

Adam Archer  
3117 Londonderry Street  
Fort Smith, AR 72908

Thang Tran & Lan Ngoc Nguyen  
8710 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Alan & Brenda Valentine  
8713 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Clifford & Cathy Harris  
3400 Kendall Avenue  
Fort Smith, AR 72908

Richard & Heather Combest, Jr.  
8706 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Amanda Huffman  
8709 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Vance Clayton  
3301 Cliff Drive  
Fort Smith, AR 72903

Minh Tam T. Chu, et al  
8705 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Steven & Diana Cancel  
8701 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Phoung T. Ngo  
8613 S. 35<sup>th</sup> Street  
Fort Smith, AR 72903

Larry & Rebecca Enoch  
8609 S. 35<sup>th</sup> Terrace  
Fort Smith, AR 72908

Chi Van Nguyen & Nisah Hamid  
8608 S. 35<sup>th</sup> Street  
Fort Smith, AR 72903

N&W Properties LLC  
1301 Armistead Road  
Fort Smith, AR 72916

DRAFT

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
MINUTES  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
OCTOBER 9, 2012**

On roll call, the following Commissioners were present: Vicki Newton, Rett Howard, Marshall Sharpe, Jennifer Parks, Mike Lorenz, Brandon Cox, Steve Griffin, Walton Maurras and Richard Spearman.

Chairman Griffin called for the vote on the minutes from the September 11, 2012, Planning Commission meeting. Motion was made by Commissioner Howard, seconded by Commissioner Sharpe and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

- 1. Master Land Use Plan Amendment from General Commercial to Residential Detached located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #2, #2, #4 & #13)**
- 2. Rezoning #15-7-12; A request by Pat Mickle, agent, for a zone change from Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL) to Residential Single Family Medium High Density (RS-3) by Extension located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #1, #3, #4 & #13)**
- 3. Subdivision Variance #3-8-12; A request by Pat Mickle, agent, for a subdivision variance from Section 27-503-5(A) – street connectivity. (tabled from August 2012) (companion item to items #1, #2, #4 & #13)**
- 4. Preliminary Plat – Park Meadows Addition – Lots 1-108 – Mickle-Wagner-Coleman (tabled from August 2012) (companion item to items #1, #2, #3 & #13)**
  
- 13. Variance #24-8-12; A request by Pat Mickle, agent, for a variance from 7.5 feet to 5 feet interior side yard setback located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #1, #2, #3 & #4)**

Mr. Wally Bailey read the staff reports indicating that the purpose of these requests is to facilitate the development of a 108 lot single family subdivision. Mr. Bailey noted that approval of the subdivision variance would allow the developer to eliminate connecting Braeburn Glen to the proposed Park Meadow Subdivision. Mr. Bailey also noted that approval of the variance request would facilitate side-entry garages on some of the houses.

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

Commissioner Maurras questioned Mr. Mickle relative to limiting the 5 foot variance only to certain lots. Mr. Mickle stated that they would rather have flexibility on all of the proposed lots.

Mr. Rob Coleman was also present to speak on behalf of these requests. Mr. Coleman stated that they are requesting a lower density and asking for a variance in order to provide larger homes in the proposed subdivision.

Mr. David Harris, 2025 South “V”, questioned the Commission as to whether a particular residential zoning district such as R-4 can have wider lots with fewer houses.

Chairman Griffin stated that he felt from a marketability standpoint, it makes sense since it gives a potential buyer flexibility as to what can be put on the lot. Mr. Griffin noted that he felt this was a reasonable request.

Commissioner Maurras stated that he feels the 5 foot setback needs to be limited to those houses that have side entry garages.

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

- 1. Master Land Use Plan Amendment from General Commercial to Residential Detached located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #2, #3, #4 & #13)**

Chairman Griffin called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

- 2. Rezoning #15-7-12; A request by Pat Mickle, agent, for a zone change from Commercial Heavy (C-5) and Commercial Heavy Special (C-5-SPL) to Residential Single Family Medium High/Density (RS-3) by Extension located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #1, #3, #4 & #13)**

Chairman Griffin called for the vote on the rezoning request. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

- 3. Subdivision Variance #3-8-12; A request by Pat Mickle, agent, for a subdivision variance from Section 27-503-5(A) – street connectivity. (tabled from August 2012) (companion item to items #1, #2, #4 & #13)**

Chairman Griffin called for the vote on the subdivision variance request. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

- 4. Preliminary Plat – Park Meadows Addition – Lots 1-108 – Mickle-Wagner-Coleman**

Commissioner Maurras questioned Mr. Bailey prior to voting whether the preliminary plat depicts the requested side yard setbacks. Mr. Bailey noted that it did not.

Chairman Griffin then called for the vote on the preliminary plat. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

**RECESS PLANNING COMMISSION  
CONVENE BOARD OF ZONING ADJUSTMENT**

- 13. Variance #24-8-12; A request by Pat Mickle, agent, for a variance from 7.5 feet to 5 feet interior side yard setback located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #1, #2, #3 & #4)**

Chairman Griffin called for the vote on the variance request. Motion was made by Commissioner Maurras, seconded by Commissioner Spearman and carried by a vote of 6 in favor, 2 opposed (Lorenz, Howard) and 1 abstention (Griffin) to amend the request to limit the 5 foot setback to those instances in which the house has a side entry garage.

Chairman Griffin then called for the vote on the variance request as amended. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

**RECESS BOARD OF ZONING ADJUSTMENT  
RECONVENE PLANNING COMMISSION**

- 5. Rezoning #25-10-12; A request by Michael Johnson, agent, for a zone change from No Zone (Institutional Area, per Chaffee Crossing) to Residential Multi-Family High Density (RM-4) by Classification located at 7803, 7807 & 7809 Wells Lake Road. (companion item to item #6)**
- 6. Development Plan Approval for a multi-family development located at 7803 and 7805 Wells Lake Road. (companion item to item #5)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to facilitate the addition of two (2) new multi-family structures and place zoning on two (2) existing multi-family structures.

Ms. Andrews stated that a neighborhood meeting was held on October 8, 2012, at 4:30 p.m. at the Fort Chaffee Redevelopment Authority's Conference Room.

Mr. Michael Johnson was present to speak on behalf of these requests.

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

Chairman Griffin called for the vote on these requests separately.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE REZONING IDENTIFIED PROPERTY  
AND AMENDING THE ZONING MAP**

---

**WHEREAS**, the City Planning Commission has heretofore held a public hearing upon request No. 25-10-12 to rezone certain properties hereinafter described, and, having considered said request, recommended on October 9, 2012, that said change be made;

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

**SECTION 1:** That the following properties to-wit:

Part of the Northeast Quarter of (NE/4) of Section 7, T-7-N, R-31-W, Fort Smith, Sebastian County, Arkansas, more particularly described as follows: Commencing at the Southeast Corner of said NE/4; thence N 02°38'20"E, along the East line of Section 7, 1971.77 feet; thence N 87°12'00"W, 49.39 feet for a Point of Beginning; thence S 02°48'00"W, 222.23 feet; thence S 47°46'53"W, 233.14 feet; thence N 87°12'00"W, 185.20 feet to the East right-of-way line of Wells Lake Road; thence N 02°48'00"E, along said East right-of-way line, 387.14 feet; thence S 87°12'00"E, 350.00 feet to the Point of Beginning, containing 2.80 acres, more or less.

more commonly known as 7803, 7805, 7807 & 7809 Wells Lake Road, should be, and is hereby rezoned from Not Zoned to Residential Multi-Family High Density (RM-4) by Classification.

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.**

**ATTEST:**

**APPROVED:**

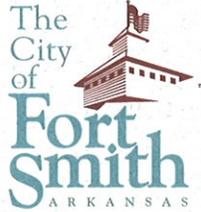
\_\_\_\_\_  
**City Clerk**

\_\_\_\_\_  
**Mayor**

Approved as to form:



\_\_\_\_\_  
City Attorney  
Publish One Time



October 29, 2012

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

Re: Rezoning #25-10-12; A request by Michael Johnson, agent, for a zone change from No Zone (Institutional Area, per Chaffee Crossing) to Residential Multi-Family High Density (RM-4) by Classification located at 7803, 7807 & 7809 Wells Lake Road.

On October 9, 2012, the City Planning Commission held a public hearing to consider the above rezoning request.

Ms. Brenda Andrews read the staff report indicating that the purpose of this request is to facilitate the addition of two (2) new multi-family structures and place zoning on two (2) existing multi-family structures.

Ms. Andrews stated that a neighborhood meeting was held on October 8, 2012, at 4:30 p.m. at the Fort Chaffee Redevelopment Authority's Conference Room.

Mr. Michael Johnson was present to speak on behalf of this request.

No one was present to speak in opposition to this request.

Chairman Griffin then called for the vote on the rezoning request. The vote was 9 in favor and 0 opposed.

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

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

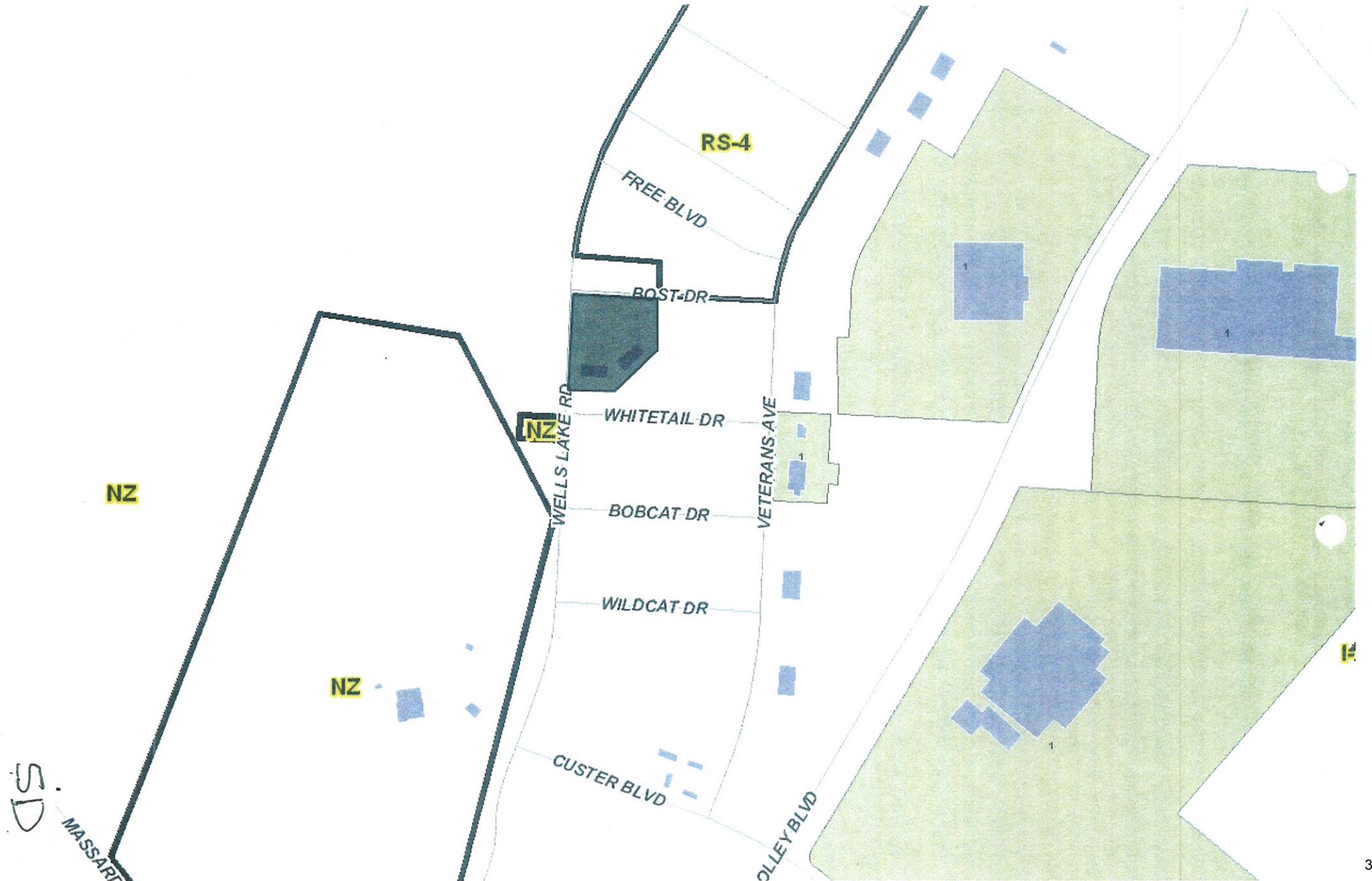
SG/lp

cc: File  
City Administrator

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

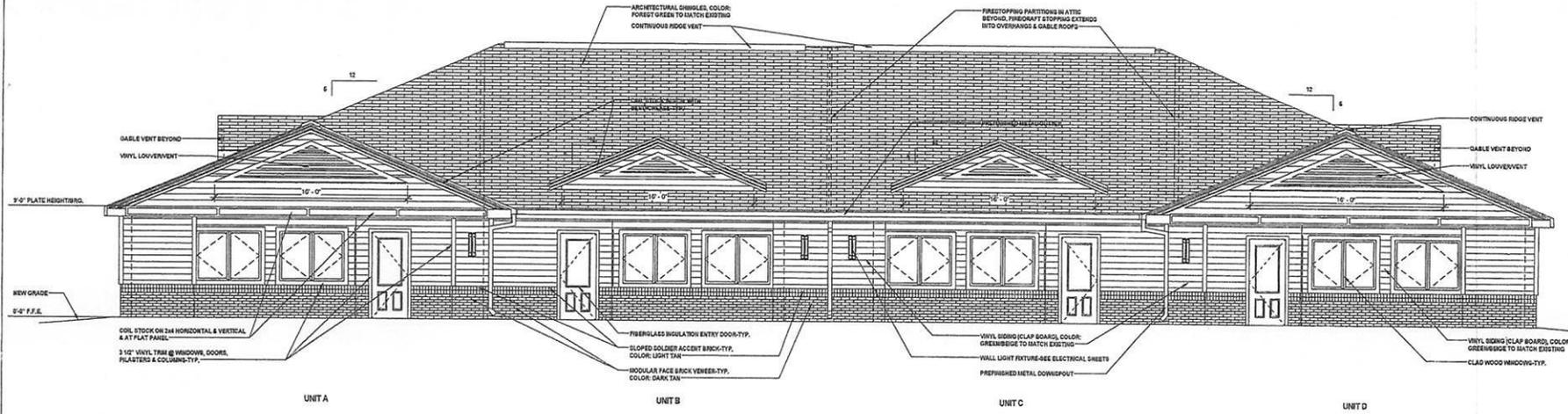
# Rezoning #25-10-12: From Not Zoned to Residential Multi-family High Density (RM-4)

7803,7805,7807 and 7809 Wells Lake Road

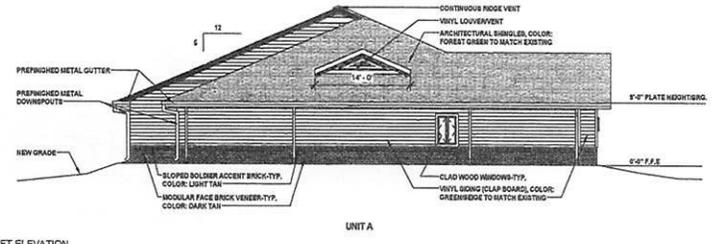




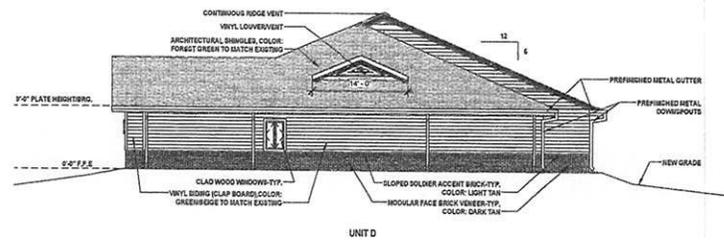
15



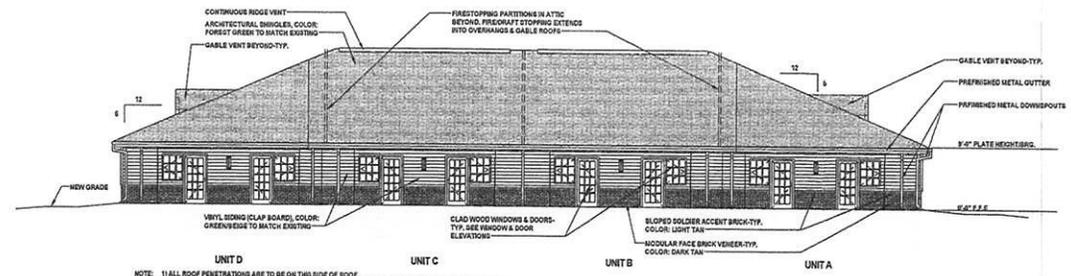
1 FRONT ELEVATION  
1/4" = 1'-0"



2 LEFT ELEVATION  
1/8" = 1'-0"



3 RIGHT ELEVATION  
1/8" = 1'-0"



4 REAR ELEVATION  
1/8" = 1'-0"

NOTE: 1) ALL ROOF PENETRATIONS ARE TO BE ON THIS SIDE OF ROOF.  
2) PAINT ALL PLUMBING & MECHANICAL VENTS, PIPES ABOVE ROOF ARE TO MATCH ROOF COLOR & BE HEAT RES. PAINT

**BOST / INDEPENDENT HOUSING AT  
CHAFFEE CROSSING**  
7803 WELLS LAKE ROAD  
FORT SMITH, ARKANSAS

**ARCHITECTURE PLUS, INC.**  
ARCHITECTS - PLANNERS

BUILDING ELEVATIONS DEVELOPMENT PLAN

PLANS	No.	Descrip.	Date

PROJECT: 10-77-01  
DATE: 08-29-12

A2.1A

**ARCHITECTS - PLANNERS**

NOT FOR CONSTRUCTION

C:\Documents and Settings\jensal\Desktop\10-77-01\_Bldg...\_independent housing\10-77-01\_Bldg...CENTRAL FILE backup.rvt

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** September 20, 2012

**Re:** Rezoning #25-10-12; A request from Michael Johnson, agent for Bost Inc., for Planning Commission consideration of a zone change from Not Zoned to Residential Multi-Family High Density (RM-4) by classification at 7803, 7805, 7807 & 7809 Wells Lake Road (companion to preliminary development plan)

## LOT LOCATION AND SIZE

The proposed zoning site is located on the east side of Wells Lake Road, north of Custer Boulevard. The tract contains 2.8 acres with approximately 333 feet of street frontage on Wells Lake Road.

## EXISTING ZONING

The site is currently not zoned.

## REQUESTED ZONING

The proposed zoning on this tract is Residential Multi-Family High Density (RM-4). Characteristics of this zone are as follows:

### Purpose:

To provide high density attached homes, including multi-story residential buildings in those areas where such building types already exist, or where such buildings would be consistent with an area's established development pattern and character. The RM-4 Zoning District is appropriate in urban areas within the Residential Attached, Mixed Use Residential, or Mixed Use Employment land use categories of the Master Land Use Plan.

### Uses:

All general uses, conditional uses and home occupations allowed in RM-4- zones as well as multi-family apartments.

5A

**Area Regulations:**

Lot Area - 5,000 square feet  
Front Yard Setback - 20 feet  
Side Yard Setback - 5 feet  
Side Yard on Street Side of Corner Lot - 15 feet  
Rear Yard Setback - 5 feet  
Separation of Buildings - 10 feet  
Maximum Height - 40 feet  
Side/Rear – Adjacent to RS Dist. Dev. – 40 feet

**Density Regulations:**

30 dwellings/acre

**SURROUNDING ZONING AND LAND USE**

The area to the north contains property Not Zoned and undeveloped as well as an area zoned Residential Single Family High Density (RS-4). All other properties surrounding the site are Not Zoned and undeveloped.

**PROPOSED ZONE CHANGE**

The requested zoning district will facilitate the addition of two new multi-family structures and place zoning on two existing multi-family structures.

**LAND USE COMPLIANCE**

The property is classified as Institutional by the Chaffee Crossing Future Land Use Plan.

**STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held on October 8, 2012, at 4:30 p.m., at the Fort Chaffee Redevelopment Authority’s Conference Room. Staff will provide details of the meeting at the planning commission meeting.

Staff recommends approval of the zoning request contingent upon approval of the companion development plan.

5B

**PETITION FOR CHANGE IN ZONING MAP**

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

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

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

2. Address of property: 7803, 7805, 7807 & 7809 WELLS LAKE ROAD, FORT SMITH, AR

3. The above described property is now zoned: NO ZONE (INSTITUTIONAL AREA, PER CHAFFEE CROSSING)

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

5. Why is the zoning change requested?

NO ZONE EXISTS. PROPOSED BUILDING CONSTRUCTION REQUIRES A ZONE FOR BUILDING PERMITTING PURPOSES

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

Signed:

Michael G. Johnson, AIA  
Owner or Agent Name  
Architecture Plus, Inc.  
907 South 21st Street  
Fort Smith, AR 72901  
(please print)

\_\_\_\_\_  
Owner

or

\_\_\_\_\_  
Owner or Agent Mailing Address

Michael G. Johnson  
Agent

479-783-8395  
Owner or Agent Phone Number

September 14, 2012

## **BOST INDEPENDENT HOUSING AT CHAFFEE CROSSING**

### **Description for Zoning to RM-4**

*Part of the Northeast-Quarter of (NE/4) of Section 7, T-7-N, R-31-W, Fort Smith, Sebastian County, Arkansas, more particularly described as follows: Commencing at the Southeast Corner of said NE/4; thence N02°38'20"E, along the East line of Section 7, 1971.77 feet; thence N87°12'00"W, 49.39 feet for a Point of Beginning; thence S02°48'00"W, 222.23 feet; thence S47°46'53"W, 233.14 feet; thence N87°12'00"W, 185.20 feet to the East Right of Way line of Wells Lake Road; thence N02°48'00"E, along said East Right of Way line, 387.14 feet; thence S87°12'00"E, 350.00 feet to the Point of Beginning, containing 2.80 acres, more or less.*

Western Arkansas Youth Foundation  
c/o John Furness  
1606 South "J" Street  
Fort Smith, AR 72901

Fort Chaffee Redevelopment Trust  
P. O. Box 11165  
Fort Smith, AR 72917

Blake River LLC  
109 North 6<sup>th</sup> Street  
Fort Smith, AR 72901

Arkansas Game & Fish Commission  
2 Natural Resources Drive  
Little Rock, AR 72205

Alan Love  
Fort Smith Public Schools  
P. O. Box 1948  
Fort Smith, AR 72902

Dr. Kay Johnson  
420 North Main  
Greenwood, AR 72936

**Planning Commission Meeting Minutes  
October 9, 2012**

Commissioner Maurras questioned Mr. Bailey prior to voting whether the preliminary plat depicts the requested side yard setbacks. Mr. Bailey noted that it did not.

Chairman Griffin then called for the vote on the preliminary plat. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

**RECESS PLANNING COMMISSION  
CONVENE BOARD OF ZONING ADJUSTMENT**

- 13. Variance #24-8-12; A request by Pat Mickle, agent, for a variance from 7.5 feet to 5 feet interior side yard setback located at 8750 South 36<sup>th</sup> Terrace. (tabled from August 2012) (companion item to items #1, #2, #3 & #4)**

Chairman Griffin called for the vote on the variance request. Motion was made by Commissioner Maurras, seconded by Commissioner Spearman and carried by a vote of 6 in favor, 2 opposed (Lorenz, Howard) and 1 abstention (Griffin) to amend the request to limit the 5 foot setback to those instances in which the house has a side entry garage.

Chairman Griffin then called for the vote on the variance request as amended. The vote was 8 in favor, 0 opposed and 1 abstention (Griffin).

**RECESS BOARD OF ZONING ADJUSTMENT  
RECONVENE PLANNING COMMISSION**

- 5. Rezoning #25-10-12; A request by Michael Johnson, agent, for a zone change from No Zone (Institutional Area, per Chaffee Crossing) to Residential Multi-Family High Density (RM-4) by Classification located at 7803, 7807 & 7809 Wells Lake Road. (companion item to item #6)**
- 6. Development Plan Approval for a multi-family development located at 7803 and 7805 Wells Lake Road. (companion item to item #5)**

Ms. Brenda Andrews read the staff reports indicating that the purpose of these requests is to facilitate the addition of two (2) new multi-family structures and place zoning on two (2) existing multi-family structures.

Ms. Andrews stated that a neighborhood meeting was held on October 8, 2012, at 4:30 p.m. at the Fort Chaffee Redevelopment Authority's Conference Room.

Mr. Michael Johnson was present to speak on behalf of these requests.

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

Chairman Griffin called for the vote on these requests separately.

5. **Rezoning #25-10-12; A request by Michael Johnson, agent, for a zone change from No Zone (Institutional Area, per Chaffee Crossing) to Residential Multi-Family High Density (RM-4) by Classification located at 7803, 7805, 7807 & 7809 Wells Lake Road. (companion item to item #6)**

Chairman Griffin called for the vote on the rezoning request. The vote was 9 in favor and 0 opposed.

6. **Development Plan Approval for a multi-family development located at 7803 and 7805 Wells Lake Road. (companion item to item #5)**

Chairman Griffin called for the vote on the development plan. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the following:

- Final landscaping plan shall include additional required trees to comply with Chaffee Crossing's Building Landscape requirements.
- All plant species and sizes for required landscaping shall comply with the Unified Development Ordinance Section 27-602-3 and Chaffee Crossings' landscape material list and irrigation requirements.
- The vinyl siding shall be replaced with a permitted material or the applicant shall obtain approval from the Chaffee Design Review Committee to utilize vinyl on the buildings.
- Exterior lighting must comply with Unified Development Ordinance – Section 27-602-5 Commercial and Outdoor Lighting Requirements and Chaffee's site lighting requirements.

Chairman Griffin then called for the vote on the development plan as amended. The vote was 9 in favor and 0 opposed.

7. **Master Land Use Plan Amendment from Residential Detached to Residential Attached located at 2201 Jackson Street. (companion item to items #8 and #9)**
8. **Rezoning #26-10-12; A request by Cary Smallwood for a zone change from Residential Single Family Duplex Low/Medium Density (RSD-2) to Residential Multifamily Medium Density (RM-3) by Extension located at 2201 Jackson Street. (companion item to items #7 & #9)**

# Tax Back Resolution



RESOLUTION No. \_\_\_\_\_

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH CERTIFYING LOCAL GOVERNMENT ENDORSEMENT OF BUSINESS TO PARTICIPATE IN THE TAX BACK PROGRAM (AS AUTHORIZED BY SECTION 15-4-2706(d) OF THE CONSOLIDATED INCENTIVE ACT OF 2003).**

**WHEREAS**, in order to be considered for participation in the Tax Back Program, the local government must endorse a business to participate in the Tax Back Program; and

**WHEREAS**, the local government must authorize the refund of local sales and use taxes as provided in the Consolidated Incentive Act of 2003; and

**WHEREAS**, said endorsement must be made on specific form available from the Arkansas Economic Development Commission; and

**WHEREAS**, Arkansas Refrigerated Services, Inc., located at 24 North D Street, Fort Smith, Arkansas has sought to participate in the program and more specifically has requested benefits accruing from construction and/or expansion of the specific facility; and

**WHEREAS**, Arkansas Refrigerated Services, Inc. has agreed to furnish the local government all necessary information for compliance.

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

1. Arkansas Refrigerated Services, Inc. be endorsed by the Board of Directors of the City of Fort Smith for benefits from the sales & use tax refunds as provided by Section 15-4-2706(d) of the Consolidated Incentive Act of 2003.
2. **The Department of Finance and Administration is authorized to refund local sales and use taxes to Arkansas Refrigerated Services, Inc.**
3. This resolution shall take effect immediately.

\_\_\_\_\_  
Mayor

Date Passed: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

A handwritten signature in black ink that reads "Jerry Confield".

\_\_\_\_\_  
City Attorney

NPR

# Memo



To: Ray Gosack, City Administrator  
From: Jeff Dingman, Deputy City Administrator  
Date: 10/30/2012  
Re: Tax Back Endorsement: Arkansas Refrigerated Services, Inc

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The City has received a request from the Arkansas Economic Development Commission and the Fort Smith Regional Chamber of Commerce for participation in the state "Tax Back" program authorized by the Consolidated Incentive Act of 2003 on behalf of Arkansas Refrigerated Services, Inc. This program allows for new or expanding businesses to request refunds of sales taxes paid on building materials, new equipment and other eligible expenses incurred due to construction and/or expansion.

The current request is on behalf of Arkansas Refrigerated Services, Inc., who plans to update its facility located at 24 North D Street in Fort Smith by investing over \$2.5 million and adding twenty new jobs. The company will be updating their equipment to be more energy efficient.

The Tax Back program is a state and local sales tax refund incentive to attract business growth or expansion to Arkansas. The incentive applies to capital purchases associated with construction of new facilities or expansion of existing facilities (such as equipment or building materials) and does not apply to ongoing purchases. The majority of the incentive will be derived from the state sales tax rate. However, in order to participate in the program, the local governments must also agree to the sales tax refund.

Attached is a resolution supporting the participation of Arkansas Refrigerated Services, Inc. in the "Tax Back" program, and the staff recommends approval. This action will support the board's stated goal of pursuing economic development and job creation.

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

## RESOLUTION \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE ACQUISITION OF REAL  
PROPERTY INTERESTS FOR JENNY LIND ROAD AND  
INGERSOLL AVENUE WIDENING  
PROJECT NO. 07-01-A, AHTD JOB NO. 040471**

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

SECTION 1: The appraised values for the following tracts required for the Jenny Lind Road & Ingersoll Avenue Widening project are approved and acquisition of the interests for the appraised amounts is hereby authorized:

<u>TRACT</u>	<u>OWNER</u>	<u>APPRAISED VALUE</u>
11	William D. & Myrna M. Mathews	\$117,500.00
12	Reith Properties, LLC	\$175,000.00
15	Kralicek & Flusche, LLC	\$ 21,900.00
22	Dorothy G. Allen Revocable Trust	\$ 34,300.00
25	Dreams To Wings, LLC (Make Over Studios)	\$ 51,000.00
29	CNL APF Partners, LP (Wendy's)	\$ 64,300.00
30	Charleston Investment Prop. (Medi-Save)	\$ 14,200.00
31	Regions Bank	\$ 14,800.00
58	Cotner Properties Limited Partnership	\$ 18,300.00

SECTION 2: The City Administrator, or his designated agents, and the City Attorney are hereby authorized to acquire the required tracts for the above listed appraisal amounts.

SECTION 3: Payment for acquisition of the tracts authorized by Section 2 is hereby authorized from the Sales Tax Fund (1105).

This resolution adopted this \_\_\_\_\_ day of November, 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to Form



\_\_\_\_\_  
No Publication Required

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

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

**DATE:** October 31, 2012

**SUBJECT:** Jenny Lind Road & Ingersoll Avenue Widening  
Project No. 07-01-A, AHTD Job No. 040471  
Acquisition on Tracts 11, 12, 15, 22, 25, 29, 30, 31 & 58

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The Jenny Lind Road & Ingersoll Avenue Widening Project includes the re-construction and widening of Jenny Lind Road from Cavanaugh Road to Zero Street, widening of Ingersoll Avenue from Highway 271 to Jenny Lind Road, and the extension of Ingersoll Avenue from Jenny Lind Road to Highway 71.

This project requires the property acquisition of right-of-way and/or easements from 53 tracts of land. A City ordinance requires that the acquisition of property in excess of \$10,000 be approved by the Board of Directors before an offer is made. In this Resolution, we are seeking Board approval to make offers on nine tracts which exceed \$10,000 based on the appraisals. The appraisals for these tracts were prepared in accordance with Federal and State Appraisal specifications by Matthews Appraisal Service and have been reviewed and approved by the Arkansas State Highway and Transportation Department (AHTD). Location maps showing these tracts are attached.

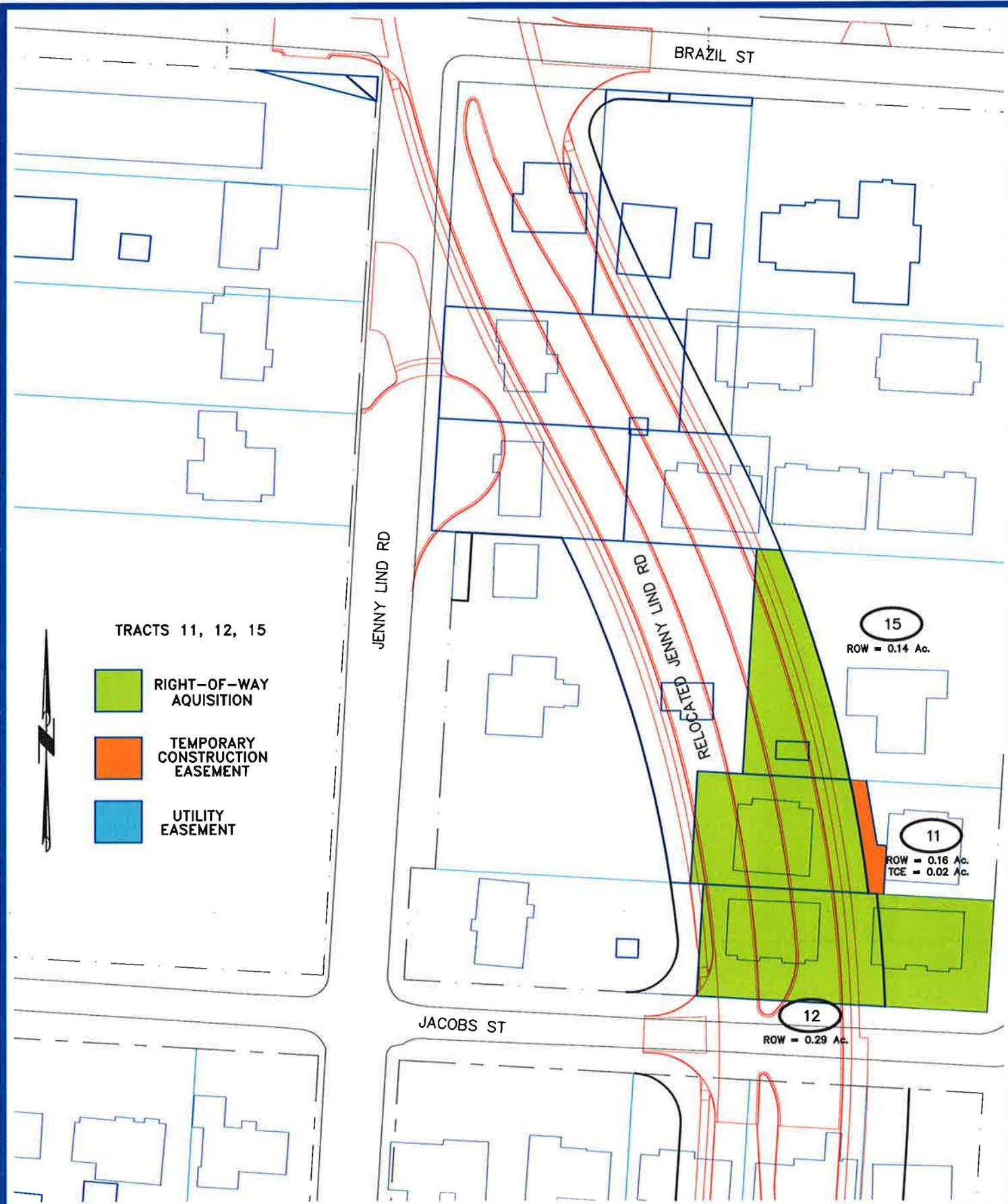
Attached is the Resolution which authorizes the acquisition of the referenced tracts for the appraised amount. Any compensation above the appraised amount will be brought back to the Board of Directors for approval. I recommend the Resolution be adopted by the Board at the next regular meeting.

Enclosures

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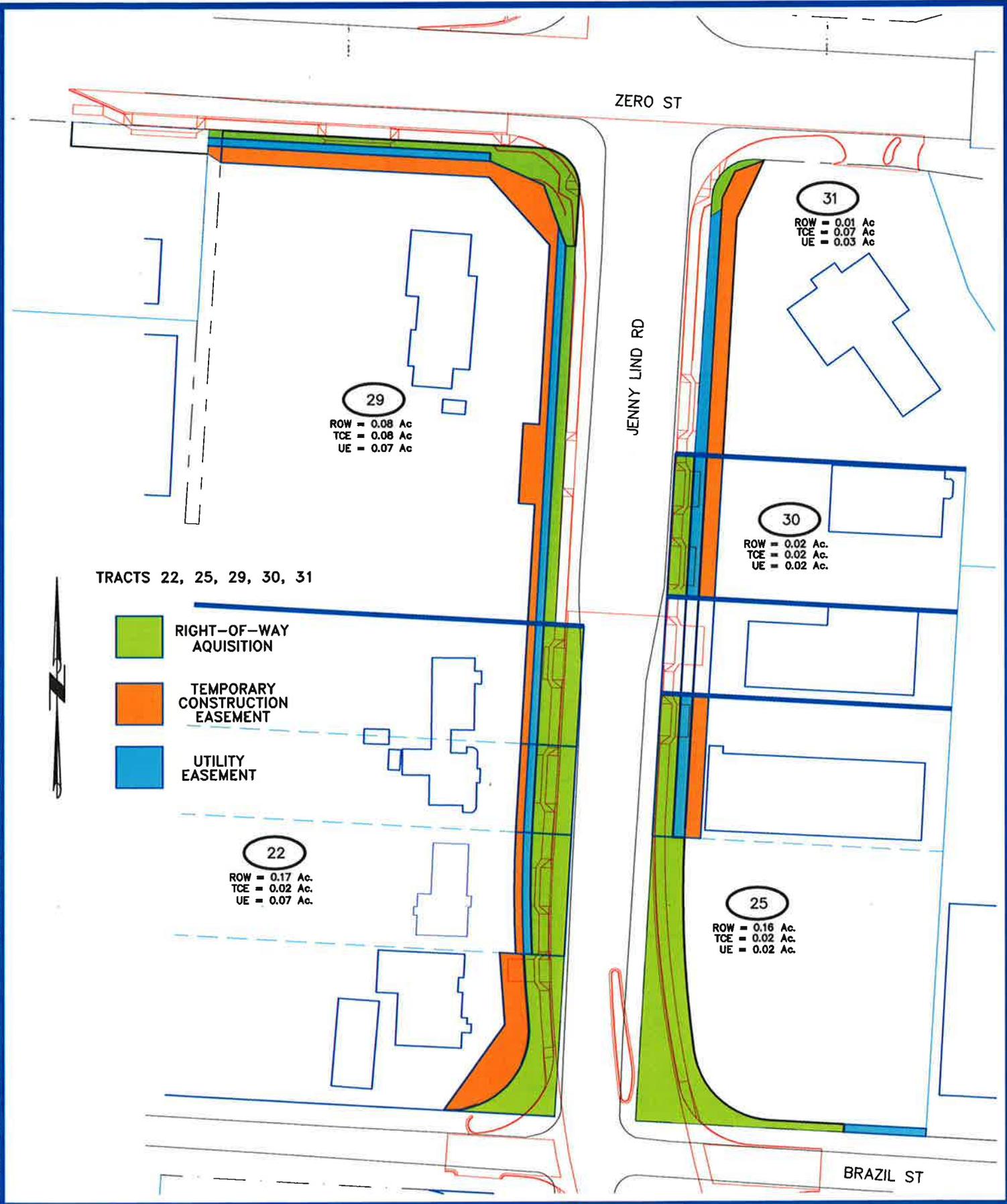
The City of Fort Smith Arkansas  
Engineering Department  
623 Garrison Avenue • P.O. Box 1908  
Fort Smith, Arkansas 72902  
Phone: 479-784-2225 • Fax: 479-784-2245



PROPERTY AQUISITION MAP  
 JENNY LIND ROAD RELOCATION  
 BRAZIL TO JACOBS  
 FORT SMITH, ARKANSAS



Project:	07-01-A
Date:	OCTOBER 2012
Scale:	NONE
Drawn By:	RBR



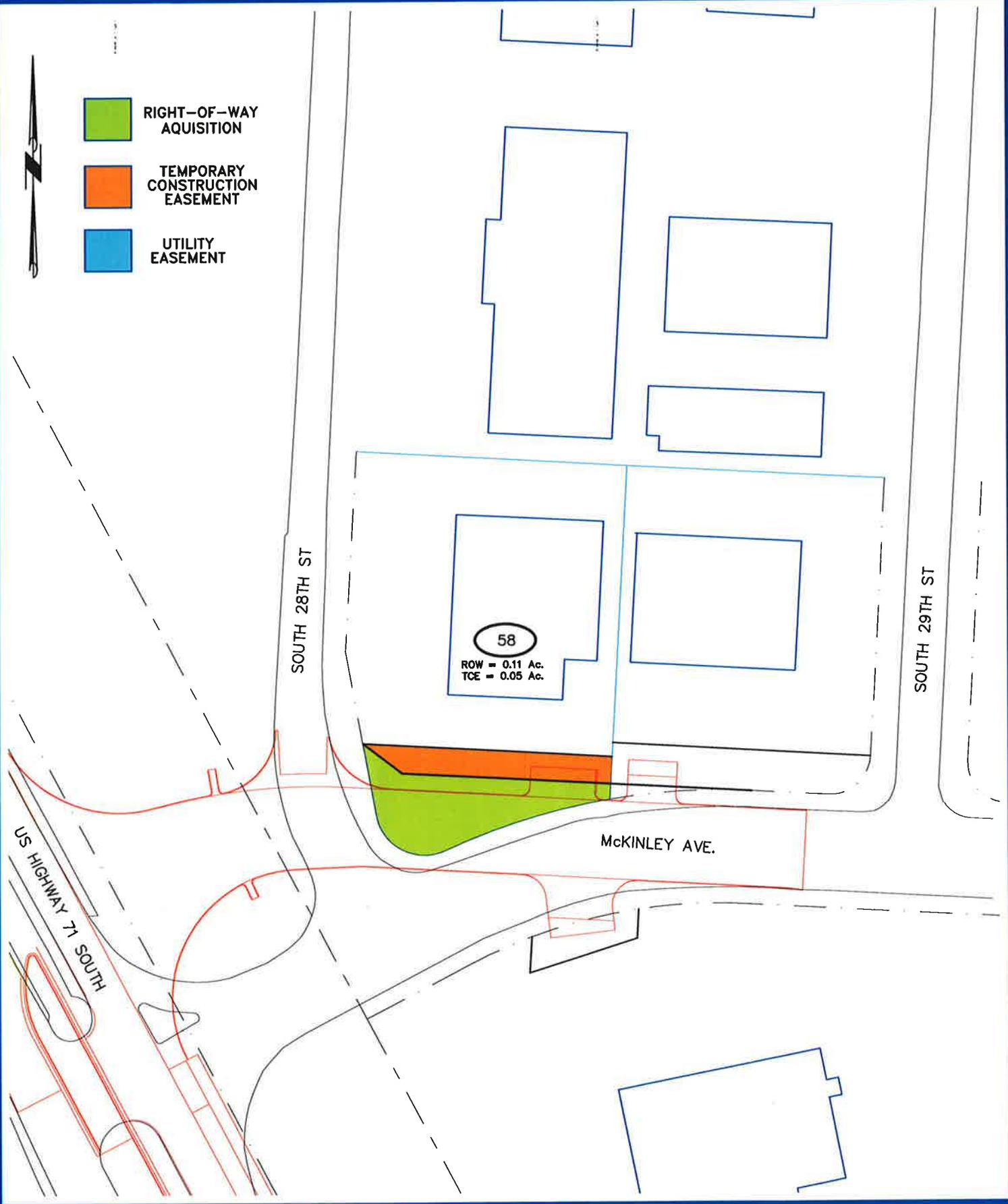
PROPERTY AQUISITION MAP  
 JENNY LIND ROAD RELOCATION  
 ZERO ST TO BRAZIL  
 FORT SMITH, ARKANSAS



Project: 07-01-A  
 Date: OCTOBER 2012  
 Scale: NONE  
 Drawn By: RBR



- RIGHT-OF-WAY AQUISITION
- TEMPORARY CONSTRUCTION EASEMENT
- UTILITY EASEMENT



PROPERTY AQUISITION MAP  
 JENNY LIND ROAD RELOCATION  
 TRACT 58  
 FORT SMITH, ARKANSAS



Project:	07-01-A
Date:	OCTOBER 2012
Scale:	NONE
Drawn By:	RBR

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION ACCEPTING BID FOR LIGHTING REPLACEMENT  
TO ALL FIRE STATIONS**

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

The bid, as indicated by enclosure for the lighting replacement to all Fire Stations from AC-DC Electrical Contracting Co. for \$51,235.00, is accepted.

This Resolution adopted this \_\_\_\_\_ day of October, 2012.

**APPROVED:**

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

Approved as to form:



\_\_\_\_\_  
No Publication Required

## Interoffice Memorandum

**TO:** Ray Gosack, City Administrator

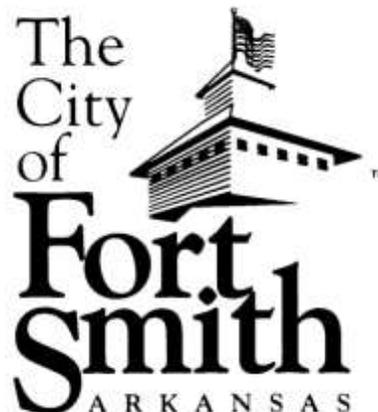
**FROM:** Alie Bahsoon, Purchasing Manager 

**SUBJECT:** Lighting Replacement Upgrades  
to Fire Stations

**DATE:** October 28, 2012

**BID TAB:** 4802-300-BA

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In October of 2011, the Board approved Resolution R-186-11 and authorized energy efficiency upgrades to be conducted at all 10 Fire Stations. This bid was a result of the Obama Administration having created the Energy Efficiency and Conservation Block Grant (EECBG) Program that was funded by the American Recovery and Reinvestment Act of 2009 (ARRA) for energy efficiency and conservation projects in U.S. cities, counties, and states. This grant was contingent upon the City pursuing energy efficiency improvement projects that reduce total energy use, fossil fuel emissions, and improve energy efficiency by increasing energy independence and contribute to the nation's long term clean energy and climate goals. The project supports the city board's green initiative to reduce energy consumption in city facilities.

As part of the energy efficiency and conservation project initiatives, we identified numerous energy savings opportunities at our fire stations and based on a needs analysis that was conducted, efficiency upgrades were identified to replace and upgrade old fluorescent lighting fixtures, windows, and heat and air units. In the process of making these updates, our lighting contractor, L.L. Bailey Electric failed to complete the lighting project as promised in his bid proposal and we therefore had to terminate his contract due to the negligence and failure to complete the work in a timely manner and failure to pay material providers (Wholesale Electric Supply Company).

With the assistance of Guest Reddick Architects, Inc., bids were solicited for the incomplete portion of the lighting project and the results of this bid are noted on the enclosed bid tabulation. The bid submitted by AC-DC Electrical Contracting Company for \$51,235 meets the City's and Federal bidding criteria and requirements. This contractor has a proven track record having worked on numerous projects for the City and it is my recommendation we accept this bid and award the contract accordingly for the completion of the work. Although the specifications are not attached, they are available for review in my office should you or any of the board members wish to view them.

Please let me know if you should have any questions.

ENERGY CONSERVATION WORK - LIGHTING REPLACEMENT TABULATION OF BIDS  
 FORT SMITH FIRE STATIONS #1 THRU #10  
 Fort Smith, Arkansas Plan No. 3523.01

October 25, 2012  
 2:00 P.M.

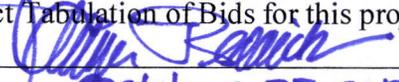
Guest+Reddick Architects  
 Fort Smith, Arkansas  
 Page 1 of 1

CONTRACTOR	O'Kelley Electric Services, Inc.	Matlock Electric Company, Inc.	Innovative Power Solutions, LLC	Hughes Electric Company, Inc.	AC-DC Electrical Contracting Co. Inc	
<b>Bid Security</b>	5%	5%	5%	5%	5%	
Certified Check						
Cashier's Check						
Bid Bond	State Farm and Casualty	Westfield Insurance Co.	U.S. Specialty Insurance Co.			FNB # 924594 dated 10/25/12 for \$2,561.75
<b>Base Bid Proposals</b>						
Fire Station #1	10,389. <sup>80</sup>	11,250. <sup>00</sup>	10,226. <sup>07</sup>		9,100. <sup>00</sup>	
Fire Station #2	5,117. <sup>30</sup>	6,400. <sup>00</sup>	5,801. <sup>75</sup>		5,330. <sup>00</sup>	
Fire Station #3	3,635. <sup>80</sup>	4,300. <sup>00</sup>	3,281. <sup>97</sup>		3,475. <sup>00</sup>	
Fire Station #4	3,189. <sup>30</sup>	3,100. <sup>00</sup>	2,068. <sup>22</sup>		2,790. <sup>00</sup>	
Fire Station #5	4,324. <sup>80</sup>	4,990. <sup>00</sup>	5,104. <sup>62</sup>		4,550. <sup>00</sup>	
Fire Station #6	4,321. <sup>30</sup>	4,700. <sup>00</sup>	4,044. <sup>35</sup>		4,360. <sup>00</sup>	
Fire Station #7	4,005. <sup>80</sup>	4,600. <sup>00</sup>	2,710. <sup>71</sup>		4,050. <sup>00</sup>	
Fire Station #8	4,045. <sup>30</sup>	5,300. <sup>00</sup>	5,472. <sup>50</sup>		4,600. <sup>00</sup>	
Fire Station #9	2,730. <sup>30</sup>	2,700. <sup>00</sup>	2,025. <sup>70</sup>		2,230. <sup>00</sup>	
Fire Station #10	10,240. <sup>30</sup>	11,600. <sup>00</sup>	11,923. <sup>96</sup>		10,750. <sup>00</sup>	
<b>Total of Proposals</b>	52,000. <sup>00</sup>	59,040. <sup>00</sup>	52,859. <sup>41</sup>		51,235. <sup>00</sup>	
<b>Time of Completion</b>						
Calendar Days	160	180	Blank	NO BID	30	
<b>Addendum Receipt</b>						
#1	acknowledged	acknowledged	acknowledged		acknowledged	
<b>Sub-Contractors</b>						

Bid Validity - 30 Days

I hereby certify this is a true and correct Tabulation of Bids for this project.

Guest+Reddick Architects

By:   
 Date: October 25, 2012

RESOLUTION NO. \_\_\_\_\_

RESOLUTION ACCEPTING BID FOR UNIFORM RENTAL SERVICES

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

The bids, as indicated by enclosure for the rental of uniform services from Cintas Corporation, are accepted.

This Resolution adopted this \_\_\_\_\_ day of October, 2012.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

Approved as to form:



\_\_\_\_\_  
No Publication Required

## Interoffice Memorandum

**TO:** Ray Gosack, City Administrator

**FROM:** Alie Bahsoon, Purchasing Manager 

**SUBJECT:** Uniform Rental Services Bid

**DATE:** October 29, 2012

**BID TAB:** 100512-BA

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The City of Fort Smith has established a comprehensive uniform rental program to obtain better pricing services. Through a competitive process, the last contract negotiated by the City was in 2006 whereby the contract was awarded to Cintas Corporation of Fort Smith. The departments participating in the uniform rental program are as follows:

- Convention Center
- Parks
- Sanitation
- Street
- Transit
- Utilities (Water & Wastewater)

Because of an existing Arkansas Procurement Law (§19-11-238 - *Multiyear contracts*) which states that “a contract for commodities or services may not exceed seven (7) years,” new bids were solicited in October of this year (copy attached) and four bids were received. The enclosed bid tabulation reflects charges for the first three years. The bid proposal represents a three year contract with the option of 2 two-year term extensions. Under this contract, the selected company will provide all new uniforms and then service the various departments weekly by supplying a clean uniform to the employee for each work day. By providing this benefit, the City can help employees project a positive image to the citizens of Fort Smith.

A mandatory pre-bid meeting was held on October 2nd with all the potential vendors. This meeting not only reviewed the bid specifications but also allowed the vendors to display and promote their uniforms and services. It also allowed our employees the opportunity to interact with the vendors, ask questions, evaluate products, and provide feedback by participating in a voluntary survey. Approximately 53 employees came and 37 of them filled out the survey (see Employee Survey results).

Because this contract affects over 350 employees throughout the City, employee involvement and participation in the decision process was essential and vital to the integrity and success of the uniform rental program. In order to remain objective, I elected not to participate in the review and selection process and acted only as a facilitator of the meetings and group discussions.

The committee members are as follows:

- Martin Bosco-Utilities
- Patrick Geel-Convention Center
- Waymon Harris-Street
- Julia Humble-Utilities-Line Maintenance
- Nancy Kain-Transit (Chairperson)
- Blake Kendrick-Sanitation
- Aaron Lee-Parks
- Jim Mackey-Parks
- Cody Mathis-Street
- Tania Mears-Transit
- Carol McGrew-Utilities (Water/Wastewater)
- Mitchell Parker-Sanitation

This committee met 3 times to discuss and review the bid proposals. They requested additional information from each vendor via email. Based on the bid responses and email clarifications, the committee selected the bidder whom they believed would offer the greatest value to the City and its employees. Although the bid document called for interviews with potential bidders prior to the final selection (Section XXI *Evaluation and Award of Contract*), the committee was **unanimous** with its decision to select Cintas Corporation and agreed it was not necessary to interview any of the vendors. The decision by the committee to select Cintas was based on numerous factors:

- A proven track record with the City based on its existing contract for the past seven years
- Minimal issues and concerns that have been effectively and efficiently handled by Cintas
- The proven ability to perform and meet the requirements of the bid by continuing to provide quality service and products
- The qualification and availability of their personnel & excellent rapport between our staff and their dedicated route driver (Jeremy)
- The transition to new uniforms will allow for a smoother process in sizing and delivering new uniforms to all employees

Despite Cintas not being the lowest bidder, the City will benefit from their pricing structure of \$1.55 per uniform set as indicated in the bid tabulation. This equates to a savings of \$0.123 per set since the cost under the current contract is \$1.673. It is estimated that the employee down time associated with sizing that is required for a new supplier will easily exceed the cost difference between Cintas and the lowest bid.

On behalf of the committee, I am recommending that we move forward with the new uniform rental services by awarding the contract to Cintas Corporation.

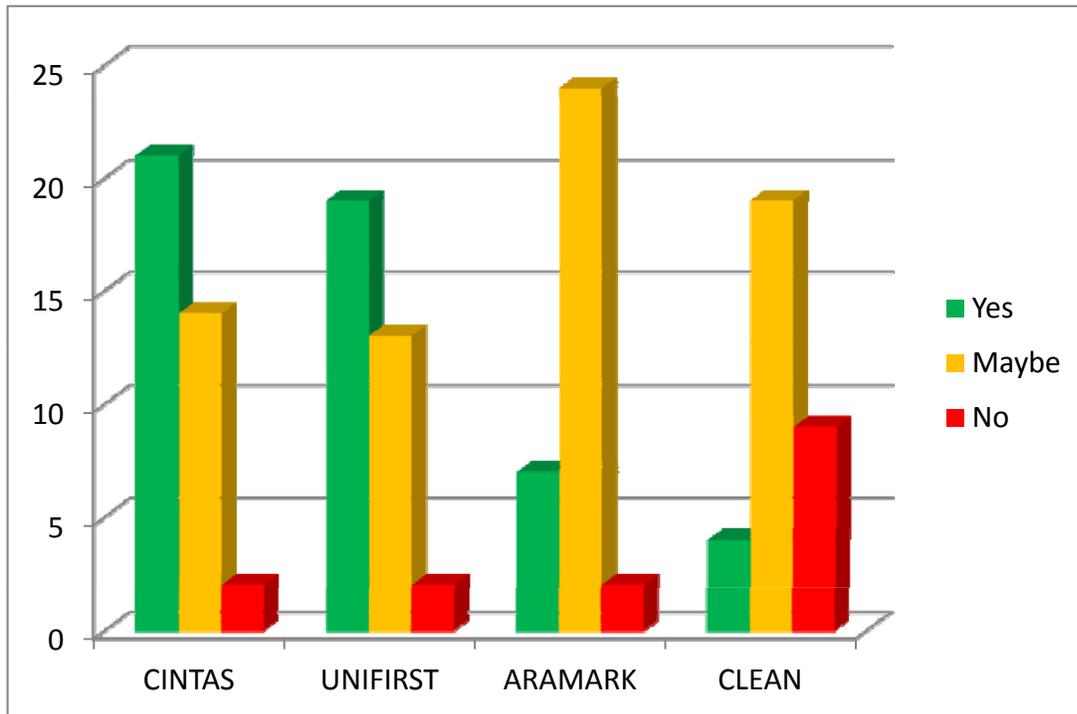
Please let me know if you should have any questions.

**UNIFORM RENTAL SERVICES  
 BID TABULATION  
 Bid #100512-BA**

	<b>Aramark</b>	<b>Cintas</b>	<b>Clean</b>	<b>Unifirst</b>
LS Shirt	\$0.14	\$0.16	\$0.15	\$0.14
SS Shirt	\$0.14	\$0.16	\$0.15	\$0.12
Polo Shirt	\$0.20	\$0.22	\$0.25	\$0.21
Pants	\$0.16	\$0.20	\$0.20	\$0.21
Denim	\$0.24	\$0.24	\$0.24	\$0.23
Shorts	\$0.13	\$0.20	\$0.20	\$0.19
Jackets	\$0.50	\$0.37	\$0.40	\$0.38
<b>TOTAL</b>	\$1.51	\$1.55	\$1.59	\$1.48
Coverall	\$0.35	\$0.75	\$0.45	\$0.37
Mats 3 x 5	\$1.00*	\$1.75	\$0.75	\$2.50
Mats 4 x 6	\$2.75	\$2.75	\$1.20	\$3.00
Shop Towels	\$0.035	\$0.07	\$0.035	\$0.06
Mop Heads	\$0.25-\$0.55	\$0.50	\$0.45-\$0.75	\$0.45
Heavy jacket	\$0.50	\$1.50	Varies	Varies
Garment Tracking	GID	TruCount	RF Chip	UniTrack
Manufacture own garments	Yes (90%)	Yes (except jeans)	No	Yes
Lockers	Yes-free	No	Yes-free	\$0.05 per bank
Emblem name /logo/make-up	All inclusive	\$.50/\$1.50/\$1.50 *	All inclusive	\$.75/\$1.45
Delivery in	7 days	7 days	7-10 days	14 days
Fees	5% service charge	\$3.00 (per delivery location)	\$1.50 (after 90 days)	\$4.00 (DEFE) (per delivery location)
Size change & upgrade	All inclusive	\$3.00	Yes/\$?	\$2.20

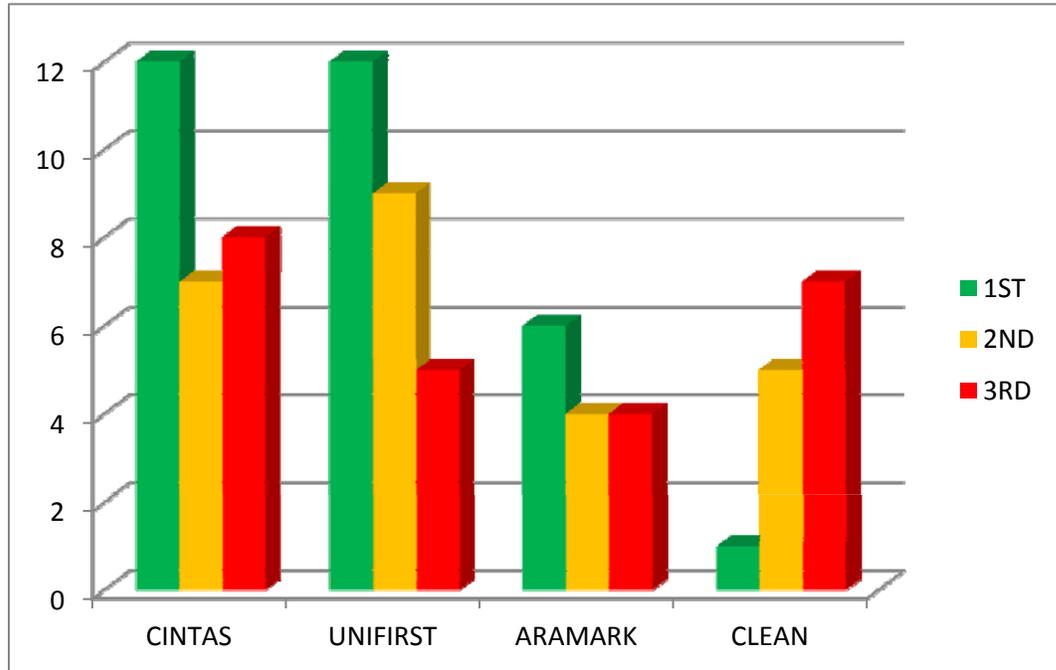
\* Only for those added to program after initial install of all new garments

## I WOULD SELECT THIS COMPANY AS MY UNIFORM PROVIDOR



	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
<b>CINTAS</b>	21	14	2
<b>UNIFIRST</b>	19	13	2
<b>ARAMARK</b>	7	24	2
<b>CLEAN</b>	4	19	9

## Vendors in order of preference (by City Employees)



	<u>1ST</u>	<u>2ND</u>	<u>3RD</u>
CINTAS	12	7	8
UNIFIRST	12	9	5
ARAMARK	6	4	4
CLEAN	1	5	7

## Employee Survey Results (37 responses)

<u>ARAMARK</u>	<u>Excellent</u>	<u>Good</u>	<u>Poor</u>
Booth display	3	29	1
Knowledgeable representatives	16	17	1
Answers to my questions were	11	25	
Quality of uniform	5	28	1
Style of uniform	8	27	1
Other products were	2	27	1
	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
I would select this company	7	24	2

<u>CINTAS</u>	<u>Excellent</u>	<u>Good</u>	<u>Poor</u>
Booth display	23	14	0
Knowledgeable representatives	24	13	0
Answers to my questions were	22	14	1
Quality of uniform	15	21	1
Style of uniform	14	21	2
Other products were	13	23	1
	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
I would select this company	21	14	2

<u>CLEAN</u>	<u>Excellent</u>	<u>Good</u>	<u>Poor</u>
Booth display	10	18	4
Knowledgeable representatives	12	18	2
Answers to my questions were	8	20	4
Quality of uniform	7	19	5
Style of uniform	6	22	4
Other products were	6	18	5
	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
I would select this company	4	19	9

<u>UNIFIRST</u>	<u>Excellent</u>	<u>Good</u>	<u>Poor</u>
Booth display	18	16	0
Knowledgeable representatives	21	13	0
Answers to my questions were	20	14	0
Quality of uniform	16	17	1
Style of uniform	16	15	2
Other products were	10	18	1
	<u>Yes</u>	<u>Maybe</u>	<u>No</u>
I would select this company	19	13	2

# **INVITATION FOR BID**

## **CITY OF FORT SMITH UNIFORM SERVICES BID #100512-BA**

### **Mandatory Pre-Bid Meeting**

**10:30 A.M. CDT**

**October 2, 2012**

### **BID DUE DATE**

**2:00 P.M. CDT**

**October 5, 2012**

### **RETURN BIDS TO:**

**Alie Bahsoon, Purchasing Manager  
City of Fort Smith  
623 Garrison Avenue, Suite 522  
P O Box 1908  
Fort Smith, AR 72902**



## LEGAL ADVERTISEMENT & NOTICE

### INVITATION FOR BID UNIFORM RENTAL SERVICES AND SUNDRIES

CITY OF FORT SMITH PURCHASING DEPARTMENT

The City of Fort Smith, Arkansas is hereby soliciting sealed bids for the provision of **UNIFORM RENTAL SERVICES AND SUNDRIES.**

The purpose of this bid is to seek a qualified Bidder for the purpose of providing uniform rental and/or leasing services and sundries to the City along with other related services as outlined within the Invitation For Bid document.

There will be a **MANDATORY** Pre-Bid Meeting to be held in conjunction with this solicitation on Tuesday, October 2, 2012 beginning at 10:30 A.M. in the West Wing of the Riverfront Park Facility, located at:  
121 Riverfront Drive, Fort Smith, AR 72902.

Bids shall be received by the Purchasing Department until 2:00 P.M., Friday, October 5, 2012, at 623 Garrison Avenue, Suite 522 in Fort Smith, Arkansas.

All proposals shall be submitted in accordance with the Invitation For Bid specifications which is available on the City's website at [www.fortsmithar.gov](http://www.fortsmithar.gov), under the heading "Government; City Departments (I-Z); Purchasing" or it may be obtained during normal business hours (8:00 A.M. to 5:00 P.M.) from:

**Purchasing Department, City of Fort Smith  
623 Garrison Avenue, Room 522  
Fort Smith, AR 72902  
479-784-2268**

The City of Fort Smith is an EOE M/F.

## **I. INTRODUCTION**

The City of Fort Smith (“the City”) is soliciting competitive sealed bids from qualified uniform services vendors for the purpose of providing uniform rental services for new and unused uniforms and sundries and other related services as described within this Invitation For Bid (“IFB”) document. The City desires to enter into an initial three (3) year agreement, effective November 7, 2012.

## **II. BACKGROUND AND OBJECTIVES**

The City currently (as of September, 2012) has approximately 314 uniformed personnel in more than 25 departments. The City currently procures its uniform services from Cintas Corporation of Fort Smith, Arkansas. The City desires to continue providing each of its employees with a well-made, high-quality uniform that consistently presents a professional appearance to meet the high standards of the City of Fort Smith’s image.

The City desires to make award to a single qualified Bidder who will provide quality products and services and will enable the City to achieve its goals in maintaining a professional appearance that conforms to the City’s Image. For this to happen, the City is requiring that the successful Bidder (“Bidder”) supply new uniforms to all current uniformed employees and to those additional employees that will be added on during the term of this contract. This IFB is to allow potential bidders to provide the City all options and pricing available for the rental and maintenance services of uniforms, floor mats, and sundries.

## **III. SCOPE OF SERVICES AND MINIMUM SPECIFICATIONS**

1. The successful Bidder shall furnish all labor, equipment, supplies, transportation and any other related services in accordance with these specifications.
2. Services shall be on a once-per week basis for pick-up and delivery at various locations (See *Exhibit A*). Uniforms shall be delivered to each location on hangers. Delivery and pickup shall be between the hours of 7:00 A.M., and 3:30 P.M., excluding holidays (See *Observed Holidays*-Page 20).
3. The Bidder shall submit an itemized delivery ticket with each delivery. The ticket shall specify the number of items delivered for each employee delivered to that location and shall include an itemized list of items picked up from the same location. Delivery tickets shall show a minimum of the following information: quantity, item number, unit prices, and total price.
4. All uniforms supplied shall be new.
5. Uniforms are to be clean, free of stains and odors, and returned on hangers, with each garment labeled to properly identify the garment by employee, and each employee’s garments must be packaged separately.
6. All uniforms are to be fitted to each individual’s requirements.
7. Shirts shall have the employee’s first name over the right pocket and the department name over the left pocket. There are some exceptions whereby some departments only require a logo with no name.
8. Each shirt & jacket shall have an embroidered Department patch securely sewn on.
9. All garments are to be kept in a good condition and to include the replacement(s) of missing or broken buttons & zippers and the replacement of torn and worn-out garments.

10. A ticket pick-up and delivery system is to be provided to each department indicating the number of garments received and picked up.
11. Five (5) uniform changes are allowed per week per employee (11 sets).
12. 5 (five) samples of the City emblem/logo and colors shall be submitted with your bid. Please indicate if you would like the samples to be returned. The PMS (pantone matching system) colors for the City logo are follows:
  - \* 549 Sky Blue
  - \* 187 Cranberry Red
13. Garment pricing shall be based on the Cintas Item number as provided in *Exhibit A* "Uniform Employee Count." Due to the nature of the various types of garments, please provide pricing for your standard garments that are equivalent to the items offered by Cintas and use the attached "*Uniform Pricing Form*" to indicate your price. Please provide a description of garments being offered.
14. Delivery in a timely manner is of utmost importance. A maximum 14-day delivery time, upon receipt of order is required for all new uniform purchases or rentals. In addition, a maximum of 7-day response time is required for all new fittings. Provide your delivery/pick-up times on the Uniform Pricing Form.
15. The Bidder shall provide a written Return/Credit Policy that details how returns, exchanges, and replacements are handled. This policy should cover the procedures required to ensure proper billing and the steps required to obtain the desired product or service.

In addition to the above requirements please address the following in your bid proposal:

16. What does your service guarantee consist of?
17. Provide information on your pricing structure and any additional charges/fees that the City might incur.
18. Explain your lost or replacement rate/policy in your contract.
19. Do you manufacture your own uniforms? If not, where are they obtained from?
20. What features do your garments have that are different from other suppliers?
21. How do you track your garments?
22. Please submit a sample of the pick-up and delivery ticket/receipt.
23. Explain in detail how you will provide the City with uniforms for new employees and replacements in a timely manner and how long will it take to do so.
24. How do you inspect your garments and what system do you use to determine that the garment(s) needs replaced?
25. How do you track the age of the garment?
26. Explain your repair and replacement process/procedures.
27. What differentiates from other uniform suppliers?
28. How do you handle employee turnover? Weight gain? What are the costs involved, if any?
29. Please indicate in your bid proposal if your services include lockers and the associated fees.

In your bid proposal, please provide product information and pricing for the following items that the City is considering in taking advantage of with this contract:

- Overalls
- Caps
- Rain gear (poncho)
- Safety Vests
- Heavier coats (for winter)

#### **IV. PRICE ESCALATION/DE-ESCALATION**

Prices are to remain firm for the first contract period. In subsequent terms, the Bidder may request in writing at least sixty (60) days in advance of the contract ending date, an increase/decrease.

Should the City elect to exercise the option to renew the contract for additional year(s), the contract prices for the additional years shall not exceed the percentage increase/decrease of the "Services" category of the CPI-W SECTION OF THE CONSUMER PRICE INDEX of the United States Bureau of Labor Statistics for the latest twelve month for which statistics are available.

#### **V. PRICING**

All prices quoted herein shall be on an F.O.B. destination basis and shall include all delivery costs. All prices including cleaning, delivery, fitting, change out of seasonal styles or any other fee shall be clearly noted and included in the bid pricing.

#### **VI. QUALIFICATIONS OF BIDDERS**

The City may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder to perform the work and furnish the items. The Bidder shall furnish to the City all information and data as might be needed for this purpose. The City reserves the right to inspect the Bidders' physical facilities prior to award to satisfy questions regarding the Bidder's capabilities. The City further reserves the right to reject any bid if the evidence submitted by, or investigations of, such Bidder fails to satisfy to the City that the Bidder is properly qualified to carry out the obligations of the contract and to complete the work/furnish the items contemplated therein.

#### **VII. MEASUREMENTS**

Bidder shall be responsible for obtaining individual measurements and the resultant fit of uniforms. All measurements must be obtained within four (4) weeks after receipt of notification of award. The City will not accept male-cut clothing for female employees.

#### **VIII. WINTER-SUMMER CHANGEOVER**

The uniforms are to be worn throughout the year except that the Bidder shall allow for seasonal changes as requested from departments. Some departments may require long-sleeve shirts or short-sleeve shirts on a year-round basis. These departments will be identified after the award of the contract. Employees will not be required to keep additional shirts that are not a part of the weekly uniform allowance. If the employee chooses long sleeve shirts in the winter and short sleeve shirt in the summer, issue will be for current season. Again, some departments may wish to carry both long and short sleeve at the same time.

#### **IX. ALTERATIONS**

All alterations under this contract shall be at no additional cost to the City.

## **X. MARKING**

Each item of clothing must be clearly, but inconspicuously marked or labeled, to permit identification by the employees.

## **XI. RETURN OF UNIFORMS**

The Bidder shall be promptly advised by the City of all terminated employees. These employees will be required to return the rented uniforms to their supervisor upon termination of employment. Uniforms shall be returned to the Bidder within thirty days of termination. The Bidder shall not invoice the City for services effective the date of notice of termination by the City.

## **XII. LOST RENTAL ITEMS**

The Bidder shall submit a complete account of missing items every six months to the City. The City may either locate the missing items and return them to the Bidder or reimburse the Bidder accordingly. The Bidder shall be required to provide sufficient documentation of the shortages and submit a proper invoice. The City will not be liable for payment of any lost garments for which it has not been notified in accordance with the preceding paragraph. Uniforms lost by the Bidder will be replaced at no charge to the City.

## **XIII. GENERAL CONDITIONS**

Bidder shall submit their proposal upon the following expressed conditions:

- A. Shall thoroughly examine the specifications, supplemental conditions, and all other bid documents.
- B. Shall make all investigations necessary to thoroughly inform themselves regarding performance of services as required by the bid documents. No plea of ignorance as a result of failure to make the necessary examinations and investigations will be accepted as a basis for varying the requirements of the City.
- C. Bidders are advised that City contracts are subject to all legal requirements under Local, State, and Federal statutes, ordinances, and regulations.
- D. This contract may be extended for two (2) additional two (2) year periods, provided all terms and conditions remain in full force and effect except for the contract period being extended. This option, if exercised, is to be executed in the form of a letter of agreement, to be issued no sooner than sixty (60) calendar days prior to the expiration of this contract, nor later than the final day of the contract period. This option to renew requires the mutual agreement of both parties. Refusal by either party to exercise this option will cause this contract to expire on the original or mutually agreed upon date. The total period of this contract, including all extensions as a result of exercising this option, will not exceed a maximum combined period of seven (7) years.

- E. Bidder certifies that it has a minimum of three (3) years experience in this field.
- F. Bidder shall supply, with the proposal, the names and addresses of a minimum of five (5) firms to which it has provided these types of services, both in the past or with which it is presently under contract for such services (See *References* - Pages 17 & 18). Please include a name and phone number of the company representative with whom we may contact for references and performance history. The City may utilize other reference on a bidder's performance history to determine performance history.

#### **XIV. MANDATORY PRE-BID MEETING**

A mandatory pre-bid meeting will take place on Tuesday, October 2, 2012 at 10:30 A.M. and will be held at the Fort Smith River Front, West Wing, 121 Riverfront Drive, Fort Smith, AR 72902. Any bidder interested in submitting a proposal is required to attend the meeting. The purpose of the meeting is to review and highlight certain aspects of the Invitation For Bid, provide clarifications, answer questions, and distribute addendums (if necessary).

Though not required, each bidder will be offered the opportunity to set up a booth to display their products at the East Wing at the same location. Bidders must be willing to have a booth for product display from 12:30 – 4:00 P.M. City employees will be invited to stop by anytime between those times in order to examine uniform samples and various products/services, and interact with vendors. This will enable the Committee to survey those employees in order to get feedback about their preferences. A 6 foot rectangular table or a 60” round table will be available and you may come in for set up any time after 8:00 A.M. on October 2<sup>nd</sup>. If you have specific questions about the facility or have special needs, call 479-784-2368 for more information. Please send an email to [abahsoon@fortsmithar.gov](mailto:abahsoon@fortsmithar.gov) to notify the City of your intent of having a display booth and also provide the number of staff that will be present. Please note that everyone present will be served lunch.

#### **XV. CLARIFICATION OR OBJECTIONS TO BID DOCUMENTS**

- A. If a bidder needs a clarification to the bid document prior to the meeting, please send an email to the Purchasing Manager at [abahsoon@fortsmithar.gov](mailto:abahsoon@fortsmithar.gov). Such request will be received by the Purchasing Manager, no later than 4:00 P.M. on Monday, October 1, 2012. No personal visits or phone calls will be accepted by the Purchasing Department Staff.
- B. Objections to the bid documents shall be handled in the same manner as addressed in 4A.

#### **XVI. ADDENDA**

All requests for clarification shall be addressed at the meeting. An addendum to the bid document, if necessary, will be issued by the Purchasing Manager in response to the requests received, or for any other reason the City considers advisable. Once issued, an addendum becomes a part of the bid document. A copy of the addendum will be emailed to each bidder present at the pre-bid meeting. Any further clarifications made as a result of the meeting shall be the sole responsibility of the bidder. No further addendums will be issued.

## **XVII. PREPARATION OF BIDS**

Bidders shall prepare their bid documents in accordance with the following steps:

- A. All information required by the bid documents shall be furnished. The bidder shall print or type their name, in ink, and manually sign the *Vendor Information Form* (Page 15). This form, with original signatures, shall be submitted with the bid documents.
- B. Alternate bids will not be considered unless expressly authorized by the bid documents.
- C. The City **IS taxable** and not exempt from payment of State and Local sales taxes.
- D. By submitting a bid, each bidder certifies that it is a duly qualified, capable, and bondable business entity; that it is not in or contemplating bankruptcy or receivership; and that it is not currently delinquent with respect to payment of taxes assessed by any political subdivision.

## **XVIII. SUBMISSION OF BIDS**

- A. Bids and bid addenda shall be enclosed in sealed envelopes and submitted to the City Purchasing Managers' Office. Each bidder shall submit 1 (one) original and 6 (six) copies, easily identifiable as such. Bids may be mailed or hand delivered to the following address:

City of Fort Smith  
Purchasing Manager  
623 Garrison Avenue, Suite 522  
P O Box 1908  
Fort Smith, AR 72902

- A. It is the bidder's responsibility to ensure that the proposal is received by the Purchasing Department prior to the opening date and time specified. Any proposal received after the opening date and time shall be promptly returned to the bidder unopened.
- B. The City shall not be responsible for proposals received late because of delays by a third party delivery service; i.e., U.S. Mail, UPS, Federal Express, etc. The name and address of the bidder, date of the bid opening and the bid name shall be shown on the outside of the envelope.
- C. No proposal shall be withdrawn for a period of (sixty) 60 days after the scheduled time for receiving proposals. A bidder may withdraw a bid only by a written request received by the Purchasing Manager prior to the time set for bid opening.

- D. All bid documents shall contain an original signature of an authorized representative of the bidder on the Vendor Information Form. All bid documents shall be typed or printed in ink.
- E. Each bidder agrees that its price(s) shall remain firm and subject to acceptance by the City for a period of 60 calendar days from the bid opening date.

## **XIX. REJECTION OF BIDS**

- A. The City shall have the right to reject any or all bid documents if:
  - 1. the bidder misrepresents or conceals any material fact in the bid;
  - 2. there is/has been any collusion among the bidders;
  - 3. the bid does not strictly conform to the bid documents;
  - 4. the bidder is delinquent in the payment of taxes to any political jurisdiction; or
  - 5. it is deemed in the best interest of the City to do so; in the event there are inconsistencies between the general conditions and other terms or conditions contained herein, the former will take precedence.
- B. The City shall not be responsible for any costs incurred in the preparation of the bid document or to contract for its contents and any other costs incurred in anticipation of receiving a contract award.

## **XX. ACCEPTANCE OF BID**

Upon acceptance of the bid by the Board of Directors and issuance of a Contract Award by the Purchasing Manager, the successful bidder shall perform the services as specified at the stated prices, within the time specified, and in accordance with all provisions of the bid documents.

## **XXI. EVALUATION AND AWARD OF CONTRACT**

- A. The selection of the successful Bidder will be based on the content of the proposals.
- B. A Committee comprised of City employees representing various departments will thoroughly evaluate and rank each proposal in order of preference including but not limited to the following: completeness, experience, understanding of the scope of services, qualifications and availability of personnel, delivery efficiency, return and exchange policy, past experience of the Contractor with similar work, references, and cost. Interviews by the Committee will be conducted with the top three (3) potential bidders in order to discuss/review the proposal submitted. This will also enable the bidder to make a short presentation to the Committee about the services offered. Dates and locations of such interviews will be made available at a later date. The selected Bidder will be required to submit clothing and color samples.
- C. Award shall be made to the Bidder who provides the greatest value to the City, from the standpoint of meeting specifications and requirements of proposal documents, suitability to purpose, quality, service, previous experience, price, life-cycle cost, ability to deliver, or any other reason deemed by the City to be in its own best interest. Thus, the result will not be determined by price alone. Any final analysis or weighted point score does not imply that one bidder is superior to another, but simply that in the City's judgment, the contractor selected appears to offer the best overall solution for its current and anticipated needs. In addition to price, the City shall consider quality, delivery time, payment terms, warranties, safety, availability of items, cost of maintenance, suitability of components offered, options available and suitability of the product offered for the intended use, as well as the capacity, character, integrity, and reputation of the bidder and any past experience with the product offered or the bidder.
- D. The City shall have the right to waive any informality or irregularity in any proposal received and to advertise for new proposals where the acceptance, rejection, waiving, or re-advertising is determined by the City to be in its own best interest. The City reserves the right to award the contract in whole or in part, and to contract with more than one Bidder if it is deemed in the best interest of the City.
- E. The successful Bidder shall comply with all employment laws and regulations regarding safety and shall ensure their staff to be properly trained in safe work practices and procedures.

## **XXII. FITTING & TAILORING OF UNIFORMS**

The Bidder shall provide personnel to do fittings for uniforms at mutually agreeable times and at the site locations provided in the bid. All personnel shall be fit with care to ensure proper sizing and first class appearance. The Bidder is to include tailoring in the quoted prices, including the cost of hemming of pants and the altering of all clothing items to provide a professional look. As a part of this proposal, the Contractor is required to sew patches and embroidery on shirts, jackets and other items as directed by the City. Minor repairs and mending are also required as a part of the laundering services. Please advise of any additional costs involved.

### **XXIII. PROHIBITED INTEREST**

No member, officer, or employee of the City during their tenure or one (1) year thereafter shall have any interest, direct or indirect, in this proposal or proceeds thereof.

### **XXIV. DATA PRIVACY**

- A. All material submitted in response to this bid document will become public record and will be subject to inspection after notice to proceed has been given. Any material requested to be treated as proprietary or confidential must be clearly identified and easily separable from the rest of the bid document.
- B. Bidder agrees to abide by all applicable state and federal laws and regulations concerning the handling and disclosure of private and confidential information. Bidder agrees to hold the City harmless from any claims resulting from the bidder's unlawful disclosure or use of private or confidential information.

### **XXV. TECHNICAL REPRESENTATIVES**

Any advice, approvals, or instructions given by the City's staff, technical personnel or other representatives to any bidder are expressions of personal opinion only and do not alter or amend the bid documents unless included in an addendum.

### **XXVI. WARRANTY OF PRICE**

The City will pay the price for services specified by the Bidder's bid. The Bidder warrants its price to be no higher than the Contractor's current prices for its performance of the services covered by this contract for others under similar conditions.

### **XXVII. PATENTS, INDEMNIFICATION, AND INFRINGEMENT**

The Bidder agrees to indemnify, hold harmless and defend the City, its officers, agents and employees against all claims, suits, demands, or damages for alleged or actual infringement of patents, copyrights, or trademarks by the services furnished hereunder.

### **XXVIII. DISPUTES AND APPEALS**

- A. The Board of Directors is the final authority on issues relating to this contract. The City Administrator, Purchasing Manager and the Committee are the City's representatives in the award and administration of this contract, and will issue and receive all documents, notices, and correspondence.
- B. If a protest is not resolved to a bidder's satisfaction, the bidder may submit a notice of appeal to the Board of Directors, through the Purchasing Manager, within 5 days from the November 6, 2012 Board of Director's meeting. The bidder will have to be present the appeal to the Board and the Board's decision is final and conclusive, and binding on all parties concerned.

## **XXIX. GRATUITIES**

- A. The City may terminate this contract if gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Bidder, or any agent or representative of the Bidder, to any officer or employee of the City to secure favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of the contract.
- B. In the event this contract is terminated under this section, the City may collect, in addition to any other damages or remedies to which it may be entitled by law, exemplary damages in an amount not less than three (3) nor more than ten (10) times the value of the gratuity offered or given to any city officer or employee.

## **XXX. DELEGATION, SUBCONTRACTS, ASSIGNMENTS**

The Bidder will not, without written consent of the City, make any contract with any other entity for furnishing any of the completed or substantially completed goods covered by this contract or assign its obligations under this contract. The City may set-off against the amount payable to any person under this contract any claim or charge it may have against the Contractor.

## **XXXI. CHANGE OF NAME**

The Bidder is responsible for the performance of this contract. In the event the Bidder changes its name, the Purchasing Manager must be notified in writing immediately. No change in the obligation of the Bidder will be recognized until such change is approved by the Purchasing Manager.

## **XXXII. FORCE MAJEURE**

In the event that the performance by either party of any of its obligations under this contract is interrupted or delayed by events outside of their control such as acts of God, war, riot, or civil commotion, then the party is excused from such performance for the period of time reasonably necessary to remedy the effects of the events.

## **XXXIII. TERMINATION FOR DEFAULT**

Failure by either party to perform any of its provisions will constitute a default and breach of contract in which case, the other party may require corrective action within 10 days from the date the defaulting party receives written notice citing the nature of the breach. Failure of the defaulting party to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed 10 days will authorize the other party to terminate this agreement by written notice.

## **XXXIV. TERMINATION FOR CONVENIENCE**

The City reserves the right to terminate this contract upon 30 days written notice for any reason deemed by the City's Board or its designated representatives to serve the public interest. Termination for convenience will not be made when termination is authorized under any other provisions of this contract. In the event of such termination, the City will pay the Bidder those costs directly attributable to services received by the City in compliance with the contract prior

to termination provided however, that no costs will be paid to the Bidder which is recoverable in the Bidder's normal course of doing business. The City is not liable for loss of any profits anticipated to be made hereunder. Other reasons for termination may include, but not limited to the following:

- A. Funds not appropriated for
- B. Poor service/quality of uniforms
- C. Fraud or violation of the intent of this contract
- D. Conviction of any anti-trust violation(s)
- E. Refusal to correct errors or to follow terms and conditions of the contract
- F. Evidence of unlawful discrimination

### **XXXV. ENTIRETY OF AGREEMENT; AMENDMENTS**

This IFB represents the entire agreement between the parties relating to the subject matter of this contract. Any prior agreements, promises, negotiations, or representations between the parties are not binding unless included in this contract. All amendments to this contract must be in writing and executed by both parties.

### **XXXVI. FUNDING**

Funds for payment of this contract have been provided through the City budget approved by City Board and City Administrator for the current fiscal year only. State statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of services covered by this contract is considered a recurring requirement and is included as a standard and routine expense of the City to be included in each proposed budget within the foreseeable future. The Board expects this to be an integral part of future budgets to be approved during the period of this contract except for unanticipated needs or events which may prevent such payments against this contract. However, the City cannot guarantee the availability of funds, and enters into this contract only to the extent such funds are made available. The fiscal year for the City extends from January 1<sup>st</sup> of each calendar year to December 31<sup>st</sup> of the same calendar year.

### **XXXVII. INSURANCE**

The Bidder shall purchase, provide, and maintain, at its own expense, such insurance as it will protect the City from claims set forth below.

Proof of such insurance shall be furnished to the City prior to the commencement of any work and shall be maintained throughout the life of this contract and shall be evidenced by the carriers certificates filed with the City.

The Bidder shall supply the City with a list of subcontractor's (if applicable) and shall verify and take responsibility for the subcontractors' proof of insurance. Insurance shall be in force the first day of the Contract. Insurance shall not be canceled, limited in scope of coverage, or non-renewed until after Thirty (30) days written notice has been given to the Purchasing Manager.

The Bidder shall not commence work until the City has obtained required insurance and filed an acceptable certificate of insurance with the City. All insurance policies shall be open to inspection by the City and copies of policies shall be submitted to the City upon written request. The insurance certificate shall specify "City of Fort Smith" and the project name.

- **COMPREHENSIVE GENERAL LIABILITY**  
A single or combined limit occurrence based general liability insurance policy which shall include a broad form comprehensive liability endorsement and a contractual endorsement, which shall include the following coverage at a minimum:  
  - Bodily Injury/Property Damage \$ 300,000 per person
  - \$1,000,000 per occurrence
  
- **AUTOMOBILE LIABILITY**  
A single or combined limit auto liability insurance policy for all owned, non-owned and hired vehicles, if any, using the provision of services under this contract, which shall include the following coverage at a minimum:  
  - Bodily Injury/Property Damage \$300,000 per person
  - \$1,000,000 per occurrence
  
- **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE**  
Bidder shall procure and maintain a policy that at least meets Arkansas statutory minimum requirements and is covered for work in Arkansas.

The above subparagraphs establish minimum insurance requirements and it is the sole responsibility of the Bidder to purchase and maintain additional insurance that may be necessary in connection with this contract.

### **XXXVIII. DESIGNATED HOLIDAYS**

No deliveries will be required or accepted on designated holidays, unless specific prior arrangements have been made. Attached (*Observed Holidays*-Page 20) you will find the City approved holiday schedule. Future schedules are expected to be similar.

### **XXXIX. QUALITY OF SERVICES**

The successful bidder expressly warrants that all services specified in this bid proposal will be performed by it or its subcontractors with skill, care, and diligence and in accordance with all specifications of this bid. The successful bidder agrees to correct any deficiencies in its provision of services upon notification by the City and without additional expense to the City.

**VENDOR INFORMATION FORM**

FIRM NAME \_\_\_\_\_  
Please print

CONTACT \_\_\_\_\_  
Please print  
Please include a business card of the individual submitting this proposal or is an approved representative of the company bidding.

SIGNATURE \_\_\_\_\_

EMAIL \_\_\_\_\_

TITLE \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ FAX \_\_\_\_\_

TAX PAYER I.D. NUMBER \_\_\_\_\_

GENERAL NATURE OF BUSINESS \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# **UNIFORM PRICING SHEET**

## **City of Fort Smith BID #100512-BA**

Pricing shall be for 5 changes per week with the exception of jackets. Each employee shall be issued two (2) jackets. All prices shall include sales tax unless otherwise stated herein. Once again, these prices shall be based on your standard garments.

**PER EMPLOYEE COST:**

Long Sleeve Shirt	\$ _____	Per Week
Short Sleeve Shirt	\$ _____	Per Week
Polo Shirt	\$ _____	Per Week
Pants	\$ _____	Per Week
Pants-Denim	\$ _____	Per Week
Shorts	\$ _____	Per Week
Jackets	\$ _____	Per Week

Delivery & pick-up times \_\_\_\_\_

**FIRM NAME** \_\_\_\_\_  
Please print

**CONTACT** \_\_\_\_\_  
Please print

**SIGNATURE** \_\_\_\_\_

**DATE** \_\_\_\_\_

## **REFERENCES**

Provide five (5) current customers for whom you have provided equivalent goods and services to.

### **Reference 1**

Name of Business: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Description of Work Performed: \_\_\_\_\_

\_\_\_\_\_

### **Reference 2**

Name of Business: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Description of Work Performed: \_\_\_\_\_

\_\_\_\_\_

### **Reference 3**

Name of Business: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Description of Work Performed: \_\_\_\_\_

\_\_\_\_\_

**REFERENCES (cont.)**

Provide five (5) current customers for whom you have provided equivalent goods and services to.

**Reference 4**

Name of Business: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Description of Work Performed: \_\_\_\_\_

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**Reference 5**

Name of Business: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Contact Name & Title: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Description of Work Performed: \_\_\_\_\_

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# City of Fort Smith 2012 Uniform Services IFB

## Bid Schedule

- 09/22-23/12: Advertise & release bid solicitation
- 10/01/12: Vendor questions due (by 4:00 P.M.)
- 10/02/12: Mandatory pre-bid meeting (Riverfront)  
10:30 - 11:30 (lunch provided)
- 10/02/12: Vendor Booths & City employee drop-in  
12:30 – 4:00

### Location:

Riverfront Park-West Wing  
121 Clayton Expressway  
Fort Smith, AR 72901

- 10/05/12: Bids due by 2:00 p.m. (not opened publicly)
- 10/11/12: Evaluation Committee meeting
- 10/15-26/12: Vendor interviews & presentations
- 10/31/12: Selection & Notice of Intent to Award
- 11/06/12: Approval by Board of Directors

**Please note that this schedule is subject to change. Please check the City's website at [www.fortsmithar.gov](http://www.fortsmithar.gov) for periodic updates, if necessary.**

## **CITY OF FORT SMITH OBSERVED HOLIDAYS**

- New Years Day
- Martin Luther King, Jr. Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving (Thursday & Friday observed)
- Christmas (two days observed)

**City of Fort Smith  
Uniform Employee Count  
As of August, 2012**

	Department	No. of Empl.	Cotton Work Shirt	Cargo Pant	Comfort Pleated Pants	Women's work Pants	Carpenter Jean Pants	Denim Pants	Comfort Pant	Cargo Shorts	Coveralls
	Item #		330	270	865	390/395	74331	894	945	370	912
	Price		\$0.194	\$0.265	\$0.870	\$0.214	\$0.277	\$0.265	\$0.209	\$0.190	\$1.015
1.	Parks	15						143	22		
2.	Convention Center	11			11						
3.	Seb. County Health	0									
4.	Police	2									
5.	Purchasing	0									
6.	Fire	0	1					1			
7.	Street	41	33	89				307	44	82	6
8.	Transit	26						55	231		
9.	Sanitation	63						193			
10.	Utilities-Massard	11							110		
11.	Utilities-Mountainburg	11							121		
12.	Utilities-Maint.	15							143		2
13.	Utilities-Lee Creek	11						121			
14.	Utilities-Lab	11						77			
15.	Utilities-P Street	17							154		
16.	Utilities 5610-5616	80		22		55	11	649	121		4
	<b>TOTALS</b>	<b>314</b>	<b>34</b>	<b>111</b>	<b>11</b>	<b>55</b>	<b>11</b>	<b>1546</b>	<b>946</b>	<b>82</b>	<b>12</b>

**City of Fort Smith  
Uniform Employee Count  
As of August, 2012**

	Department	Work Shorts	Comfort Shirt LS	Comfort Shirt SS	Short Sleeve Polo	Denim Shirt	Lab Coats	Jackets	Mats 3x4	Mat 3x5	Mats 3x10	Mats 4x6	Logo Mat 3x5	Logo Mat 4x6
	<b>Item #</b>	741	935	935	259	65415	925	970	*	1800	84020	*	84301	84401
	<b>Price</b>	\$0.202	\$0.162	\$0.162	\$0.265	\$0.264	\$2.250	\$0.408	\$1.950	\$3.000	\$4.150	\$3.100	\$4.000	\$6.000
1.	Parks					165			4			4		22
2.	Convention Center				11				2					
3.	Seb. County Health													
4.	Police								2		3	5		
5.	Purchasing												6	
6.	Fire							1						
7.	Street	10	726					80	8				2	
8.	Transit	40	286	286				36	4		3		1	
9.	Sanitation		638	693				138		1				
10.	Utilities-Massard		176					24		1		7		
11.	Utilities-Mountainburg		238					20		2		4		
12.	Utilities-Maint.		285					30	1	1		1		
13.	Utilities-Lee Creek		164					20	4			1		2
14.	Utilities-Lab		99				63	4	1			1		
15.	Utilities-P Street		206					28	3		3	1		
16.	Utilities 5610-5616		869	869					13		1	3		2
	<b>TOTALS</b>	<b>50</b>	<b>3687</b>	<b>1848</b>	<b>11</b>	<b>165</b>	<b>63</b>	<b>381</b>	<b>42</b>	<b>5</b>	<b>10</b>	<b>27</b>	<b>9</b>	<b>26</b>

**City of Fort Smith  
Uniform Employee Count  
As of August, 2012**

	<b>Department</b>	<b>Shop Towels</b>	<b>Dish/Bar Towels</b>	<b>22" Dust Mop</b>	<b>30" Dust Mop</b>	<b>48" Dust Mop</b>	<b>60" Dust Mop</b>
	<b>Item #</b>	2160	2960	2631	2577	2604	2610
	<b>Price</b>	\$0.070	\$0.110	\$0.500	\$0.500	\$0.600	\$0.600
1.	Parks	40	60			7	1
2.	Convention Center						
3.	Seb. County Health						
4.	Police						
5.	Purchasing						
6.	Fire	200		10			
7.	Street			1			
8.	Transit	100		2			
9.	Sanitation	300	200				
10.	Utilities-Massard		150		6		
11.	Utilities-Mountainburg		50	1			
12.	Utilities-Maint.	300					
13.	Utilities-Lee Creek	60	100		2		
14.	Utilities-Lab		500				
15.	Utilities-P Street		200				
16.	Utilities 5610-5616	200					
	<b>TOTALS</b>	<b>1200</b>	<b>1260</b>	<b>14</b>	<b>8</b>	<b>7</b>	<b>1</b>

**LOCATION ADDRESSES**

- |     |                           |              |
|-----|---------------------------|--------------|
| 1.  | 3301 South M              | Fort Smith   |
| 2.  | 55 South 7                | Fort Smith   |
| 3.  | 3112 South 70             | Fort Smith   |
| 4.  | 100 South 10              | Fort Smith   |
| 5.  | 623 Garrison Avenue       | Fort Smith   |
| 6.  | 200 North 5th             | Fort Smith   |
| 7.  | 3900 Kelley Hwy           | Fort Smith   |
| 8.  | 6821 Jenny Lind           | Fort Smith   |
| 9.  | 5900 Commerce             | Fort Smith   |
| 10. | 1609 North 9              | Fort Smith   |
| 11. | 2100 Lake Ft. Smith Drive | Mountainburg |
| 12. | 13 North P                | Fort Smith   |
| 13. | 2425 Pine Hollow          | Van Buren    |
| 14. | 3900 Kelley Hwy           | Fort Smith   |
| 15. | 13 North P                | Fort Smith   |
| 16. | 3900 Kelley Hwy           | Fort Smith   |

**ADDENDUM**

**10-04-12**

**CITY OF FORT SMITH  
UNIFORM SERVICES**

**BID #100512-BA**

**Please note that this will be the only addendum issued in regards to above captioned bid. The changes have been noted in blue and are underlined and/or further comments have been added to further clarify an item in the bid.**

- ◆ Page 4 - Clarification on *Item III-10*: The number of garments count can be done either manually or by way of an on-site bar code scanning system. Simply explain how your process will be handled to account for the proper number of items picked up and delivered.
- ◆ Page 16 - Pricing Sheet: please include the pricing of two types of jackets: your standard light weight jacket AND a heavier weight jacket for the cold temperatures.
- ◆ Please provide pricing for items noted on page 2.

I acknowledge that I have read and understood the addendum:

FIRM NAME \_\_\_\_\_  
Please print

CONTACT \_\_\_\_\_  
Please print

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

**PRODUCT PRICING SHEET**

**City of Fort Smith  
BID #100512-BA**

Pricing shall be based on a per-week basis. All prices shall include sales tax.

PER ITEM COST:

Coveralls	\$ _____	Per Week
Mats 3X5	\$ _____	Per Week
Mats 4X6	\$ _____	Per Week
Shop Towels	\$ _____	Per Week
Mop Heads	\$ _____	Per Week

Deliver & pick-up times \_\_\_\_\_

FIRM NAME \_\_\_\_\_  
Please print

CONTACT \_\_\_\_\_  
Please print

SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_



November 2, 2012

UniFirst Corporation  
1301 Commerce Court  
Fort Smith, AR 72908  
Phone: 479-646-5943

To Whom It May Concern:

I am writing this letter as a formal protest to the recent uniform bid process. The entire process was handled poorly, and the bid documents laid out by Mr. Bahsoon were not followed at all. I truly believe this was never a fair playing field for all of the vendors who spent time and money in putting together programs to best help the City.

Item XXI section B of the Bid clearly states the top three bidders would be allowed a presentation and have interviews with the committee. This was not given to anyone involved in the process. Please help me understand how the committee can justify saying they have found the BEST fit for the City, when they did not go with the lowest bid or give anyone else a chance to show how they would handle the Cities' Uniform service.

I was also shocked at the Mandatory pre-bid meeting that Mr. Bahsoon gave a lengthy talk to the committee and vendors about how great the service that Cintas had given over the past agreement. It should not be his place to try and influence the committee. At this meeting, the use of scanning equipment was discussed to keep track of the uniforms since Cintas had not been counting what they brought in or out. This was made public by some of the committee members. Everyone other than Cintas had this process of scanning garments already in place. We were told this would be added to the bid specs. When the amendment was sent out, it was written that the uniforms could be hand counted so Cintas was the only vendor that would benefit from this amendment.

We serviced the Cities' uniform needs in the past and was very happy to hear from city employees that not only remember the excellent service we provided, but still remembered the name of the Route Sales Representative that serviced them seven years ago. We also have all of the documented Good Will Visits our service managers perform from our years of service with the city. Most of these are marked COMPLETELY SATISFIED and a number of them are signed by Mr. Bahsoon himself.

In closing, I do not mind losing a bid. This is business and that happens. I do however; believe this is more than just losing a bid. I ask that before the Board approves any vendor that they at least look into the true reasons they were selected.

Thank You,

Shawn Hatcher  
Sales Manager

Mayor & Members of the Board: Additional information and feedback regarding this protest will be forwarded to you on Monday, November 5th.

*Alie Bahsoon, Purchasing Manager*



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION ACCEPTING A GIFT AND EXCHANGE AGREEMENT  
WITH A SPECIAL WARRANTY DEED WITH WILLIAM H. HANNA  
FOR PROPERTY LOCATED AT CAROL ANN CROSS PARK

---

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

SECTION 1: The attached Gift and Exchange Agreement with a Special  
Warranty Deed donating approximately 10 acres and exchanging 8.3 acres  
with the City of Fort Smith for 8.5 acres for the expansion of Carol Ann Cross Park  
is hereby approved.

SECTION 2: The City Administrator and City Attorney are hereby  
authorized to take any and all reasonable actions to complete the Gift and  
Exchange Agreement. The Mayor, his signature being attested by the City  
Clerk, is hereby authorized to execute the approved Agreement and any  
Special Warranty Deed necessary to complete the Agreement.

THIS RESOLUTION adopted this \_\_\_\_\_ day of November, 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM



\_\_\_\_\_  
npr



## Memo:

October 31, 2012

To: Ray Gosack, City Administrator  
From: Mike Alsup, Director of Parks and Recreation  
Re: Carol Ann Cross Park, land donation and land exchange with William H. Hanna

Carol Ann Cross Park is a favorite park for many citizens for walking, fishing, pedal boating, and spending time with their families. The beauty of this park centers on the lake framed by Wildcat Mountain. The resolution to accept a ten (10) acre donation of land and exchange of eight and a half (8.5) acres will expand the park from fifty-one (51) acres to sixty-one (61) acres and provide access to the Arkansas River.

The Parks Commission and staff recommend that the Board of Directors approve the gift and exchange agreement. Plans for the property include extending the trail system in the park for exercise, wildlife observation, and accessing the River. Hiking and mountain bike trails are anticipated with long range plans of an ADA compliant trail from the east side of the dam to the River. The River Valley Chapter of the Arkansas Canoe Club is working with the Parks Department to map a water trail for canoes and kayaks in the Fort Smith pool of the River. This property will provide an access to the River for the blueway.

William H. Hanna purchased the property from the Elmo Caruthers' family with the intent of keeping the land in a natural state and providing recreation opportunities. The ten acre donation is required with the purchase of the property; the exchange land evens up the property lines and provides the City with the best property for trail development. The topography is more level from the dam to the River than the City exchange property at the top of Wildcat Mountain which is steep.

The City is restricted in its use of the property for initial period of twenty (20) years and Hanna for ten (10) years. During the initial period the property will remain in a natural state with development of trails being permitted. A secondary period of twenty-five (25) years is less restrictive and does not allow for commercial, industrial, or residential development of the City property. There are no restrictions at the end of the second period. After the initial ten (10) year period, Hanna or his successors may develop the property under the current residential zoning regulations of R-1 or greater. After the Secondary Use Period, there are no

restrictions for development. The Caruthers agreement with Stephens Production for a gas well allows Stephens to drill in other locations on the property when the existing well fails to produce. Stephens Production denied a request from the City to give up this right to drill additional wells on the property.

Attachment

# GIFT AND EXCHANGE AGREEMENT

It is the wish of William H. Hanna (“**Hanna**”) to donate approximately 10 acres (the “**Donated Land**”) to the City of Fort Smith (the “**City**”) for the expansion of Carol Ann Cross Park (the “**Park**”) such that there will be access from the Park to the Arkansas River via a hiking trail across the Donated Land with remainder of the Donated Land to remain in a natural state during the term of and according to the provisions of this Gift and Exchange Agreement (“**Agreement**”). In addition, Hanna will exchange 8.3 acres (the “**Hanna Exchange Land**”) with the City for 8.5 acres the City owns (the “**City Exchange Land**”) to further expand the nature preserve area for the Park. Hanna and the City believe the exchange of the Hanna Exchange Land for the City Exchange Land will benefit the City and its residents and will make the Park more usable. The Donated Land, Hanna Exchange Land and City Exchange Land are laid out on the map or diagram attached as Exhibit A and are sometimes referred to as the “**Properties**”. As to Exhibit A, the combined Donated Land and Hanna Exchange Land are designated together as “Tract 3” and the City Exchange Land as “Tract 1.” Title to Tract 2, as noted on Exhibit A, shall remain with Hanna as his property and shall not be subject to any of the restrictions set out herein. Only the surface rights to the Properties will be donated or exchanged, not the mineral rights.

**1. NAME and ACKNOWLEDGEMENT:** In order to express the appreciation of the City to Hanna, as donor, appropriate recognition will be given to the Caruthers family, long time owners of the Donated Land and the Hanna Exchange Land. Within thirty-six (36) months from the date of the donation/exchange, a sign will be erected on the Donated Land commemorating the Caruthers family. At such time as a nature trail is constructed across the Donated Land to the Arkansas River and deemed to be compliant with the American with Disabilities Act (“**ADA**”), an additional sign or plaque will be installed recognizing the accomplishments and contributions to the City by James Walcott and his family (“**Walcott**”). The design, location and wording of the two plaques or signs will be determined by the City’s Park Director after reasonable consultation with Hanna as to the Caruthers memorial and with Hanna and a family representative of Walcott in connection with the plaque or sign honoring Walcott and his family. The City will endeavor to install the Walcott plaque or sign on an ADA-compliant trail as close to the Arkansas River as reasonably possible.

**2. USE RESTRICTIONS:** The Donated Land and the Hanna Exchange Land will be used as an extension of the Park solely for nature preserve purposes (including existing utility installations) such that these two tracts shall remain in a natural state for a period of twenty (20) years from the date of the recordation of the deeds referenced below (the “**Initial Use Period**”); provided, however, City owned utilities, hiking and biking trails, and a water access point for canoes and kayaks (and related utility and support amenities) may be constructed and operated on these two tracts. During the Initial Use Period no additional construction of any type will be permitted on the Donated Land or the Hanna Exchange Land and the following restrictions shall apply to Donated Land and the Hanna Exchange Land. Other than the removal of non-native invasive plants, the cutting of significant trees, shrubs or plants shall be limited to areas of permitted uses or for maintenance or upkeep purposes. Use of fertilizers or chemicals to the detriment of

water resources used for sustenance of wildlife shall be discouraged. Other than signs referred to in paragraph 1 above, utility markings, and directional or park boundary signage, no signs or billboards shall be placed by the City on the Properties during the Initial Use Period. The City shall reasonably prohibit dumping or storage of ashes, trash, garbage, or other unsightly or offensive materials, hazardous substances or toxic waste, or any placement of underground storage tanks in, on, or under the Donated Land and Hanna Exchange Land. Other than for construction, maintenance, or emergency use, the City shall not permit the use or operation of motorcycles, automobiles, trucks, all terrain or off-road vehicles, or other types of vehicles on the Donated Land and Hanna Exchange Land.

Following the expiration of the Initial Use Period and during the Secondary Use Period (as defined below), the City may consider and permit any reasonable or necessary expansion of the foregoing mentioned uses on these two tracts so long as such expansion does not include any one or more of the following: (i) commercial, industrial or residential development; (ii) amusement parks or attractions that require extensive nighttime lighting; or (iii) the expansion of the water access point on the Arkansas River to permit or allow a commercial marina for motor powered boat or watercraft. The period beginning with the end of the Initial Use Period and continuing twenty-five (25) years shall be referred to as the (“**Secondary Use Period.**”) Following the Secondary Use Period, there shall be no restrictions on the City’s use or disposition of the Donated Land or Hanna Exchange Land from this Agreement or the restrictions in the subject deeds.

Hanna agrees that for a period of ten (10) years following the recordation of the deed for the City Exchange Land (the “**Hanna Use Period**”), he and his successors and assigns shall keep the City Exchange Land in its natural state. During this period of time, other than routine maintenance and upkeep activities, no drive ways or paved or concrete pathways wider than four feet or garages or other walled structures shall be constructed on the City Exchange Land; provided, however, Hanna shall be permitted to construct reasonable driveways or access points across the City Exchange Land to the Tract 2 property. The foregoing vegetation removal, fertilizer and chemical, signs, dumping and storage and use of motor vehicle provisions applicable to the City during the Initial Use Period shall also be applicable to Hanna as to the City Exchange Land during the Hanna Use Period. Following expiration of the Hanna Use Period, Hanna may only develop the City Exchange Land in conformity with the standards associated with the current (as of the date of this Agreement) R-1 (or greater) residential zoning standards. Until the end of the Secondary Use Period, Hanna and his successors shall not seek zoning authority for any commercial or industrial use of the City Exchange Land. The foregoing use restrictions shall be binding on the City, Hanna, and their successors and assigns.

Should the City decide to sell or transfer any portion of the Donated Lands or Hanna Exchange Land during the Initial Use Period or Secondary Use Period, the City shall first give Hanna or his successors or assigns the right to purchase at its then fair market value for a period of ninety (90) days that portion of the Properties proposed to be sold or transferred. Should Hanna decide to sell or transfer any portion of the City Exchange Land to anyone other than a family member or entity in which Hanna or a family member

have a controlling interest during the Initial Use Period or Secondary Use Period, the City shall have the first right to purchase that portion of the City Exchange Land proposed to be sold or transferred at its then fair market value for a period of ninety (90) days. Following expiration of the ninety (90) day periods, the property in question may be sold or transferred free of these restrictions.

City and Hanna agree the use restrictions set forth in paragraph 2 of this Agreement regarding the Properties shall be inserted in the deeds conveying the Properties. As noted, the deeds conveying the Properties shall convey the surface estates but not the mineral estates to the Properties. The special warranty deed from Hanna to the City shall warrant good title to the Donated Land and Exchange Land, but the deed shall otherwise convey the Property as is without warranty regarding the condition of the Property. The special warranty deed from the City to Hanna with reference to the City Exchange Land shall contain the special warranty of the City that the City has not adversely affected any title or interest it has in the City Exchange Land and, also, shall convey the surface estate as is without warranty regarding the condition of the property

**3. MINERAL INTERESTS.** As noted above, only the surface estates of the properties will be donated or exchanged and not the mineral estates. Paragraph 2 contains certain use restrictions on the Properties. It is agreed that the use restrictions on the Properties are not applicable to (and will not be considered to have been violated by) the actions of third parties in lawful pursuit of the development of the mineral estates of the subject properties.

**4. DISCRETIONARY CONSENT.** Consent for activities otherwise prohibited under this Agreement may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in this Agreement are deemed desirable by both Hanna (or his successor or assign) and the City (or its assign), permission may be given for such activities. Such requests for permission and permission for activities requiring consent shall be in writing and shall describe the proposed activity and affected property. Any such consent must be executed by the party giving consent (on behalf of the City after approval of the Board of Directors of the City).

**5. REMEDIES.** If either party becomes aware of a violation of the terms of this Agreement, the party asserting violation shall give written notice to the other party at the address provided for notices in paragraph 9 of this Agreement with a request for corrective action to abate such violation. Within ten (10) days of receipt of such letter, the other party shall provide a written response to the notice of violation. If the noticed violation has not been abated, the chief administrative officer of the City and the designated representative of Hanna, or his successors or assigns, shall meet and discuss the noticed violation and response in an effort to resolve the dispute. If that meeting does not result in a resolution of the dispute, either party may bring an action at law or equity in the Circuit Court of the Fort Smith District of Sebastian County, Arkansas to obtain appropriate legal relief with reference to the enforcement of this Agreement and the recovery of any damages arising from non-compliance with this Agreement.

**6. FAILURE TO ACT OR DELAY.** No party to this Agreement waives or forfeits the right to take action as may be necessary to insure compliance with this Agreement by any prior failure to act.

**7. VIOLATIONS DUE TO CAUSES BEYOND PARTY'S CONTROL.** Nothing herein shall be construed to entitle any party to institute any enforcement proceedings against the other party for any changes to the Properties due to causes beyond a party's control, such as changes caused by fire, flood, storm, earthquake, or the unauthorized wrongful acts of third persons.

**8. MERGER.** The provisions of this Agreement set forth the entirety of the Agreement of the parties with reference to the Properties. All prior negotiations are merged into the provisions of this Agreement. Any change or amendment to this Agreement must be in writing executed by the parties and approved, on behalf of the City, by the Board of Directors of the City.

**9. NOTICES.** Any notices required in this Agreement shall be sent by registered or certified mail to the following address or such address as may be hereinafter specified by notice in writing:

**Grantor:** William H. Hanna  
60 South Sixth Street  
P.O. Box 1356  
Fort Smith, Arkansas 72902

**Grantee:** City of Fort Smith, Arkansas  
Attn: City Administrator  
623 Garrison Avenue  
PO Box 1902  
Fort Smith, Arkansas 72902-1902

**10. ACCEPTANCE:** The foregoing terms and conditions shall be effective only upon proper execution of this Agreement by William H. Hanna and by the Mayor of the City following approval of this Agreement by the City's Board of Directors.

[SIGNATURE PAGE FOLLOWS]

In witness whereof, the parties have executed this Agreement on the dates indicated below.

Agreed to by William H. Hanna:

\_\_\_\_\_  
William H. Hanna

\_\_\_\_\_  
Date

Agreed to by the City of Fort Smith:

\_\_\_\_\_  
Sandy Sanders, Mayor of Fort Smith

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
City Clerk



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION APPROVING A TERMINATION AGREEMENT REGARDING  
A LEASE OF PROPERTY BETWEEN THE CITY OF FORT SMITH AND  
SEBASTIAN COUNTY GIRLS' SOFTBALL LEAGUE, INC.

---

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

The Mayor is hereby authorized to execute, his signature being attested  
by the City Clerk, the attached Termination Agreement with the Sebastian  
County Girls' Softball League, Inc. ("League") providing for the termination of a  
Lease Agreement dated September 9, 2004, between the City and the League  
upon the completion and final payment of the contract by the City for the  
construction of two softball fields to be located at Ben Geren Regional Park.

The Resolution adopted this \_\_\_\_\_ day of November, 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM



\_\_\_\_\_  
npr



## Memo:

October 31, 2012

To: Ray Gosack, City Administrator  
From: Mike Alsup, Director of Parks and Recreation  
Re: Sebastian County Girls Softball League agreement to terminate the agreement of September 9, 2004

The Sebastian County Girls Softball League (League) played at Andrews Field for many years. As the National Cemetery approached capacity; the City, League, and Veterans Association met to discuss the future of the Cemetery. It was agreed by all the groups that Cemetery expansion should take place at the Andrews Field location with the fields being replaced at another location.

The City purchased fifty-one (51) acres on Riverfront Drive for the fields with private donations, a state appropriation, and City funds. The League holds a fifty (50) year lease from the City for this property. Subsequently, the League has made its home at Ben Geren Park, the League has grown, and their intent is to remain at that location. The City is prepared to build two (2) fields at Ben Geren Park which along with two (2) existing fields will provide for their needs.

The League has agreed to release the lease of the Riverfront Drive property when the two (2) fields are completed. This project is scheduled first with the dedicated funding provided this year. Development of the Riverfront Drive property would not begin for a year after completion of the Ben Geren softball fields. There should be no overlapping of construction on these projects.

The staff recommends approval of this agreement.

Attachment

**AGREEMENT TERMINATING LEASE**  
**AGREEMENT OF SEPTEMBER 9, 2004**

THIS TERMINATION AGREEMENT MADE AND ENTERED INTO this \_\_\_ day of November, 2012, by and between the City of Fort Smith, Arkansas, hereinafter "City," and the Sebastian County Girls' Softball League, Inc., hereinafter "League."

**WITNESSETH**

WHEREAS, the parties entered into a Lease Agreement effective September 9, 2004, whereby the League leased from the City a tract of real property consisting of approximately 51 acres on which the League might conduct public recreational activities especially including softball and baseball for the inhabitants of Fort Smith; and,

WHEREAS, the subject property has not been utilized for the construction of softball and baseball facilities; and,

WHEREAS, as approved by voters of the City of Fort Smith, and to replace the Andrews Field softball facilities, the City is in the process of constructing two softball fields for the use of the public as managed by the League on property now owned and operated by Sebastian County as Ben Geren Regional Park; and,

WHEREAS, the parties desire to make provisions for the termination of the Lease Agreement of September 9, 2004, upon the completion and final payment of the contract to build the two softball fields at Ben Geren Regional Park;

NOW, THEREFORE:

In exchange of the mutual terms and conditions set forth herein, which are acknowledged by the parties to be sufficient to support the obligations set forth herein, the parties agree as follows:

1. The property subject to the parties' September 9, 2004, Lease Agreement is located in

the Fort Smith District of the County of Sebastian, State of Arkansas, and is more particularly described as follows, to wit:

Part of the Southwest-Quarter (SW1/4) of Section 33, Township 9 North, Range 32 West, Ft. Smith, Sebastian County, Arkansas, more particularly described as follows: Commencing at the Southwest Corner of said SW 1/4 of Section 33 thence North 89degrees, 39 minutes, 54 seconds East, 615.24 feet to the easterly right of way line of Clayton Expressway for the POINT OF BEGINNING; thence North 13 degrees, 17 minutes, 00 seconds East, along said easterly right of way line, 442.52 feet; thence North 15 degrees, 30 minutes, 00 seconds East, along said easterly right of way line, 1122.66 feet; thence North 89 degrees, 39 minutes, 54 seconds East, 1259.47 feet; thence South 00 minutes, 54 seconds East, 1510.14 feet to the south line of said SW 1/4; thence South 89 degrees, 39 minutes, 54 seconds West, along said south line, 1670.00 feet to the point of beginning, containing 51.00 acres, more or less, less and except a strip of property 100' wide located along the southern boundary of the above described tract as shown on the Exhibit "A" attached to the Lease Agreement.

2. The parties agree to the termination of their Lease Agreement of September 9, 2004, on the date that the City declares completion and makes final payment for the construction of two softball fields to be located within the area known as Ben Geren Regional Park, which softball fields shall be available for public use supervised by the League for the conduction of the League's scheduled youth activity programs, primarily including baseball and softball leagues for the public park benefit of the citizens of the City of Fort Smith. Upon the date of completion of the subject contract, the City Administrator of the City shall issue and deliver to the president of the League at P.O. Box 957, Fort Smith, Arkansas 72903 a letter verifying the completion of the contract and verifying the date of termination of the Lease Agreement pursuant to this Termination Agreement. The parties agree that a copy of the City Administrator's letter filed with the City Clerk shall be considered to be official confirmation of the date of termination of the parties' Lease Agreement of September 9, 2004.

3. The provisions of this Termination Agreement constitute the complete agreement of the parties. No oral or other discussions of the parties leading to the execution of this Termination

Agreement shall have any force or effect contrary to the express provisions of this Termination Agreement.

This Termination Agreement is executed on the dates indicated in the acknowledgments below by the Mayor and City Clerk by the City of Fort Smith pursuant to Resolution No. \_\_\_\_\_ of the Fort Smith Board of Directors and by the President and Secretary of the League pursuant to a resolution adopted by the Board of Directors of the League.

CITY OF FORT SMITH, ARKANSAS

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

SEBASTIAN COUNTY GIRLS'  
SOFTBALL LEAGUE, INC.

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary



RESOLUTION NO. R-157-04

**A RESOLUTION APPROVING A LEASE OF PROPERTY BETWEEN THE CITY OF FORT SMITH AND THE SEBASTIAN COUNTY GIRLS' SOFTBALL ASSOCIATION**

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

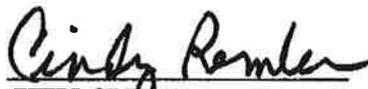
The Mayor is hereby authorized to enter into the attached lease agreement with the Sebastian County Girls' Softball Association for 51 acres of property to allow the construction of a new softball diamond complex to replace Andrews Field.

This Resolution adopted this 17<sup>th</sup> day of September, 2004.

APPROVED:

  
MAYOR

ATTEST:

  
CITY CLERK

*Approved as to form  
JSC  
no publication required*

R-157-04

LEASE AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO this 9<sup>th</sup> day of Sept, 2004, by and between the City of Fort Smith, Arkansas, hereinafter "City" and the Sebastian County Girls' Softball League, Inc., hereinafter "League."

WITNESSETH

WHEREAS, the City is the owner of the real property described in paragraph 1 of this Agreement having received ownership of the subject property by purchase from Kansas City Southern Railroad Company for the use of the subject property as a "public park"; and,

WHEREAS, the parties desire that the subject property continue to be used, in part, for the public youth athletic activities supervised by the League (primarily baseball and softball activities); and,

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the lease of the described real properties and use of the described personal properties by the League; NOW, THEREFORE:

In exchange of the mutual terms and conditions set forth herein, which are acknowledged by the parties to be sufficient to support the obligations set forth herein, the parties agree as follows:

1. Leased property. The City hereby leases to the League for an annual payment of one dollar (\$1.00) due on or before January 31 each year and the League hereby takes from the City, under the terms and conditions set forth herein, the hereinafter-described tract of real property located in the Fort Smith District of the County of Sebastian, State of Arkansas, to wit:

Part of the Southwest-Quarter (SW1/4) of Section 33, Township 9 North, Range 32 West, Ft. Smith, Sebastian County, Arkansas, more particularly described as follows: Commencing at the Southwest Corner of said SW1/4 of Section 33' thence North 89

degrees, 39 minutes, 54 seconds East, 615.24 feet to the easterly right of way line of Clayton Expressway for the POINT OF BEGINNING; thence North 13 degrees, 17 minutes, 00 seconds East, along said easterly right of way line, 442.52 feet; thence North 15 degrees, 30 minutes, 00 seconds East, along said easterly right of way line, 1122.66 feet; thence North 89 degrees, 39 minutes, 54 seconds East, 1259.47 feet; thence South 00 minutes, 54 seconds East, 1510.14 feet to the south line of said SW1/4; thence South 89 degrees, 39 minutes, 54 seconds West, along said south line, 1670.00 feet to the point of beginning, containing 51.00 acres, more or less, less and except a strip of property 100' wide located along the southern boundary of the above described tract as shown on the attached Exhibit "A."

SUBJECT, however, to any and all easements, servitudes, reservations, restrictions, licenses and agreements, public rights-of-way and rights of others, whether of record or not, zoning ordinances and laws and those matters which would be disclosed by an accurate survey and/or inspection of the above described property.

2. The League shall use the leased property solely for the conduction of the League's scheduled youth activity programs, primarily including baseball and softball leagues for the public park benefit of the citizens of the City of Fort Smith. During the term of the Lease, the League shall have the right to control use of the softball improvements and facilities which may be constructed on the property and personal property and equipment owned by the League or stored in the structures located on the leased property.

3. It is acknowledged by the League that all employees, agents and volunteers of the League are not employees or agents of the City.

4. The League shall allow participation in its recreational, park activities on a non-discriminatory basis. The League shall not permit discrimination based on race, national origin, religion, disability, or gender. The provisions of this paragraph shall not prevent the League from establishing recreational activities according to gender in compliance with the guidelines of the American Softball Association or other supervising agency nor according to the ages and

competitive abilities of the participants in the activities.

5. The League shall indemnify and hold the City harmless from all claims, liens, actions, and judgments, including reasonable legal fees and costs incurred with reference thereto, arising from the activities of the League under this Lease Agreement. Liability insurance (with contract obligation coverage) shall be maintained by the League in the amount shown on Exhibit "B."

6. The scheduled activities of the League shall be open to participation by all Fort Smith citizens, subject to the right of the League to impose reasonable rules on participants in League scheduled activities.

7. The League shall maintain the leased properties and the proposed improvements to be located thereon so as to return same to the City at the end of the leased term in the same condition as the property now exists and, as to proposed improvements, in the condition of same upon completion of initial construction, subject to ordinary wear and tear. The League's maintenance obligation includes the obligation to clean and maintain public restrooms during times scheduled by the League. Specifically, it shall be the obligation of the League to maintain the leased premises in conformance with all relevant codes and ordinances of the City, including the Clean-up of Lands Ordinance and applicable Health Codes.

8. The League shall have the right to construct improvements for uses consistent with the terms of the lease. All such construction activities shall be in conformance with all applicable codes and regulations.

9. The League shall maintain fire, storm and other casualty insurance on the improvements located on the leased premises in minimum amounts set forth in the schedule attached as Exhibit "B" to this Agreement. Any such insurance policy shall designate the City

and the League as insureds under the policy "as their interests may appear." All insurance proceeds shall be utilized to repair or replace damaged improvements, consistent with this Agreement.

10. The City has the right to grant easements, rights-of-way, and other rights of use of the leased property which do not directly affect the League's use of ball field areas.

11. This Agreement shall have a term of fifty (50) years.

12. Any notice required or permitted to be given pursuant to this Lease Agreement shall be provided to the other party at the addresses indicated:

City of Fort Smith  
Office of City Administrator  
P.O. Box 1908  
Fort Smith, Arkansas 72902

Sebastian County Girls' Softball League, Inc.  
ATTN: Mike Bock  
P.O. Box 957  
Fort Smith, Arkansas 72903

13. Either party to this Agreement may provide notice to the other at the addresses indicated in paragraph 12 above, that the party deems the other party to the Agreement to be in violation of the Agreement.

a. The notice shall specify the nature of the alleged violation and the corresponding provision in this Agreement. Within seven (7) days, the other party shall respond in writing regarding the allegations of violation of the Agreement. If the alleged violations have been cured, the response shall so note. If after the exchange of notice of violation and response, either party considers the issue to not be resolved, that party shall notify the other of the date, time, and place of a meeting (to be held within the City of Fort Smith and not sooner than seven

(7) days from the date of said notice of meeting and not more than fourteen (14) days subsequent to the date of said notice of meeting) at which representatives of the parties shall discuss the alleged violation and the response thereto.

b. Irrespective of the foregoing, in the event that the City determines that any condition on the leased premises constitutes an immediate health hazard to the members of the public, the City shall have the right to immediately take action to correct said condition. In that situation, the City shall notify the representative of the League identified in paragraph 12 above, by telephone, facsimile transmission or other method designed to provide the most expedient notice to the League. If the League does not subsequently agree to pay the expense of such curative action, the City has the right under this Agreement to petition a court of competent jurisdiction to declare the rights of the parties and, and if it is declared that the expense was the obligation of the League under this Agreement, the League shall immediately pay the expense to the City after exhausting judicial remedies regarding that issue. Any failure of the League to comply with the provisions of this paragraph shall be a basis for the City, in its sole discretion to terminate this Lease Agreement on seven (7) days notice of termination.

c. In the event the meeting of the parties pursuant to the procedures in subparagraph (a) above does not resolve the alleged violation, either party may pursue any available judicial remedy. Upon final determination that the other party is in violation of this Agreement, either party shall have the right to terminate this Agreement, on seven (7) days notice to the other.

THIS AGREEMENT EXECUTED as of the date first set forth above by the Mayor and the City Clerk of the City of Fort Smith pursuant to Resolution No. R-157-04 of the Fort Smith Board of Directors and the President and Secretary of the League pursuant to resolution

adopted by the Board of Directors of the League.

CITY OF FORT SMITH, ARKANSAS

By: 

ATTEST:

  
City Clerk

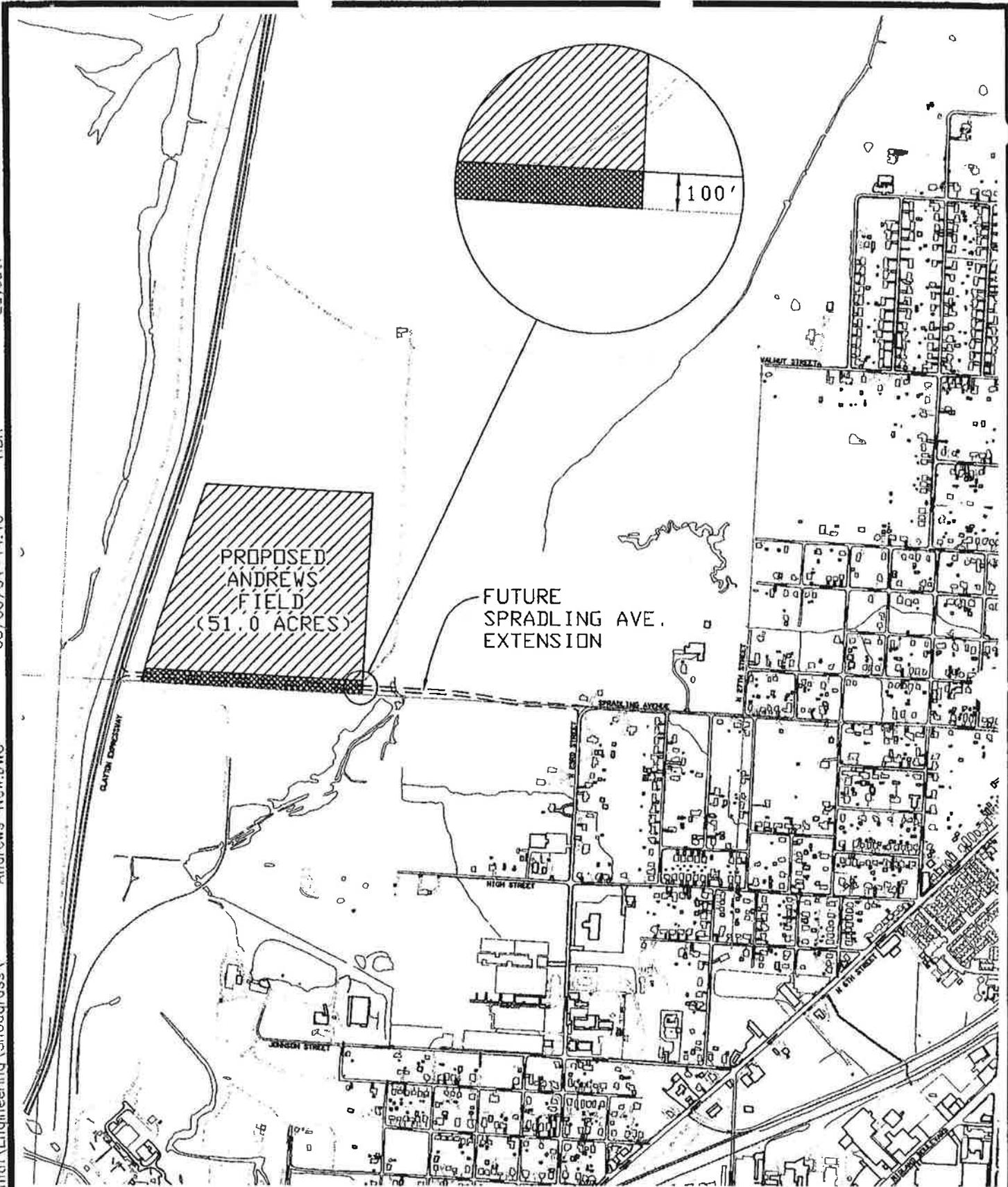
SEBASTIAN COUNTY GIRLS'  
SOFTBALL LEAGUE, INC.

By:   
President

ATTEST:

  
Secretary





PROPERTY LOCATION MAP  
 ANDREWS FIELD  
 FORT SMITH, ARKANSAS



Project:	
Date:	AUGUST 2004
Scale:	NONE
Drawn By:	RBR

*Exhibit A*

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE NATIONAL PARK SERVICE – FORT SMITH NATIONAL HISTORIC SITE TO PROVIDE FIRE PROTECTION ON LANDS WITHIN THE PARK’S BOUNDARIES

---

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

The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, a Memorandum of Understanding with the National Park Service – Fort Smith National Historic Site for the fire department to provide mutual assistance in preventing, detecting, and suppressing structural fires on lands within the Park’s boundaries.

This Resolution adopted this \_\_\_\_\_ day of November, 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:



\_\_\_\_\_  
City Attorney  
No Publication Required



# Fort Smith Fire Department

200 North Fifth Street  
Fort Smith, Arkansas 72901  
479-783-4052



Mike Richards  
Fire Chief

## Memo

**To:** Ray Gosack, City Administrator  
**From:** Mike Richards, Fire Chief  
**Date:** October 29, 2012  
**Re:** Memorandum of Understanding with Fort Smith National Historic Site

The Fort Smith National Historic Site is developing a Structural Fire Management Plan for their facility. The National Park Service (NPS) is primarily responsible for providing fire prevention and detection on federally owned land and buildings within any National Park.

As part of the Structural Fire Management Plan, the Fort Smith National Historic Site has asked the City of Fort Smith Fire Department to enter into a Memorandum of Understanding (MOU) to formally provide fire protection to their facility. The conditions and terms are outlined in the attached MOU.

As outlined in the proposed MOU, the NPS has authority under 42 U.S.C. § 1856a (2006) to enter into agreement "with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection."

Fire Department staff and the City Attorney have reviewed the agreement and are recommending approval of the MOU. Please contact me if you have any questions.

Attachments (1)

**Memorandum of Understanding  
between the  
National Park Service – Fort Smith National Historic Site  
and the  
City of Fort Smith, Arkansas Fire Department**

**Article I - Background and Objectives**

This agreement is entered into by and between the National Park Service (hereinafter "NPS"), United States Department of the Interior, acting through the Superintendent of Fort Smith National Historic Site (hereinafter "Park"), Arkansas, and the Fort Smith Fire Department acting through its Fire Chief. The purpose of this agreement is to establish the terms and conditions under which the parties will provide mutual assistance in preventing, detecting, and suppressing structural fires on lands within the Park's boundaries.

Currently the NPS is primarily responsible for providing fire prevention and detection on federally owned land and buildings within the Park. The Fort Smith Fire Department is primarily responsible for providing fire prevention and suppression within the City of Fort Smith and in the immediate surrounding area.

**Article II - Authority**

The NPS enters into this agreement under the authority of 42 U.S.C. § 1856a (2006), which authorizes "each [federal] agency head charged with the duty of providing fire protection for any property of the United States ... to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection."

**Article III - Statement of Work**

A. The NPS agrees to:

1. Provide to the Fort Smith Fire Department an annual familiarization tour of the Park's facilities, equipment, and access points.
2. Provide to the Fort Smith Fire Department copies of current fire and safety plans for the Park, and descriptions of applicable special actions to be taken, such as to protect museum collections, in the event of a fire.

B. The Fort Smith Fire Department agrees to:

1. Furnish, when requested by the NPS, available qualified personnel, fire equipment, and rescue equipment to assist in the suppression of structural fires on federally owned land within the Park.
2. Provide to the NPS an annual familiarization tour of the Fort Smith Fire Department's facilities and equipment.

C. The parties further agree as follows:

1. Each party will provide to the other party a list of responsible persons, with telephone numbers, to be contacted in an emergency. At least once a year, or more often if necessary, each party will provide the other party with an updated list of such persons and telephone numbers.
2. After notifying the other party of a fire's discovery, either party may take immediate action to suppress a fire in the Park in order to save life or property.
3. Upon arrival, the Fort Smith Fire Department will assume control of the scene and will direct the fire suppression efforts in the Park.
4. During the performance of this agreement employees of each party will remain under the control of, and report to, their normal supervisors through their normal chain of command. Employees of one party should not be deemed to be "borrowed servants" of the other party.
5. Minimum Impact Suppression Tactics must be used when fighting fires on federally owned land within the Park. No chainsaws or ground-disturbing equipment such as graders or bulldozers may be used without the permission of the NPS Superintendent or his /her designees unless the Incident Commander of the Fort Smith Fire Department determines alternative tactics are necessary for life safety or property conservation.
6. In accordance with 42 U.S.C. § 1856a(a), each party to this agreement waives all claims against the other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of this agreement.
7. Neither party to this agreement will reimburse the other party for all or any part of the cost incurred by such party in providing fire protection pursuant to this agreement.

8. Nothing in this agreement will be construed as obligating the NPS to expend in any one fiscal year any sum in excess of the monies appropriated by Congress or allocated by the NPS for the performance of this agreement.

#### **Article IV - Term of Agreement**

This agreement will be effective for a period of five years from the date of final signature, unless it is terminated earlier by one of the parties pursuant to article VIII below. At the conclusion of that five-year term, this agreement may be extended or renewed by written agreement of the parties.

#### **Article IV - Key Officials**

All communications and notices regarding this agreement will be directed to the following key official(s) for each party:

For the NPS:

Superintendent  
Fort Smith National Historic Site  
301 Parker Ave.  
Fort Smith, Arkansas 72901  
(479) 783-3961

For the City of Fort Smith, Arkansas:

Fire Chief  
Fort Smith Fire Department  
200 N. 5<sup>th</sup> Street  
Fort Smith, Arkansas 72901  
(479)783-4052

#### **Article V - Property Utilization**

Unless otherwise agreed to in writing by the parties, any property furnished by one party to the other will remain the property of the furnishing party. Any property furnished by the NPS to the Fort Smith Fire Department during the performance of this agreement will be used and disposed of as set forth in the NPS Property Management Regulations.

#### **Article VI - Prior Approval**

Not applicable.

#### **Article VII - Reports and/or Deliverables**

Upon request and to the full extent permitted by applicable law, the parties will share with each other final reports of incidents involving both parties.

#### **Article VIII - Modification and Termination of Agreement**

This agreement may be modified only by a written instrument executed by the parties. Either party may terminate this agreement by providing the other party with sixty (60) days advance written notice. In the event that one party provides the other party with notice of its intention to terminate, the parties shall meet promptly to discuss the reasons for the notice and to try to resolve their differences amicably. The parties commit to using every reasonable means available, including the use of a neutral mediator if necessary, to try to avoid terminating this agreement.

#### **Article IX - Standard Clauses**

##### **A. Civil Rights**

During the performance of this agreement, the participants agree to abide by the terms of USDI-Civil Rights Assurance Certification, non-discrimination, and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin.

B. Public Information Release

The Fort Smith Fire Department must obtain prior Government approval from the Superintendent of Fort Smith National Historic Site for any public information release that refers to the Department of the Interior, any bureau, park unit, or employee (by name or title), or to this agreement. The specific text, layout, photographs, etc. of the proposed release must be submitted with the request for approval.

**Article X - Authorizing Signatures**

In witness hereof, the following authorized representatives of the parties have signed their names on the dates indicated, thereby executing this agreement.

For the National Park Service:

\_\_\_\_\_  
Name (signature)

\_\_\_\_\_  
Superintendent, Fort Smith National Historic Site

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

For the City of Fort Smith:

\_\_\_\_\_  
Name (signature)

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ACCEPT AN OFFER MADE BY PROPERTY OWNERS FOR THE ACQUISITION OF EASEMENTS IN CONNECTION WITH THE LAKE FORT SMITH 48-INCH WATER TRANSMISSION LINE PROJECT

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

The City Administrator is hereby authorized to accept an offer made by the following property owners:

<u>Tract</u>	<u>Owner</u>	<u>Amount</u>
11-30-11-01	Carroll Kimes & Farnese Kimes	\$ 1,250.00
11-30-11-02	Robert Johnston & Martha Johnston	\$ 5,750.00
11-30-28-02	Billy Joe Shepherd & Marjorie Shepherd	\$ 5,500.00
11-30-32-01 & 11-30-29-03A	James Shepherd & Dorothy Shepherd	\$ 8,500.00
11-30-32-01A & 11-30-32-01A/AE	Ernestine Shepherd & Roy Shepherd, Jr.	\$ 3,000.00

and to make payment for same in connection with the acquisition of a water line easement for the Lake Fort Smith 48-Inch Water Transmission Line, Project Number 08-07-P, said properties being located in Mountainburg, Crawford County, Arkansas.

This Resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** October 29, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Lake Fort Smith 48-Inch Water Transmission Line Project  
Project Number 08-07

The City of Fort Smith is planning to construct the first 6.5 miles of new 48-inch water transmission line from the Lake Fort Smith water treatment plant. This segment of the line will extend from the water treatment plant in Mountainburg to the Grotto community near Highway 282. A location map is attached.

To date, several of the needed easements have been acquired for the appraised value as authorized by the city's property acquisition policy. Staff and City Attorney are negotiating with the balance of the property owners in an effort to reach a mutually agreed upon settlement. The property owners shown on the Resolution have made a counter offer to sell the needed easement to the city as follows:

Carroll and Farnese Kimes: The \$1,250.00 counter offer is \$450.00 above the city's appraisal of \$800.00, however, \$250.00 of which is payment for a shade tree that was not included in the city's appraisal.

Robert and Martha Johnston: The \$5,750.00 counter offer is \$650.00 above the city's appraisal of \$5,100.00, however, \$250.00 of which is payment for tree trimming and for loss of an additional shade tree that was not included in the city's appraisal.

Billy Joe and Marjorie Shepherd: The \$5,500.00 counter offer includes additional payment provisions for a current market adjustment in hay prices for loss of hay and restoration costs not fully included in the city's appraisal of \$3,200.00. Attached is a letter from the city attorney in support of this counter offer.

James and Dorothy Shepherd: The \$8,500.00 counter offer includes additional payment provisions for a current market adjustment in hay prices for loss of hay, top soil, and restoration costs not fully included in the city's appraisal of \$5,700.00. Attached is a letter from the city attorney in support of this counter offer.

Ernestine Shepherd and Roy Shepherd, Jr.: The \$3,000.00 counter offer includes additional payment provisions for a current market adjustment in hay prices for loss of hay and restoration costs not fully included in the city's appraisal of \$1,900.00. Attached is a letter from the city attorney in support of this counter offer.

Staff believes that the counter offers to sell the city permanent water line easements are reasonable and that the administrative costs associated with acquiring the needed easements through other means is not the best alternative. Therefore, staff recommends that the Board of Directors approve the attached Resolution accepting the counter offers at its next scheduled meeting.

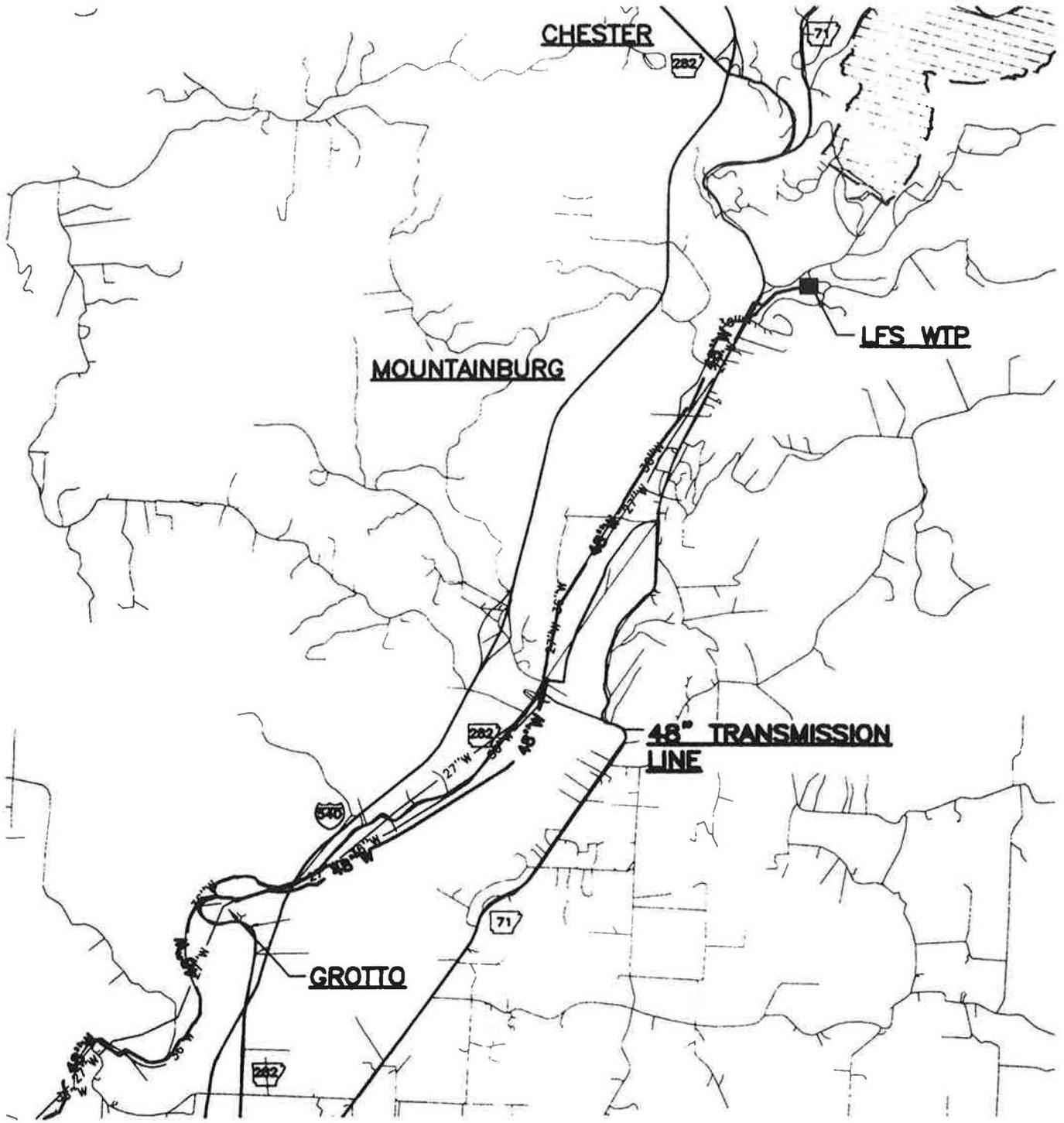
If you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

**MICKLE-WAGNER-COLEMAN, INC.**  
Engineers Consultants Surveyors

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



**MOUNTAINBURG TO GROTTO**

N.T.S.

PROJECT NO. 08-07-E2

**LAKE FORT SMITH WATER TRANSMISSION LINE**

Plot prepared by MICKLE-WAGNER-COLEMAN, INC. on 08-07-E2. This drawing is a reproduction of the original drawing. All rights reserved. 08-07-E2

# DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

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

[www.dailywoods.com](http://www.dailywoods.com)

JAMES E. WEST  
DALE CARLTON  
PHILLIP E. NORVELL †

OF COUNSEL

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

WRITER'S E-MAIL ADDRESS  
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WYMAN R. WADE, JR., P.A.  
DOUGLAS M. CARSON, P.A.  
ROBERT R. BRIGGS, P.A. †  
C. MICHAEL DAILY, P.A. † ●  
L. MATTHEW DAVIS, P.A. †  
COLBY T. ROE

† Also Licensed in Oklahoma

● Also Licensed in Wyoming & North Dakota

October 25, 2012

Mr. Steve Parke  
Director of Utilities  
City of Fort Smith  
3900 Kelley Highway  
Fort Smith, AR 72904

**Via E-Mail Only**

Re: Lake Fort Smith - 48 inch Water Transmission Line Project No. 08-07-P  
Tract 11-30-28-02 / Billy Joe Shepherd and Marjorie Shepherd

Dear Mr. Parke:

The above referenced project includes the acquisition of permanent water line easements and temporary construction easements from the Shepherds. The City's appraiser has appraised the fair market value of the acquisition at \$3,200.00. However, after negotiations and provision of additional market data regarding hay prices and restoration costs, the landowners have submitted a counteroffer in the amount of \$5,500.00.

Considering the additional market data as well as the costs, risks and uncertainty of trial, the landowners' counteroffer seems reasonable.

Thank you for your attention to this matter.

Very truly yours,



Robert R. Briggs  
tdp

cc: Mr. Larry Guthrie (via e-mail only)

# DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

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

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L. MATTHEW DAVIS, P.A. †  
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† Also Licensed in Oklahoma

● Also Licensed in Wyoming & North Dakota

JAMES E. WEST  
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PHILLIP E. NORVELL †

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October 26, 2012

Mr. Steve Parke  
Director of Utilities  
City of Fort Smith  
3900 Kelley Highway  
Fort Smith, AR 72904

**Via E-Mail Only**

Re: Lake Fort Smith - 48 inch Water Transmission Line Project No. 08-07-P  
Tract 11-30-32-01 / James H. Shepherd and Dorothy Shepherd

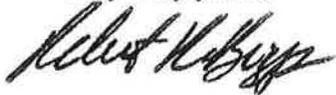
Dear Mr. Parke:

The above referenced project includes the acquisition of access easements, permanent water line easements and temporary construction easements from the Shepherds. The City's appraiser has appraised the fair market value of the acquisition at \$5,700.00. However, after negotiations and provision of additional market data regarding hay prices and restoration costs, the landowners have submitted a counteroffer in the amount of \$8,500.00.

Considering the additional market data as well as the costs, risks and uncertainty of trial, the landowners' counteroffer seems reasonable.

Thank you for your attention to this matter.

Very truly yours,



Robert R. Briggs  
tdp

cc: Mr. Larry Guthrie (via e-mail only)

# DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

KMW BUILDING  
58 SOUTH SIXTH STREET  
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JOHN S. DAILY (1912-1987)  
BEN CORE (1924-2007)

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

October 29, 2012

Mr. Steve Parke  
Director of Utilities  
City of Fort Smith  
3900 Kelley Highway  
Fort Smith, AR 72904

**Via E-Mail Only**

Re: Lake Fort Smith - 48 inch Water Transmission Line Project No. 08-07-P  
Tract 11-30-32-01A and Tract 11-30-32-01(A)AE / Ernestine Shepherd and Roy  
Shepherd, Jr.

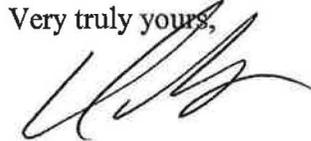
Dear Mr. Parke:

The above referenced project includes the acquisition of a permanent water line easement, access easement and temporary construction easement from the Shepherds. The City's appraiser has appraised the fair market value of the acquisition at \$1,900.00. However, after negotiations and provision of additional market data regarding hay prices and restoration costs, the landowners have submitted a counteroffer in the amount of \$3,000.00.

Considering the additional market data as well as the costs, risks and uncertainty of trial, the landowners' counteroffer seems reasonable.

Thank you for your attention to this matter.

Very truly yours,



Robert R. Briggs  
tdp

Enclosures

cc: Mr. Larry Guthrie (via e-mail only)(w/encl.)

RESOLUTION NO. \_\_\_\_\_

6 H

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE EASEMENTS WITH THE DEPARTMENT OF THE ARMY AT THE WILLIAM O. DARBY RESERVE CENTER

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

The Mayor is hereby authorized to execute a water and sewer line easement with the Department of the Army for the installation of a 48-inch water transmission line and a sewer force main in connection with the Lake Fort Smith 48-Inch Water Transmission Line, Project Number 08-07, and the Chaffee Crossing Pump Station and Force Main, Project Number 08-09.

This resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** October 29, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Lake Fort Smith 48-Inch Water Transmission Line and  
Chaffee Crossing Pump Station and Force Main  
Project Number 08-07 and Project Number 08-09

The city is planning to construct a 48-inch water transmission line and a sewer force main across a portion of the William O. Darby Reserve Center property located in Barling. The property is owned by the Department of the Army and is at the intersection State Highway 22 and State Highway 59. The sewer force main is planned for construction in the near future, and the water line constructed in the later phases of the transmission line from Mountainburg to the city. Exhibits showing the property and the location of the sewer easement along State Highway 22, and the water line easement across the western edge of the property are attached for your review.

The Department of the Army, after several months of negotiations, has agreed to donate the easements to the city. Both easements are for a 25 year term, at which time the city will apply for a renewal. The easement forms require execution by the city and Department of the Army.

Staff recommends the attached Resolution be submitted for the Board's consideration at its next regular scheduled meeting. If you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

PORTION OF TRACT 64  
FORT CHAFFEE MILITARY RESERVATION  
DARBY RESERVE CENTER

LEGAL DESCRIPTION: A 5.682-ACRE PARCEL OF LAND BEING A PORTION OF TRACT NO. 64 OF THE FORT CHAFFEE MILITARY RESERVATION BOUNDARY, BEING A PORTION OF LOT 2 OF THE NORTHWEST QUARTER, SECTION 2, TOWNSHIP 7 NORTH, RANGE 21 WEST, SEBASTIAN COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 2; THENCE SOUTH 31° 14' 22" WEST, ALONG THE WEST LINE OF SAID SECTION 2, A DISTANCE OF 708.88 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 12 IN 128-FOOT RIGHT-OF-WAY FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 3794.00 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SAME BEING THE SOUTH R-O-W OF SAID HIGHWAY, THROUGH A DELTA ANGLE OF 82° 14' 57", AN ARC DISTANCE OF 208.72 FEET, AND A CHORD OF SOUTH 81° 22' 27" EAST, A DISTANCE OF 226.70 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 1, RLS NO. 1120" FOR THE INTERSECTION OF SAID HIGHWAY R-O-W LINE WITH THE WEST R-O-W LINE OF MILITARY ROAD AC-B (A 58-FOOT R-O-W) AND THE POINT OF BEGINNING, THENCE CONTINUING ALONG SAID CURVE TO THE LEFT AND SAID HIGHWAY R-O-W, THROUGH A DELTA ANGLE OF 82° 24' 41", AN ARC DISTANCE OF 247.17 FEET, AND A CHORD OF SOUTH 64° 16' 03" EAST, A DISTANCE OF 292.18 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 2, RLS NO. 1120" FOR THE POINT OF TANGENCY; THENCE SOUTH 65° 24' 24" EAST, CONTINUING ALONG SAID HIGHWAY R-O-W, A DISTANCE OF 343.48 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 3, RLS NO. 1120"; THENCE SOUTH 24° 52' 43" WEST, LEAVING SAID HIGHWAY R-O-W, A DISTANCE OF 174.58 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 4, RLS NO. 1120" ON THE NORTH R-O-W LINE OF THE UNION PACIFIC RAILROAD (FORMERLY THE MISSOURI PACIFIC RAILROAD) (A 108-FOOT R-O-W) FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 2099.41 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SAME BEING THE NORTH R-O-W OF SAID RAILROAD, THROUGH A DELTA ANGLE OF 81° 15' 24", AN ARC DISTANCE OF 84.87 FEET, AND A CHORD OF NORTH 83° 14' 24" WEST, A DISTANCE OF 88.07 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 5, RLS NO. 1120" FOR THE POINT OF TANGENCY; THENCE NORTH 83° 52' 36" WEST, ALONG SAID RAILROAD R-O-W, A DISTANCE OF 430.16 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 6, RLS NO. 1120" FOR THE BEGINNING OF A TANGENT CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 1728.64 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A DELTA ANGLE OF 85° 17' 00", AN ARC DISTANCE OF 168.41 FEET, AND A CHORD OF NORTH 81° 13' 04" WEST, A DISTANCE OF 169.20 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 7, RLS NO. 1120" FOR THE INTERSECTION OF SAID MILITARY R-O-W LINE WITH THE WEST R-O-W LINE OF SAID MILITARY ROAD AC-B; THENCE NORTH 25° 01' 02" EAST, ALONG SAID WEST R-O-W, A DISTANCE OF 442.68 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND BEING SURVEYED BY JAMES W. MONTGOMERY, RLS NO. 1120, OF B & F ENGINEERING, INC., WITH A PLAN OF SAID SURVEY BEING RECORDED IN THE CIRCUIT CLERK'S OFFICE, SEBASTIAN COUNTY, ARKANSAS, CONTAINS 5.682 ACRES OF LAND, NONE OF LESS. BASIS OF BEARINGS IS THE ARKANSAS COORDINATE SYSTEM.

CERTIFICATION: I, JAMES W. MONTGOMERY, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECTION AND SUPERVISION.  
SIGNED THIS 6TH DAY OF DECEMBER, 1995.

JAMES W. MONTGOMERY, RLS NO. 1120

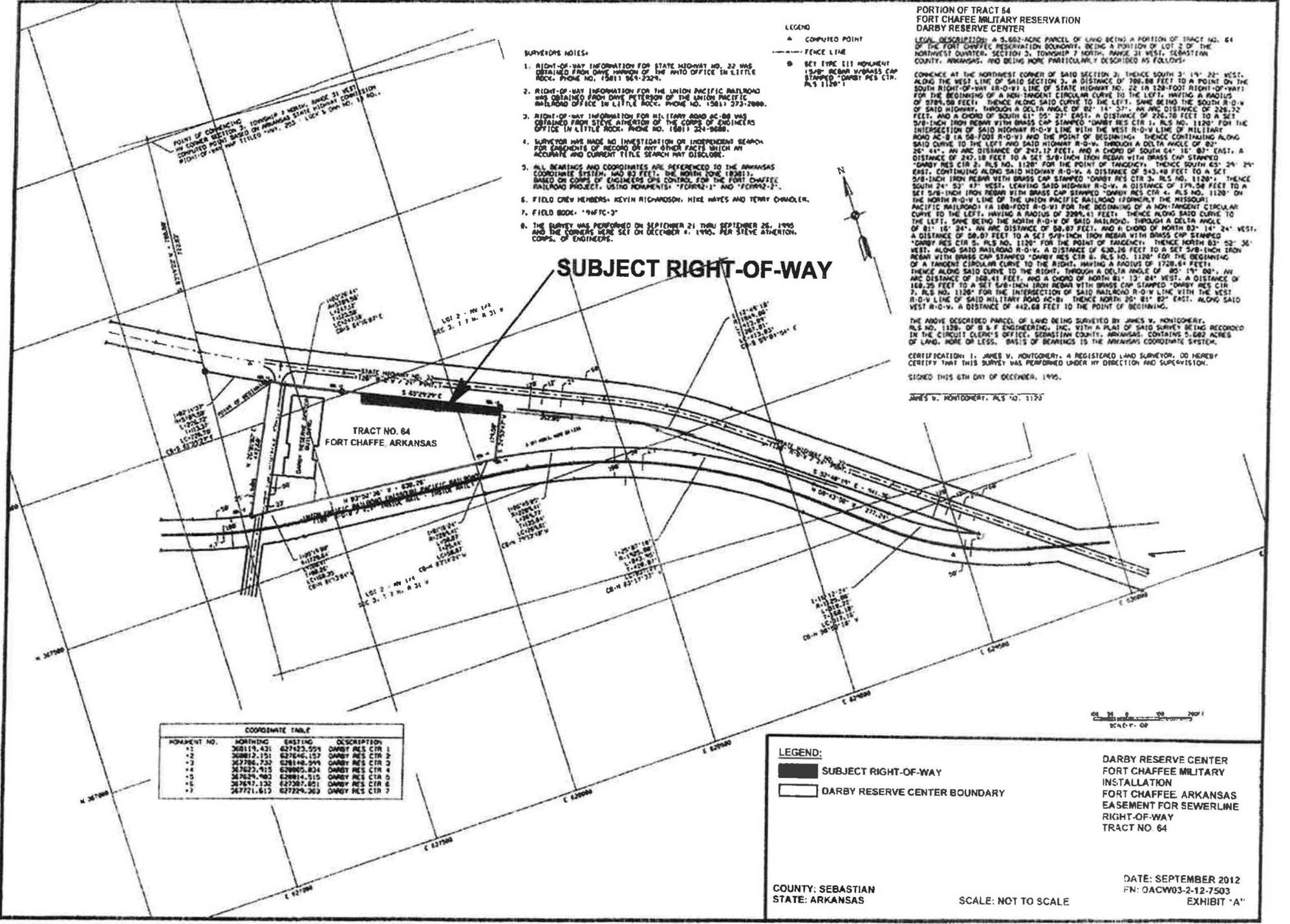
SURVEYOR'S NOTES:

- RIGHT-OF-WAY INFORMATION FOR STATE HIGHWAY NO. 22 WAS OBTAINED FROM DAVID HARRISON OF THE AUTO OFFICE IN LITTLE ROCK, PHONE NO. (501) 964-2324.
- RIGHT-OF-WAY INFORMATION FOR THE UNION PACIFIC RAILROAD WAS OBTAINED FROM DAVID PETERSON OF THE UNION PACIFIC RAILROAD OFFICE IN LITTLE ROCK, PHONE NO. (501) 373-2889.
- RIGHT-OF-WAY INFORMATION FOR MILITARY ROAD AC-B WAS OBTAINED FROM STEVE ATHERTON OF THE CORPS OF ENGINEERS OFFICE IN LITTLE ROCK, PHONE NO. (501) 224-9688.
- SURVEYOR MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EVIDENCE OF RECORD OR ANY OTHER FACTS WHICH MAY ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
- ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE ARKANSAS COORDINATE SYSTEM, NAD 83 FEET, (THE NORTH ZONE 182813), BASED ON CORPS OF ENGINEERS CHS CONTROL FOR THE FORT CHAFFEE RAILROAD PROJECT, USING MONUMENTS "FORMA-1" AND "FORMA-2".
- FIELD CREW MEMBERS: KEVIN RICHARDSON, HIDE HAYES AND TERRY CHOWLER.
- FIELD BOOK: "94FC-3"
- THE SURVEY WAS PERFORMED ON SEPTEMBER 21 THRU SEPTEMBER 26, 1995 AND THE CORNERS WERE SET ON DECEMBER 7, 1995, PER STEVE ATHERTON, CORPS. OF ENGINEERS.

LEGEND

- ▲ COMPUTED POINT
- FENCE LINE
- SET TYPE [1] MONUMENT
- SET TYPE [2] MONUMENT
- SET TYPE [3] MONUMENT
- SET TYPE [4] MONUMENT
- SET TYPE [5] MONUMENT
- SET TYPE [6] MONUMENT
- SET TYPE [7] MONUMENT
- SET TYPE [8] MONUMENT
- SET TYPE [9] MONUMENT
- SET TYPE [10] MONUMENT
- SET TYPE [11] MONUMENT
- SET TYPE [12] MONUMENT
- SET TYPE [13] MONUMENT
- SET TYPE [14] MONUMENT
- SET TYPE [15] MONUMENT
- SET TYPE [16] MONUMENT
- SET TYPE [17] MONUMENT
- SET TYPE [18] MONUMENT
- SET TYPE [19] MONUMENT
- SET TYPE [20] MONUMENT

SUBJECT RIGHT-OF-WAY



COORDINATE TABLE			
MONUMENT NO.	NORTHING	EASTING	DESCRIPTION
+1	368119.431	627423.529	DARBY RES CTR 1
+2	368812.151	627646.157	DARBY RES CTR 2
+3	367786.732	628148.049	DARBY RES CTR 3
+4	367623.915	628985.824	DARBY RES CTR 4
+5	367629.482	628814.515	DARBY RES CTR 5
+6	367627.132	627587.851	DARBY RES CTR 6
+7	267721.613	627229.363	DARBY RES CTR 7

LEGEND:

- █ SUBJECT RIGHT-OF-WAY
- DARBY RESERVE CENTER BOUNDARY

DARBY RESERVE CENTER  
FORT CHAFFEE MILITARY  
INSTALLATION  
FORT CHAFFEE, ARKANSAS  
EASEMENT FOR SEWERLINE  
RIGHT-OF-WAY  
TRACT NO. 64

COUNTY: SEBASTIAN  
STATE: ARKANSAS

SCALE: NOT TO SCALE

DATE: SEPTEMBER 2012  
FN: OACW03-12-7503  
EXHIBIT "A"

**PORTION OF TRACT 64  
FORT CHAFFEE MILITARY RESERVATION  
DARBY RESERVE CENTER**

LEGAL DESCRIPTION: A 5.682-ACRE PARCEL OF LAND BEING A PORTION OF TRACT NO. 64 OF THE FORT CHAFFEE MILITARY RESERVATION, BEING A PORTION OF LOT 2 OF THE NORTHWEST QUARTER, SECTION 3, TOWNSHIP 7 NORTH, RANGE 31 WEST, SEMBASTIAN COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE SOUTH 3° 19' 22" WEST, ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 309.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY (R-O-W) LINE OF STATE HIGHWAY NO. 22 IN A 128-FOOT RIGHT-OF-WAY FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 5794.66 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SAME BEING THE SOUTH R-O-W OF SAID HIGHWAY, THROUGH A DELTA ANGLE OF 82° 14' 37", AN ARC DISTANCE OF 226.72 FEET, AND A CHORD OF SOUTH 61° 55' 23" EAST, A DISTANCE OF 226.78 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 1, RLS NO. 1120" FOR THE INTERSECTION OF SAID HIGHWAY R-O-W LINE WITH THE WEST R-O-W LINE OF MILITARY ROAD AC-B IN A 50-FOOT R-O-W; AND THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CURVE TO THE LEFT AND SAID HIGHWAY R-O-W, THROUGH A DELTA ANGLE OF 82° 26' 44", AN ARC DISTANCE OF 247.12 FEET, AND A CHORD OF SOUTH 64° 16' 03" EAST, A DISTANCE OF 247.18 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 2, RLS NO. 1120" FOR THE POINT OF TANGENCY; THENCE SOUTH 65° 29' 29" EAST, CONTINUING ALONG SAID HIGHWAY R-O-W, A DISTANCE OF 543.48 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 3, RLS NO. 1120"; THENCE SOUTH 24° 53' 47" WEST, LEAVING SAID HIGHWAY R-O-W, A DISTANCE OF 179.08 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 4, RLS NO. 1120" ON THE NORTH R-O-W LINE OF THE UNION PACIFIC RAILROAD (FORMERLY THE MISSOURI PACIFIC RAILROAD) IN A 100-FOOT R-O-W FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 208.41 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SAME BEING THE NORTH R-O-W OF SAID RAILROAD, THROUGH A DELTA ANGLE OF 81° 16' 24", AN ARC DISTANCE OF 58.07 FEET, AND A CHORD OF NORTH 83° 14' 24" WEST, A DISTANCE OF 58.07 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 5, RLS NO. 1120" FOR THE POINT OF TANGENCY; THENCE NORTH 83° 32' 36" WEST, ALONG SAID RAILROAD R-O-W, A DISTANCE OF 630.20 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 6, RLS NO. 1120" FOR THE BEGINNING OF A TANGENT CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 1700.64 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A DELTA ANGLE OF 80° 19' 20", AN ARC DISTANCE OF 168.41 FEET, AND A CHORD OF NORTH 81° 13' 24" WEST, A DISTANCE OF 168.20 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 7, RLS NO. 1120" FOR THE INTERSECTION OF SAID RAILROAD R-O-W LINE WITH THE WEST R-O-W LINE OF SAID MILITARY ROAD AC-B; THENCE NORTH 26° 31' 02" EAST, ALONG SAID WEST R-O-W, A DISTANCE OF 442.68 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND BEING SURVEYED BY JAMES V. MONTGOMERY, RLS NO. 1120, OF B & F ENGINEERING, INC. WITH A PLAT OF SAID SURVEY BEING RECORDED IN THE CIRCUIT CLERK'S OFFICE, SEMBASTIAN COUNTY, ARKANSAS, CONTAINS 5.682 ACRES OF LAND, MORE OR LESS. BASIS OF BEARINGS IS THE ARKANSAS COORDINATE SYSTEM.

CERTIFICATION: I, JAMES V. MONTGOMERY, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECTION AND SUPERVISION.

DATED THIS 8TH DAY OF OCTOBER, 1995.

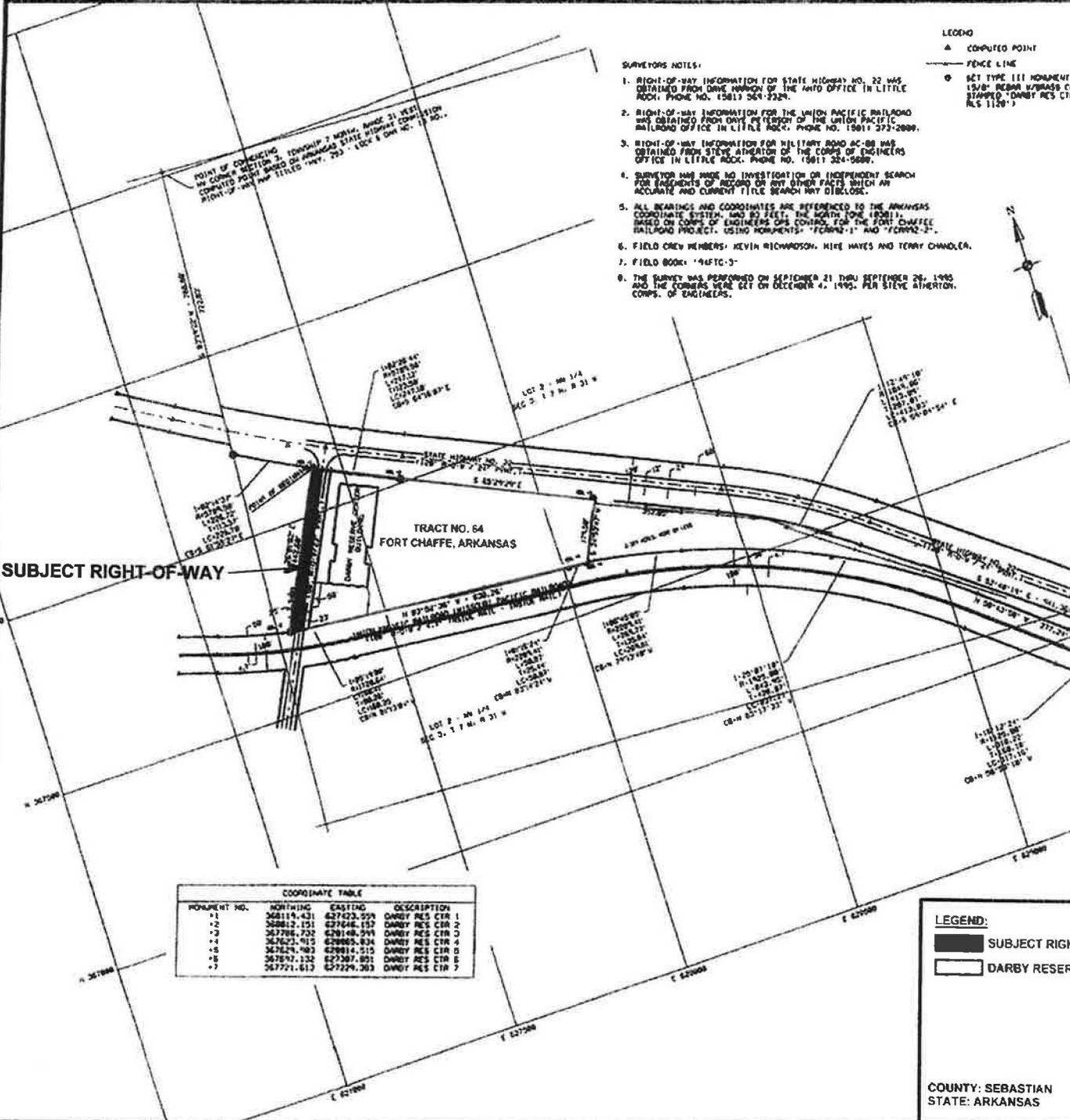
JAMES V. MONTGOMERY, RLS NO. 1120

LEGEND  
 ▲ COMPUTED POINT  
 --- FENCE LINE  
 ○ SET TYPE (SEE MONUMENT)

**SURVEYOR'S NOTES:**

- RIGHT-OF-WAY INFORMATION FOR STATE HIGHWAY NO. 22 WAS OBTAINED FROM DAVE HANCOCK OF THE AHD OFFICE IN LITTLE ROCK, PHONE NO. (501) 264-2329.
- RIGHT-OF-WAY INFORMATION FOR THE UNION PACIFIC RAILROAD WAS OBTAINED FROM DAVE HANCOCK OF THE UNION PACIFIC RAILROAD OFFICE IN LITTLE ROCK, PHONE NO. (501) 272-2000.
- RIGHT-OF-WAY INFORMATION FOR MILITARY ROAD AC-B WAS OBTAINED FROM STEVE ATHERTON OF THE CORPS OF ENGINEERS OFFICE IN LITTLE ROCK, PHONE NO. (501) 264-5000.
- SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR ENCUMBRANCES OF RECORD OR ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE SEARCH WY DISCLOSE.
- ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE ARKANSAS COORDINATE SYSTEM, AND 89 FEET; THE NORTH ZONE (1983), BASED ON CORPS OF ENGINEERS OPS CONTROL FOR THE FORT CHAFFEE RAILROAD PROJECT, USING MONUMENTS "FORMAZ-1" AND "FORMAZ-2".
- FIELD CREW MEMBERS: KEVIN RICHARDSON, HIRE HAYES AND TERRY CHANDLER.
- FIELD BOOK: "48TC-3"
- THE SURVEY WAS PERFORMED ON SEPTEMBER 21 THRU SEPTEMBER 26, 1995 AND THE COMINGS WERE SET ON DECEMBER 4, 1995. PER STEVE ATHERTON, CORPS. OF ENGINEERS.

**SUBJECT RIGHT-OF-WAY**



COORDINATE TABLE			
MONUMENT NO.	NORTHING	EASTING	DESCRIPTION
+1	368119.431	627423.559	DARBY RES CTR 1
+2	368812.151	627646.157	DARBY RES CTR 2
+3	367786.732	628148.999	DARBY RES CTR 3
+4	367623.915	628863.834	DARBY RES CTR 4
+5	367624.403	628814.510	DARBY RES CTR 5
+6	367877.132	627387.851	DARBY RES CTR 6
+7	367721.612	627229.363	DARBY RES CTR 7

**LEGEND:**  
 ■ SUBJECT RIGHT-OF-WAY  
 □ DARBY RESERVE CENTER BOUNDARY

SCALE: 1" = 100'

DARBY RESERVE CENTER  
 FORT CHAFFEE MILITARY  
 INSTALLATION  
 FORT CHAFFEE, ARKANSAS  
 EASEMENT FOR WATERLINE  
 RIGHT-OF-WAY  
 TRACT NO. 64

COUNTY: SEMBASTIAN  
 STATE: ARKANSAS

SCALE: NOT TO SCALE

DATE: SEPTEMBER 12, 1995  
 FN: DACW03-2-12-7502  
 EXHIBIT "A"

**NO. DACA03-2-12-7502**  
**DEPARTMENT OF THE ARMY**  
**EASEMENT FOR WATER TRANSMISSION LINE RIGHT-OF-WAY**  
**FOR ACTIVITIES ON**  
**WILLIAM O DARBY USARC**  
**SEBASTIAN COUNTY**

**THE SECRETARY OF THE ARMY** under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2668, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to **City of Fort Smith, Utility Department, 3900 Kelley Hwy, Fort Smith, Arkansas 72904**, hereinafter referred to as the grantee, an easement for a right of way **for the construction, operation and maintenance of a water transmission line**, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibits “A” and “B”, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of twenty-five (25) years, beginning October 1, 2012, and ending September 30, 2037, but revocable at will by the Secretary.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation, and maintenance of the water transmission line for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to **City of Fort Smith, Attn: Director of Utilities, 3900 Kelley Hwy, Fort Smith, Arkansas 72904**, and, if to the United States, to the **District Engineer, Little Rock District Corps of Engineers, ATTN: Chief, Real Estate Division, P. O. Box 867, Little Rock, Arkansas 72203-0867**, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

#### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to “Secretary”, “District Engineer”, “Installation Commander”, or “said officer” shall include their duly authorized representatives. Any reference to “grantee” shall include assignees, transferees and their duly authorized representatives.

#### **5. SUPERVISION BY THE DISTRICT ENGINEER**

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the District Engineer, Little Rock District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

#### **6. APPLICABLE LAWS AND REGULATIONS**

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

#### **7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

#### **8. INSPECTION AND REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

#### **9. PROTECTION OF GOVERNMENT PROPERTY**

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

## **10. RIGHT TO ENTER**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

## **11. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

## **12. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

## **13. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

## **14. RELOCATION OF FACILITIES**

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

## **15. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

## **16. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

## **17. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

## **18. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is

attached hereto and made a part hereof as Exhibit C. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

## **19. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

## **20. NON-DISCRIMINATION**

The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

## **21. RESTORATION**

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

## **22. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

**THIS EASEMENT** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Donald L. Balch  
Little Rock District  
Chief, Real Estate Division  
Real Estate Contracting Officer

**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**WITNESS:**

\_\_\_\_\_

\_\_\_\_\_

(address)

City of Fort Smith

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**PORTION OF TRACT 64  
FORT CHAFFEE MILITARY RESERVATION  
DARBY RESERVE CENTER**

**LEGAL DESCRIPTION:** A 5,602-ACRE PARCEL OF LAND BEING A PORTION OF TRACT NO. 64 OF THE FORT CHAFFEE RESERVATION BOUNDARY, BEING A PORTION OF LOT 2 OF THE NORTHWEST QUARTER, SECTION 3, TOWNSHIP 7 NORTH, RANGE 31 WEST, SEBASTIAN COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE SOUTH 31° 15' 22" WEST, ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 788.98 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY R-O-W LINE OF STATE HIGHWAY NO. 22 IN 120-FOOT RIGHT-OF-WAY; FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 5789.58 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SAME BEING THE SOUTH R-O-W OF SAID HIGHWAY, THROUGH A DELTA ANGLE OF 82° 14' 37"; AN ARC DISTANCE OF 226.70 FEET; AND A CHORD OF SOUTH 61° 05' 27" EAST, A DISTANCE OF 246.78 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 1, RLS NO. 1128" FOR THE INTERSECTION OF SAID HIGHWAY R-O-W LINE WITH THE WEST R-O-W LINE OF MILITARY ROAD AC-8 (R 90-FOOT R-O-W) AND THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CURVE TO THE LEFT AND SAID HIGHWAY R-O-W, THROUGH A DELTA ANGLE OF 82° 25' 44"; AN ARC DISTANCE OF 247.12 FEET; AND A CHORD OF SOUTH 61° 12' 30" EAST, A DISTANCE OF 247.18 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 2, RLS NO. 1128" FOR THE POINT OF TANGENCY; THENCE SOUTH 25° 24' 24" EAST, CONTINUING ALONG SAID HIGHWAY R-O-W, A DISTANCE OF 552.49 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 3, RLS NO. 1128" ON THE NORTH R-O-W LINE OF THE UNION PACIFIC RAILROAD (FORMERLY THE MISSOURI PACIFIC RAILROAD) 14 180-FOOT R-O-W) FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 2006.81 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SAME BEING THE NORTH R-O-W OF SAID RAILROAD, THROUGH A DELTA ANGLE OF 81° 16' 24"; AN ARC DISTANCE OF 58.07 FEET; AND A CHORD OF NORTH 82° 14' 24" WEST, A DISTANCE OF 58.07 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 4, RLS NO. 1128" FOR THE POINT OF TANGENCY; THENCE NORTH 83° 52' 36" WEST, ALONG SAID RAILROAD R-O-W, A DISTANCE OF 630.26 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 5, RLS NO. 1128" FOR THE BEGINNING OF A TANGENT CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 1728.64 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A DELTA ANGLE OF 80° 19' 06"; AN ARC DISTANCE OF 162.41 FEET; AND A CHORD OF NORTH 81° 13' 04" WEST, A DISTANCE OF 162.35 FEET TO A SET 5/8-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 6, RLS NO. 1128" FOR THE INTERSECTION OF SAID RAILROAD R-O-W LINE WITH THE WEST R-O-W LINE OF SAID MILITARY ROAD AC-8; THENCE NORTH 20° 01' 02" EAST, ALONG SAID WEST R-O-W, A DISTANCE OF 442.68 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND BEING SURVEYED BY JAMES W. MONTGOMERY, RLS NO. 1128, OF B & F ENGINEERING, INC. WITH A PLAN OF SAID SURVEY BEING RECORDED IN THE CIRCUIT CLERK'S OFFICE, SEBASTIAN COUNTY, ARKANSAS, CONTAINS 5,602 ACRES OF LAND, MORE OR LESS, BASIS OF BEARINGS IS THE ARKANSAS COORDINATE SYSTEM.

**CERTIFICATION:** I, JAMES W. MONTGOMERY, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECTION AND SUPERVISION.

SIGNED THIS 6TH DAY OF OCTOBER, 1995.

JAMES W. MONTGOMERY, RLS NO. 1128

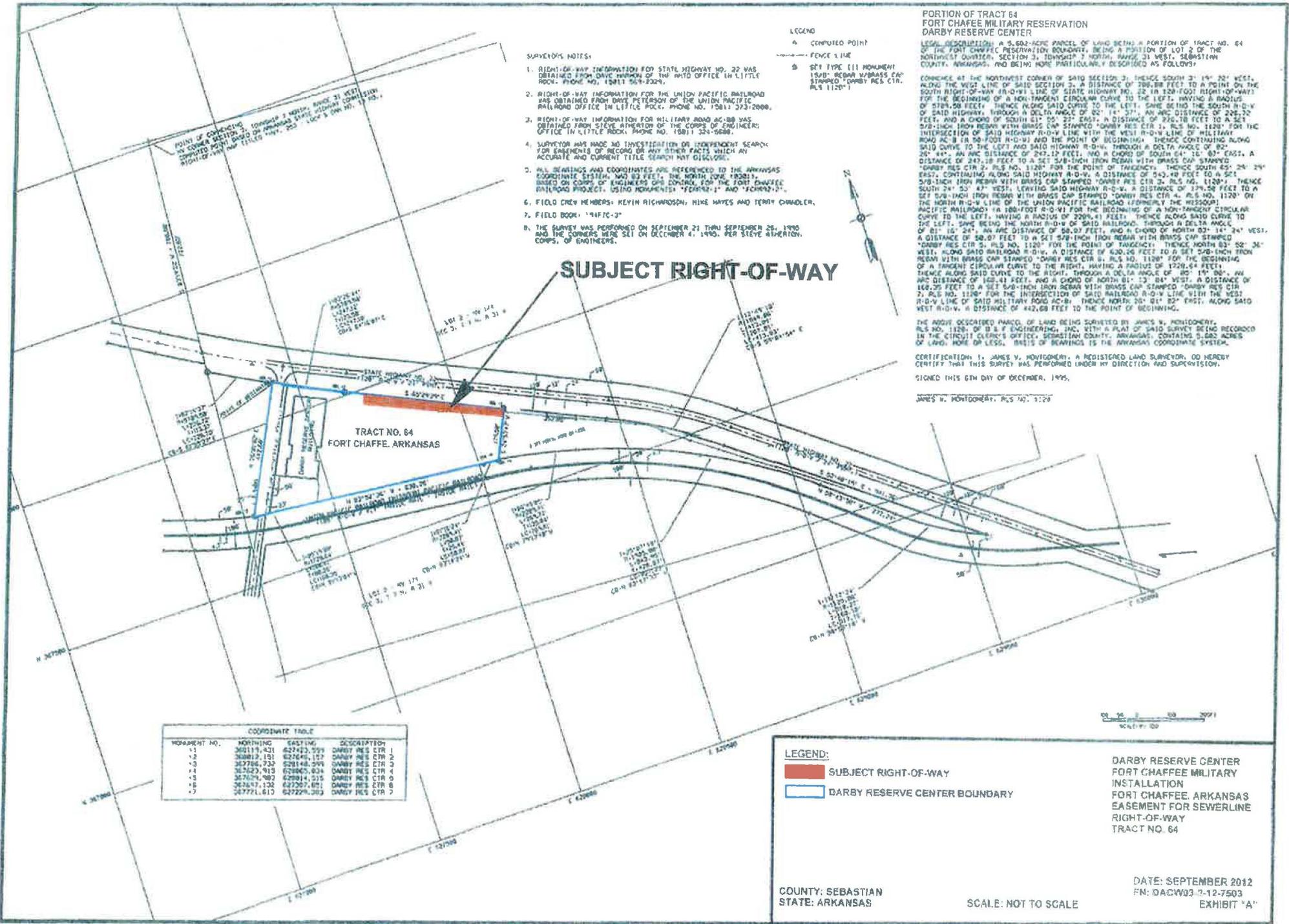
**SURVEYOR'S NOTES:**

- RIGHT-OF-WAY INFORMATION FOR STATE HIGHWAY NO. 22 WAS OBTAINED FROM DAVE HARRON OF THE RHD OFFICE IN LITTLE ROCK, PHONE NO. 1381-569-2324.
- RIGHT-OF-WAY INFORMATION FOR THE UNION PACIFIC RAILROAD WAS OBTAINED FROM DAVID PETERSON OF THE UNION PACIFIC RAILROAD OFFICE IN LITTLE ROCK, PHONE NO. 1381-273-2000.
- SURVEYOR HAS MADE AN INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD OR ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
- ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE ARKANSAS COORDINATE SYSTEM, 140 83 FEET, THE NORTH TOWNSHIP, BASED ON CORPS OF ENGINEERS GCS CONTROL FOR THE FORT CHAFFEE RAILROAD PROJECT, USING MONUMENTS "FORM-1" AND "FORM-2".
- FIELD CREW MEMBERS: KEVIN RICHARDSON, MIKE MAYES AND TERRY CHANDLER.
- FIELD BOOK: "14170-2"
- THE SURVEY WAS PERFORMED ON SEPTEMBER 21 THRU SEPTEMBER 26, 1995, AND THE CORNERS WERE SET ON DECEMBER 4, 1995, PER STEVE BERTON, COMPS. OF ENGINEERS.

**LEGEND**

- COMPUTED POINT
- FENCE LINE
- SET TYPE (I) MONUMENT 1 5/8" REBAR WITH BRASS CAP STAMPED "DARBY RES CTR, RLS 1128"

**SUBJECT RIGHT-OF-WAY**



MONUMENT NO.	NORTHING	EASTING	DESCRIPTION
+1	265119.421	627492.559	DARBY RES CTR 1
+2	263812.191	627646.127	DARBY RES CTR 2
+3	263786.732	628148.299	DARBY RES CTR 3
+4	263522.913	628665.824	DARBY RES CTR 4
+5	263629.982	629014.515	DARBY RES CTR 5
+6	263647.132	627267.671	DARBY RES CTR 6
+7	263721.613	627294.283	DARBY RES CTR 7

**LEGEND:**

- SUBJECT RIGHT-OF-WAY
- DARBY RESERVE CENTER BOUNDARY

DARBY RESERVE CENTER  
FORT CHAFFEE MILITARY  
INSTALLATION  
FORT CHAFFEE, ARKANSAS  
EASEMENT FOR SEWERLINE  
RIGHT-OF-WAY  
TRACT NO. 64

COUNTY: SEBASTIAN  
STATE: ARKANSAS

SCALE: NOT TO SCALE

DATE: SEPTEMBER 2012  
RN: DACW03-2-12-7603  
EXHIBIT "A"

ESMT NO. - DACW03-2-12-7502

PRELIMINARY ASSESSMENT SCREENING  
(PAS)

A complete search of the District files revealed no evidence that hazardous substances have been stored, released, or disposed of on the property involved.

A site investigation revealed no evidence that hazardous substances have been stored, released, or disposed of on the property involved. No unusual odors, suspicious seepage, or other evidence of the presence of hazardous waste were observed.

\_\_\_\_\_  
Jo Ellyce Best  
Senior Realty Specialist  
Real Estate Division

\_\_\_\_\_  
Date

I/We, the undersigned, made a survey of the subject lease area and agree that as of this date, the area shows no evidence of the presence of hazardous waste.

City of Fort Smith

BY: \_\_\_\_\_

\_\_\_\_\_  
Date

TITLE: \_\_\_\_\_

Exhibit C

William O. Darby USARC  
State: Arkansas

County: Sebastian  
Easement - .25 acre  
DACA03-2-12-7502

Water Transmission Line  
(Easement Right-of-way)

Part of Government Lot 2 of the Northwest Quarter of Fractional Section 3, Township 7 North, Range 31 West, city of Barling, Sebastian County, Arkansas, said easement to be 25.0 feet wide and lying 12.5 feet on each side of the following described centerline:

Commencing at the Northwest corner of said Section 3; thence along the west line of said Section 3, S 02°45'03"W, 792.35 feet to the South right-of-way line of Arkansas Highway 22 Projected; thence 227.85 feet along the arc of a curve to the left in said south right-of-way line, said curve having a radius of 5958.81 feet and being subtended by a chord having a bearing of S 62°14'24"E and a distance of 227.83 feet to the Point of Beginning, said point having city of Fort Smith coordinates of N 268107.660, E627426.603 and being 12.5 feet east of the west boundary line of the Darby Reserve Center Tract, measured perpendicularly; thence parallel with and 12.5 feet distance from said west boundary line, S 25°58'36"W, 437.60 feet to the north right-of-way line of the Union Pacific Railroad and the Point of Termination of said centerline, containing 0.25 acres, more or less. The sidelines of said easement are to be shortened or lengthened as needed to end in the lands of the grantor.

Exhibit "B"

**NO. DACA03-2-12-7503**  
**DEPARTMENT OF THE ARMY**  
**EASEMENT FOR SEWER FORCE MAIN RIGHT-OF-WAY**  
**FOR ACTIVITIES ON**  
**WILLIAM O DARBY USARC**  
**SEBASTIAN COUNTY**

**THE SECRETARY OF THE ARMY** under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2668, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to **City of Fort Smith, Utility Department, 3900 Kelley Hwy, Fort Smith, Arkansas 72904**, hereinafter referred to as the grantee, an easement for a right of way **for the construction, operation and maintenance of a sewer force main**, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibits “A” and “B”, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of twenty-five (25) years, beginning October 1, 2012, and ending September 30, 2037, but revocable at will by the Secretary.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation, and maintenance of the sewer force main for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to **City of Fort Smith, Attn: Director of Utilities, 3900 Kelley Hwy, Fort Smith, Arkansas 72904**, and, if to the United States, to the **District Engineer, Little Rock District Corps of Engineers, ATTN: Chief, Real Estate Division, P. O. Box 867, Little Rock, Arkansas 72203-0867**, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

#### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to “Secretary”, “District Engineer”, “Installation Commander”, or “said officer” shall include their duly authorized representatives. Any reference to “grantee” shall include assignees, transferees and their duly authorized representatives.

#### **5. SUPERVISION BY THE DISTRICT ENGINEER**

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the District Engineer, Little Rock District, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

#### **6. APPLICABLE LAWS AND REGULATIONS**

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

#### **7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

#### **8. INSPECTION AND REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

#### **9. PROTECTION OF GOVERNMENT PROPERTY**

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

## **10. RIGHT TO ENTER**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

## **11. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

## **12. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

## **13. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

## **14. RELOCATION OF FACILITIES**

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

## **15. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

## **16. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

## **17. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

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A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is

attached hereto and made a part hereof as Exhibit C. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

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The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

## **21. RESTORATION**

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

## **22. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

**THIS EASEMENT** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Donald L. Balch  
Little Rock District  
Chief, Real Estate Division  
Real Estate Contracting Officer

**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

**WITNESS:**

\_\_\_\_\_

\_\_\_\_\_

(address)

City of Fort Smith

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

PORTION OF TRACT 64  
FORT CHAFFEE MILITARY RESERVATION  
DARBY RESERVE CENTER

LEGAL DESCRIPTION: A 5.682-ACRE PARCEL OF LAND BEING A PORTION OF TRACT NO. 64 OF THE FORT CHAFFEE RESERVATION BOUNDARY, BEING A PORTION OF LOT 2 OF THE NORTHWEST QUARTER, SECTION 3, TOWNSHIP 2 NORTH, RANGE 21 WEST, SEBASTIAN COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 3; THENCE SOUTH 31° 24' 24" WEST, ALONG THE WEST LINE OF SAID SECTION 3, A DISTANCE OF 780.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY (R.O.W.) LINE OF STATE HIGHWAY NO. 22, 18 1/2-FOOT RIGHT-OF-WAY FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 5739.28 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SOME BEING THE SOUTH R.O.W. OF SAID HIGHWAY, THROUGH A DELTA ANGLE OF 82° 54' 31", AN ARC DISTANCE OF 228.72 FEET, AND A CHORD OF SOUTH 61° 55' 27" EAST, A DISTANCE OF 238.78 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 1, RLS NO. 1120" FOR THE INTERSECTION OF SAID HIGHWAY R.O.W. LINE WITH THE WEST R.O.W. LINE OF MILITARY ROAD AC-B IN 50-FOOT R.O.W. AND THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CURVE TO THE LEFT AND SAID HIGHWAY R.O.W. THROUGH A DELTA ANGLE OF 82° 25' 44", AN ARC DISTANCE OF 247.17 FEET, AND A CHORD OF SOUTH 64° 15' 03" EAST, A DISTANCE OF 247.18 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 2, RLS NO. 1120" FOR THE POINT OF TANGENCY; THENCE SOUTH 65° 24' 24" EAST, CONTINUING ALONG SAID HIGHWAY R.O.W., A DISTANCE OF 943.40 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 3, RLS NO. 1120"; THENCE SOUTH 74° 52' 47" WEST, LEAVING SAID HIGHWAY R.O.W., A DISTANCE OF 174.24 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 4, RLS NO. 1120" ON THE NORTH R.O.W. LINE OF THE UNION PACIFIC RAILROAD (FORMERLY THE MISSOURI PACIFIC RAILROAD) IN 100-FOOT R.O.W. FOR THE BEGINNING OF A NON-TANGENT CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 2206.41 FEET; THENCE ALONG SAID CURVE TO THE LEFT, SOME BEING THE NORTH R.O.W. OF SAID RAILROAD, THROUGH A DELTA ANGLE OF 81° 18' 34", AN ARC DISTANCE OF 58.87 FEET, AND A CHORD OF NORTH 63° 14' 24" WEST, A DISTANCE OF 58.87 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 5, RLS NO. 1120" FOR THE POINT OF TANGENCY; THENCE NORTH 83° 02' 35" WEST, ALONG SAID RAILROAD R.O.W., A DISTANCE OF 430.26 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 6, RLS NO. 1120" FOR THE BEGINNING OF A TANGENT CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 1208.64 FEET; THENCE ALONG SAID CURVE TO THE RIGHT, THROUGH A DELTA ANGLE OF 85° 15' 00", AN ARC DISTANCE OF 162.43 FEET, AND A CHORD OF NORTH 61° 13' 04" WEST, A DISTANCE OF 162.25 FEET TO A SET 2-1/2-INCH IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR 7, RLS NO. 1120" FOR THE INTERSECTION OF SAID RAILROAD R.O.W. LINE WITH THE WEST R.O.W. LINE OF SAID MILITARY ROAD AC-B; THENCE NORTH 25° 21' 02" EAST, ALONG SAID WEST R.O.W., A DISTANCE OF 442.69 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND BEING SURVEYED BY JAMES V. MONTGOMERY, RLS NO. 1128, OF S.E. ENGINEERS, INC. WITH A PLAN OF SAID SURVEY BEING RECORDED IN THE CIRCUIT CLERK'S OFFICE, SEBASTIAN COUNTY, ARKANSAS, CONTAINING 5.682 ACRES OF LAND, MORE OR LESS, BASIS OF BEARINGS IS THE ARKANSAS COORDINATE SYSTEM.

CERTIFICATION: I, JAMES V. MONTGOMERY, A REGISTERED LAND SURVEYOR, DO HEREBY CERTIFY THAT THIS SURVEY WAS PERFORMED UNDER MY DIRECTION AND SUPERVISION.

SIGNED THIS 6TH DAY OF DECEMBER, 1995.

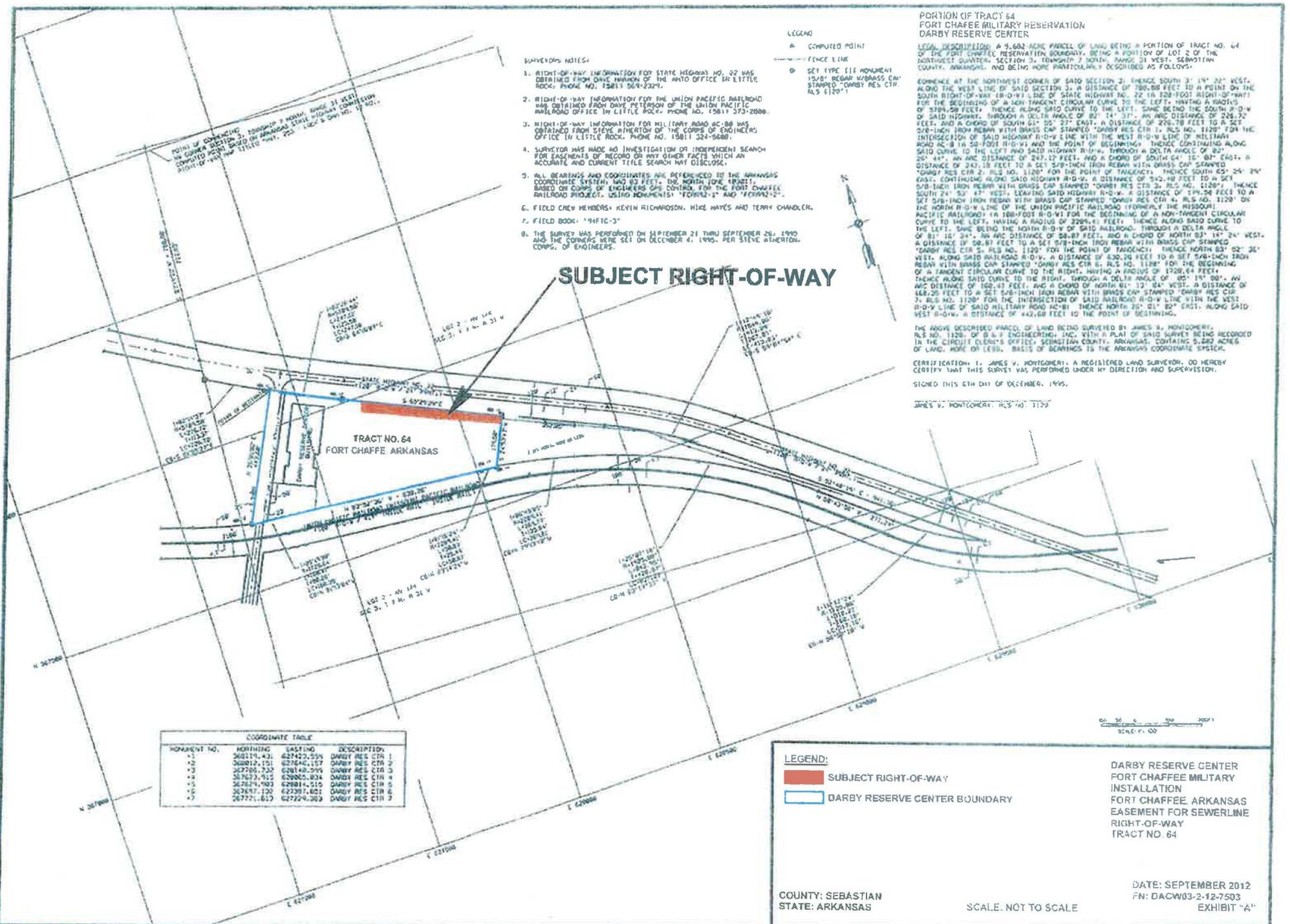
JAMES V. MONTGOMERY, RLS NO. 1128

- LEGEND
- ▲ COMPUTED POINT
  - FENCE LINE
  - SET TYPE III MONUMENT 1 1/2" IRON REBAR WITH BRASS CAP STAMPED "DARBY RES CTR, RLS 1120"

SURVEYOR'S NOTES:

1. RIGHT-OF-WAY INFORMATION FOR STATE HIGHWAY NO. 22 WAS OBTAINED FROM DAVID JENNISON OF THE AUTO OFFICE IN LITTLE ROCK, PHONE NO. 528-1324.
2. RIGHT-OF-WAY INFORMATION FOR THE UNION PACIFIC RAILROAD WAS OBTAINED FROM DAVID PETERSON OF THE UNION PACIFIC RAILROAD OFFICE IN LITTLE ROCK, PHONE NO. 528-1324.
3. RIGHT-OF-WAY INFORMATION FOR MILITARY ROAD AC-B WAS OBTAINED FROM STEVE WHERTON OF THE CORPS OF ENGINEERS OFFICE IN LITTLE ROCK, PHONE NO. 528-1324.
4. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR ENCUMBRANCES OF RECORD OR ANY OTHER FACTS WHICH AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
5. ALL BEARINGS AND COORDINATES ARE REFERENCED TO THE ARKANSAS COORDINATE SYSTEM AND 83 FEET, THE NORTH POLE ARCADE, BASED ON CORPS OF ENGINEERS DATA FOR THE FORT CHAFFEE RAILROAD PROJECT, USING MONUMENTS "FORM 1" AND "FORM 2".
6. FIELD CREW MEMBERS: KEVIN RICHARDSON, MIKE HAYES AND TERRY CHANDLER.
7. FIELD BOOK: "PAC-3"
8. THE SURVEY WAS PERFORMED ON SEPTEMBER 21 THRU SEPTEMBER 26, 1995 AND THE CORNERS WERE SET ON DECEMBER 4, 1995, PER STEVE WHERTON, CORPS OF ENGINEERS.

SUBJECT RIGHT-OF-WAY



MONUMENT NO.	NORTHING	EASTING	DESCRIPTION
+1	368174.431	627423.524	DARBY RES CTR 1
+2	368012.151	627646.157	DARBY RES CTR 2
+3	367786.732	628148.595	DARBY RES CTR 3
+4	367672.915	628065.824	DARBY RES CTR 4
+5	367674.903	628014.515	DARBY RES CTR 5
+6	367677.120	627397.621	DARBY RES CTR 6
+7	367721.615	627224.283	DARBY RES CTR 7

- LEGEND:
- █ SUBJECT RIGHT-OF-WAY
  - █ DARBY RESERVE CENTER BOUNDARY

SCALE: 1" = 100'

DARBY RESERVE CENTER  
FORT CHAFFEE MILITARY  
INSTALLATION  
FORT CHAFFEE, ARKANSAS  
EASEMENT FOR SEWERLINE  
RIGHT-OF-WAY  
TRACT NO. 64

COUNTY: SEBASTIAN  
STATE: ARKANSAS

SCALE: NOT TO SCALE

DATE: SEPTEMBER 2012  
FN: DACW03-2-12-7503  
EXHIBIT "A"

William O. Darby USARC  
State: Arkansas

County: Sebastian  
Easement - .33 acre  
DACA03-2-12-7503

Sewer Force Main  
(Easement Right-of-way)

Part of Government Lot 2 of the Northwest Quarter of Fractional Section 3, Township 7 North, Range 31 West, city of Barling, Sebastian County, Arkansas, said easement to be 25.0 feet wide and lying 12.5 feet on each side of the following described centerline:

Commencing at the Northwest corner of said Section 3; thence along the west line of said Section 3, S 02°45'03"W, 792.35 feet to the South right-of-way line of Arkansas Highway 22 Projected; thence 472.25 feet along the arc of a curve to the left in said south right-of-way line, said curve having a radius of 5958.81 feet and being subtended by a chord having a bearing of S 63°19'22"E and a distance of 472.12 feet; thence continuing along said south right-of-way line, S 65°33'04"E, 53.68 feet to the Point of Beginning, said point having city of Fort Smith coordinates of N367979.59, E627695.74; thence continuing along said south right-of-way line, S 65°33'04"E, 480.10 feet; thence leaving said right-of-way line, S 24°49'04"W, 30.04 feet; thence N 65°11'06"W, 111.31 feet; thence S 25°24'54"W, 1.97 feet to a chain link fence corner; thence along said chain link fence line, N 66°21'12"W, 25.01 feet; thence continuing along said chain link fence line, N 65°06'13"W, 344.23 feet; thence leaving said chain link fence line, N 25°46'03"E, 28.96 feet to the Point of Beginning, containing 0.33 acres, more or less.

Exhibit "B"

ESMT NO. - DACW03-2-12-7503

PRELIMINARY ASSESSMENT SCREENING  
(PAS)

A complete search of the District files revealed no evidence that hazardous substances have been stored, released, or disposed of on the property involved.

A site investigation revealed no evidence that hazardous substances have been stored, released, or disposed of on the property involved. No unusual odors, suspicious seepage, or other evidence of the presence of hazardous waste were observed.

\_\_\_\_\_  
Jo Ellyce Best  
Senior Realty Specialist  
Real Estate Division

\_\_\_\_\_  
Date

I/We, the undersigned, made a survey of the subject lease area and agree that as of this date, the area shows no evidence of the presence of hazardous waste.

City of Fort Smith

BY: \_\_\_\_\_

\_\_\_\_\_  
Date

TITLE: \_\_\_\_\_

Exhibit C

RESOLUTION AUTHORIZING ACQUISITION OF EASEMENTS IN CONNECTION WITH THE LAKE FORT SMITH 48-INCH WATER TRANSMISSION LINE AND THE CHAFFEE CROSSING PUMP STATION AND FORCE MAIN PROJECTS

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

SECTION 1: The following value for the acquisition of a water transmission line and sewer easement for the Lake Fort Smith 48-Inch Water Supply, Project Number 08-07 and the Chaffee Crossing Pump Station and Force Main, Project Number 08-09, is approved, and acquisition of the easement for the amount listed is hereby authorized:

<u>TRACT NO.</u>	<u>OWNER</u>	<u>APPRAISED VALUE</u>
1	Chaffee Crossing Development Group, LLC	\$9,300.00

SECTION 2: The City Administrator, or his designated agent, and the City Attorney are hereby authorized to acquire the easement for the above listed appraisal amount.

SECTION 3: In the event the easement described herein cannot be acquired by negotiation, the City Administrator and the City Attorney are hereby authorized to commence eminent domain proceedings to obtain the necessary easement herein described and make deposits of just compensation of the values of the easement listed herein. All such actions previously taken for this project are hereby confirmed.

This Resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** October 29, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Lake Fort Smith 48-Inch Water Transmission Line and  
Chaffee Crossing Pump Station and Force Main  
Project Number 08-07 and Project Number 08-09

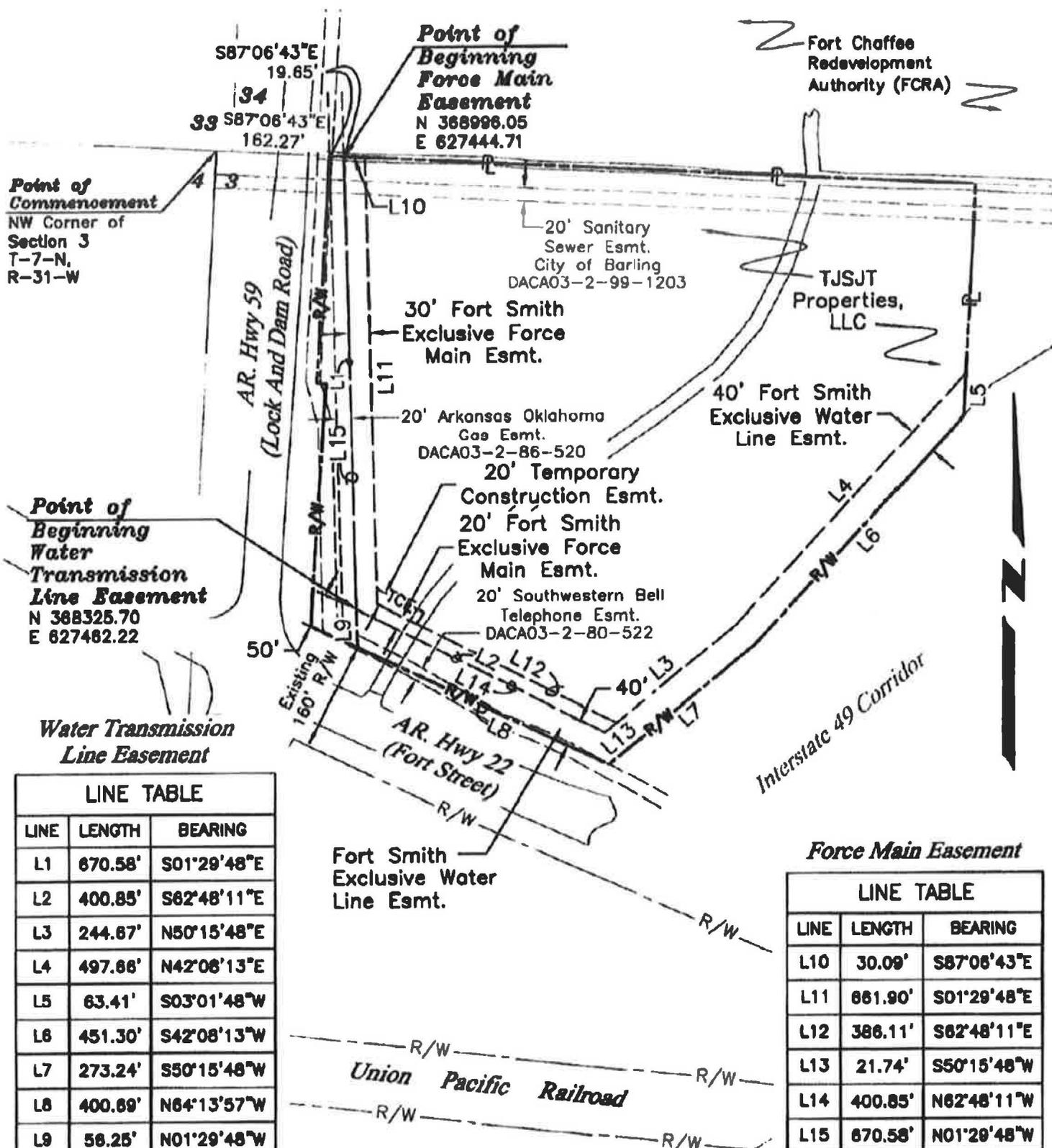
The city is planning to construct a 48-inch water transmission line and a sewer force main across a portion of property owned by Chaffee Crossing Development Group, LLC. The vacant property is located in Barling at the northeast corner of the intersection State Highway 22 and State Highway 59. The sewer force main is planned for construction in the near future, and the water line constructed in the later phases of the transmission line from Mountainburg to the city. An exhibit is attached for your review.

The city appraiser has valued the required easements at \$9,300.00. To date, the property owner has been unresponsive to the city's efforts to acquire the needed easements. Because of the project's scheduling, staff recommends that the attached Resolution approving the acquisition for the listed amount and authorization for the city administrator and city attorney to proceed with eminent domain be submitted to the Board of Directors for their approval at its next scheduled meeting. As always, representatives of the city will continue to negotiate with the property owners in an effort to reach a mutually agreeable settlement.

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

attachment

pc: Jeff Dingman



**Point of Commencement**  
 NW Corner of Section 3  
 T-7-N,  
 R-31-W

**Point of Beginning Water Transmission Line Easement**  
 N 368325.70  
 E 627482.22

**Point of Beginning Force Main Easement**  
 N 368996.05  
 E 627444.71

Fort Chaffee  
 Redevelopment  
 Authority (FCRA)

**Water Transmission Line Easement**

LINE TABLE		
LINE	LENGTH	BEARING
L1	670.58'	S01°29'48"E
L2	400.85'	S62°48'11"E
L3	244.67'	N50°15'48"E
L4	497.66'	N42°06'13"E
L5	63.41'	S03°01'48"W
L8	451.30'	S42°08'13"W
L7	273.24'	S50°15'48"W
L8	400.69'	N64°13'57"W
L9	58.25'	N01°29'48"W

**Force Main Easement**

LINE TABLE		
LINE	LENGTH	BEARING
L10	30.09'	S87°06'43"E
L11	661.90'	S01°29'48"E
L12	386.11'	S62°48'11"E
L13	21.74'	S50°15'48"W
L14	400.85'	N62°48'11"W
L15	670.58'	N01°29'48"W

**Chaffee Crossing Dev Group, LLC**

Scale 1"=200'  
 CITY of FORT SMITH - PROPOSED ESMT'S

RESOLUTION TO ACCEPT SETTLEMENT OFFER FROM A PROPERTY OWNER FOR THE ACQUISITION OF REAL PROPERTY INTERESTS FOR THE LAKE FORT SMITH WATER TREATMENT PLANT IMPROVEMENTS

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

SECTION 1: The following settlement offer from a property owner in an eminent domain action for the acquisition of real property and a water line easement for the Lake Fort Smith Water Treatment Plant Improvements, Project 07-09-C3 is approved, and the acquisition of the real property and water line easement for the amount listed is hereby authorized:

<u>Tract</u>	<u>Owner</u>	<u>Amount</u>
11-1/11-1A	Brice J. Heginger & Mary J. Heginger	\$2,100.00

SECTION 2: The City Administrator, or his designated agent, and the City Attorney are hereby authorized to acquire the real property and easement for the above listed amount. All such actions previously taken for this project are hereby confirmed.

This Resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Ray Gosack, City Administrator

**DATE:** October 29, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Lake Fort Smith Water Treatment Plant Improvements  
Project Number 07-09-C3

The Lake Fort Smith water treatment plant improvements required the acquisition of a small portion of property in fee as well as water line easement from Brice and Mary Heginger. Exhibits of the acquisitions are attached.

The Board of Directors approved the acquisition of the needed property and easement by eminent domain at its August 18, 2009, regular meeting. The amount approved by Resolution R-215-09 was \$18,656.90. Since that time the city attorney and staff have continued to communicate with the Heginger's and their attorney which has resulted in a settlement offer from the property owners to resolve the matter without going forward to trial. The Heginger's have offered to settle the case for an additional \$2,100.00.

Staff and city attorney find the owner's settlement offer to be reasonable, and that the administrative costs associated with going forward to trial is not the best alternative. Therefore, it is recommended that this settlement offer be submitted for the Board's consideration at its next scheduled meeting.

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

attachment

pc: Jeff Dingman

MICKLE-WAGNER-COLEMAN, INC.  
Engineers Consultants Surveyors

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

001-13307-000  
Heginger, Brice  
2020 Lake Fort Smith Road  
Mountainburg, AR 72946

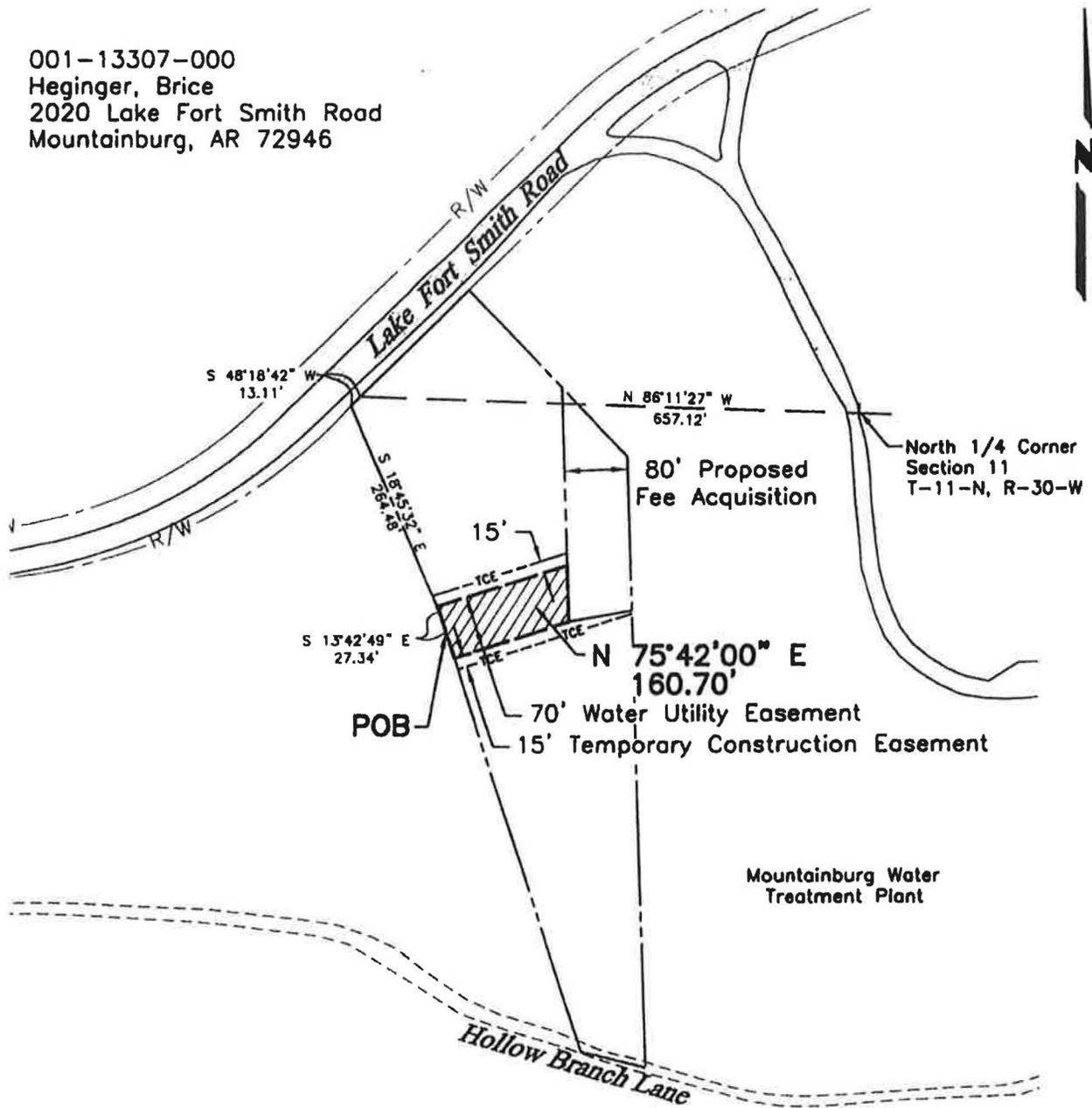
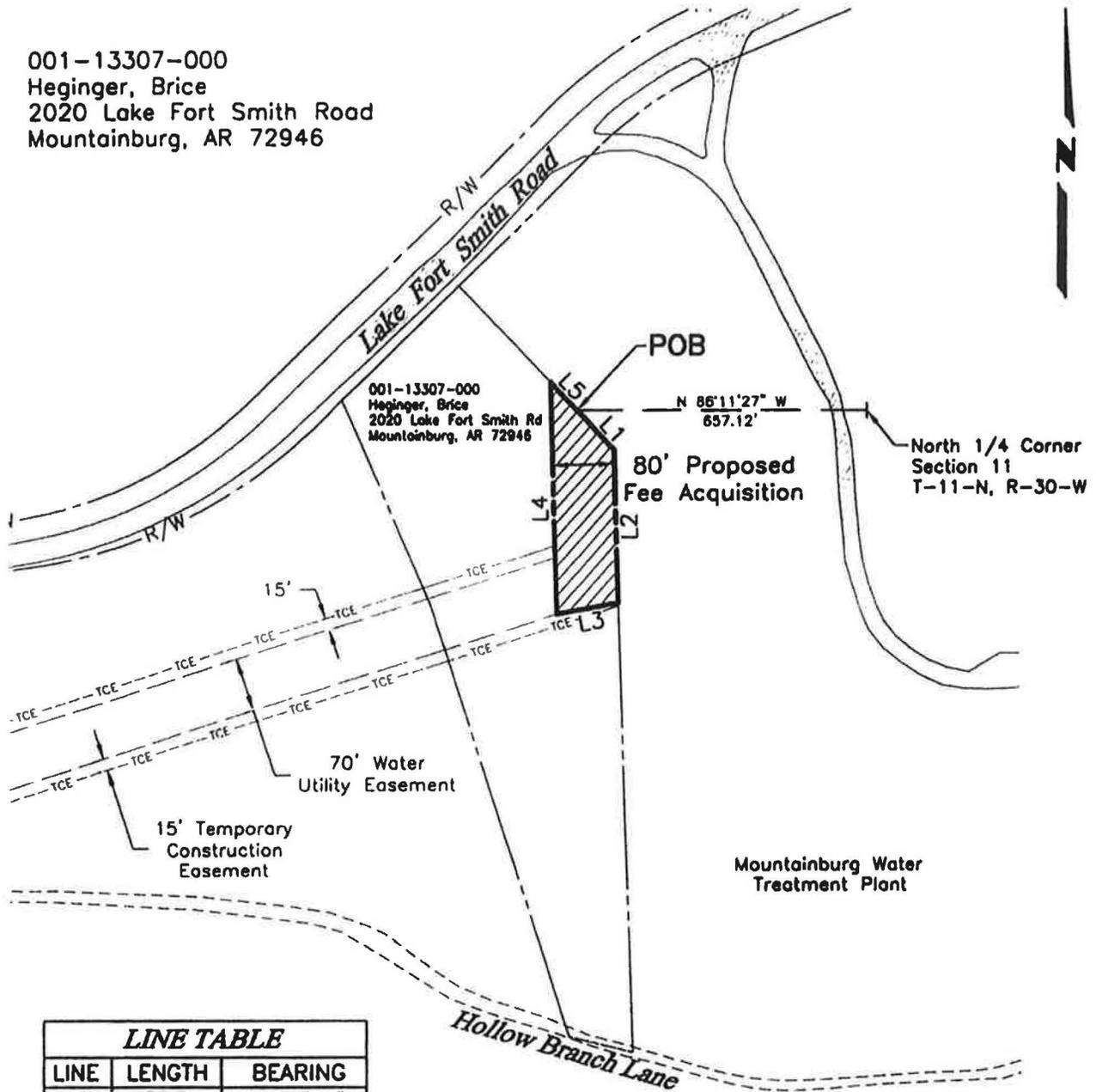


EXHIBIT A  
**TRACT 11-1**

Scale 1"=200'

*Lake Fort Smith Water Treatment Plant  
Finished Water Line Relocation*

001-13307-000  
 Heginger, Brice  
 2020 Lake Fort Smith Road  
 Mountainburg, AR 72946



<b>LINE TABLE</b>		
LINE	LENGTH	BEARING
L1	73.71	S39°30'40"E
L2	195.29	S02°07'50"W
L3	81.39	S81°30'39"W
L4	300.27	N02°07'50"E
L5	46.68	S39°30'40"E

# TRACT 11-1A

Scale 1"=200'

*Lake Fort Smith Water Treatment Plant  
 Finished Water Line Relocation*

# DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

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

[www.dailywoods.com](http://www.dailywoods.com)

JAMES E. WEST  
DALE CARLTON  
PHILLIP E. NORVELL †

OF COUNSEL

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

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

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

† Also Licensed in Oklahoma

● Also Licensed in Wyoming & North Dakota

October 24, 2012

Mr. Steve Parke  
Director of Utilities  
City of Fort Smith

Via e-mail only [steve@fortsmithar.gov](mailto:steve@fortsmithar.gov)

Re: City of Fort Smith, Arkansas v. Brice J. Heginger, et al.;  
Crawford County Circuit Court Case No. CIV-2009-628 (I)

Dear Mr. Parke:

The above referenced matter is an eminent domain case instituted by the City for the purpose of acquiring fee title and a permanent easement for the construction, operation and maintenance of public water utilities for the project known as Lake Fort Smith Water Treatment Plant Finish Water Line Relocation Project. The City's appraiser initially estimated just compensation to be \$11,537.00. However, the City subsequently agreed to increase the just compensation amount to \$18,656.90 in order to compensate for the removal of certain structures. Pursuant to the Order of Possession entered by the Court on October 5, 2009, the City tendered its just compensation deposit in the amount of \$18,656.90. The landowners, after significant negotiations, have agreed to accept the amount of \$20,756.90 in full settlement of their claim. I have enclosed a copy of the executed Settlement Agreement setting forth the terms of the settlement.

Given the uncertainty and cost of litigation, I believe this settlement is reasonable.

Thank you for your attention to this matter.

Very truly yours,



Robert R. Briggs  
tdp

Enclosure

cc: Mr. Larry Guthrie (via e-mail only)

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AUTHORIZATION NUMBER TWO TO THE AGREEMENT WITH MICKLE WAGNER COLEMAN, INC., FOR ENGINEERING SERVICES FOR CHAFFEE CROSSING WATER SUPPLY IMPROVEMENTS - CHAD COLLEY AND CUSTER BOULEVARD WATER LINES

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

SECTION 1: Authorization Number Two with Mickle Wagner Coleman for engineering construction phase services associated with the Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines, Project Number 12-04-EC1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute the Authorization Number Two in the amount of \$149,820.00, for performance of said services.

This Resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

RESOLUTION NO. \_\_\_\_\_

6 L

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIAMOND CONSTRUCTION COMPANY, INC., FOR CHAFFEE CROSSING WATER SUPPLY IMPROVEMENTS - CHAD COLLEY AND CUSTER BOULEVARD WATER LINES

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

SECTION 1: The bid of Diamond Construction Company, Inc., for the construction of the Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines, Project Number 12-04-C1, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with Diamond Construction Company, Inc., for an amount of \$910,833.40, for performing said construction.

This Resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Ray Gosack, City Administrator

**DATE:** October 26, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Chaffee Crossing Water Supply Improvements -  
Chad Colley and Custer Boulevard Water Lines,  
Project Number 12-04

On October 23rd we received and opened eleven bids for construction of the Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines, Project Number 12-04-C1. The low bid was submitted by Diamond Construction Company, Inc., in the amount of \$910,833.40. A bid tabulation sheet is attached for your information.

This project is the first of four being designed by Mickle Wagner Coleman, Inc., under the engineering agreement authorized by the Board on January 17th for the purpose of providing water system improvements needed to support growth in the Chaffee Crossing and southeast Fort Smith area. This project includes the construction of 2,000 linear feet of 24-inch water line along Chad Colley Boulevard and 5,200 linear feet of 16-inch water line along Custer Boulevard. An exhibit showing the project location is attached.

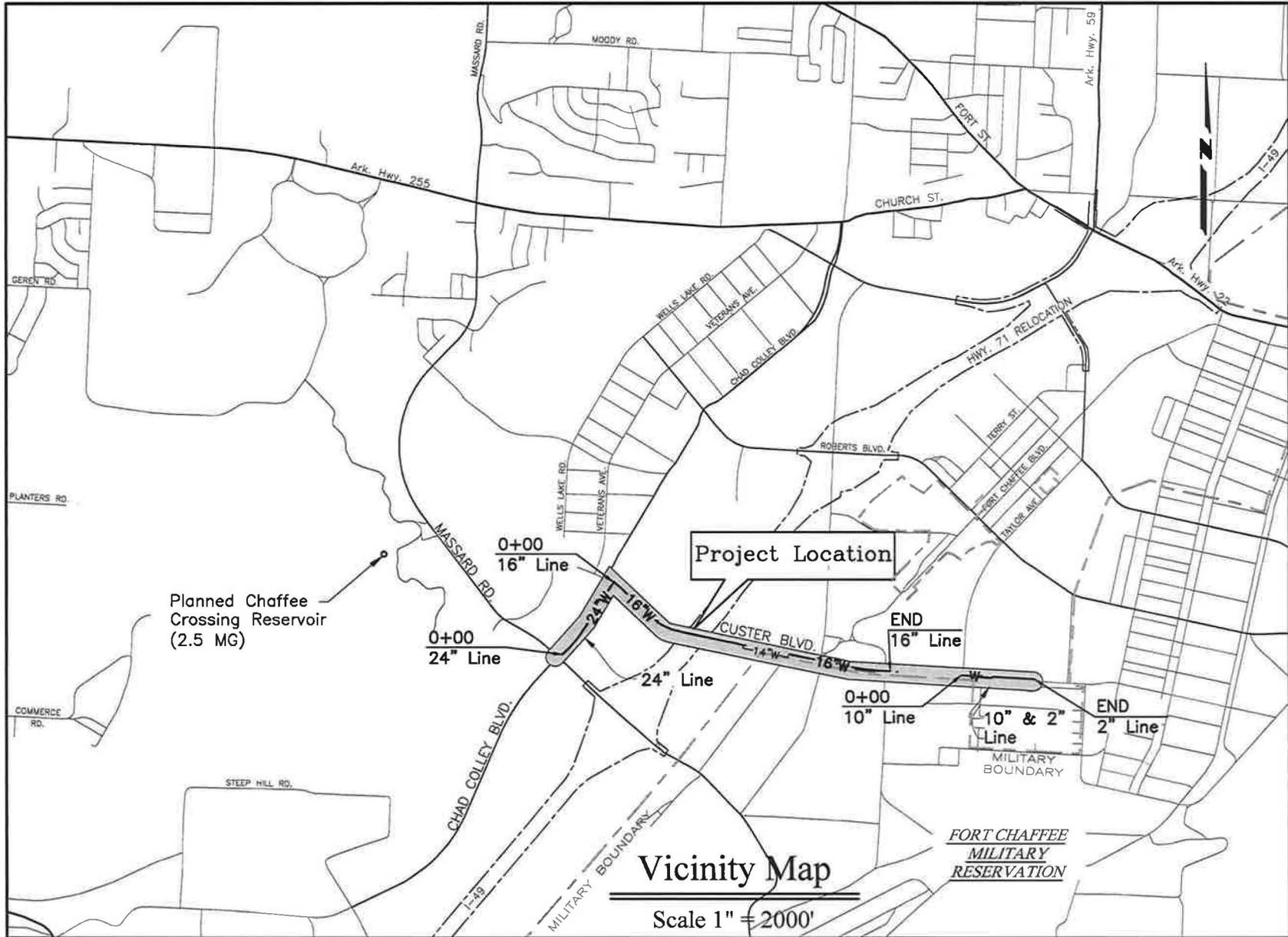
I have attached a Resolution authorizing contract award to Diamond Construction Company, Inc., in the amount of \$910,833.40. I have also attached a Resolution approving Authorizing Number Two to the Agreement with Mickle Wagner Coleman, Inc., in the amount of \$149,820.00 for providing contract administration and construction observation services. Funds for this project are available from the 2012 sales tax and use tax bonds issued for water transmission system improvements.

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

attachment

pc: Jeff Dingman

Chaffee Crossing Water Supply Improvements - Chad Colley and Custer Boulevard Water Lines  
 Project Number 12-04-C1



**Vicinity Map**

Scale 1" = 2000'

C:\Users\Bart\Documents\Water Supply - 14\working\plans\12-04-C1\12-04-C1.dwg Cover: 10/24/2012 2:37:41 PM, A125 B (11.00 x 17.00 Inches)

## Bid Tabulation Sheet

### **Project Name**

Chaffee Crossing Water Supply Improvements - Chad Colley & Custer Boulevard Water Lines  
Project Number 12-04-C1

### **Bid Opening**

October 23, 2012  
10:00 A.M.

### **Bids Received**

Diamond Construction, Co. N. Little Rock, AR	\$ 910,833.40
Garney Companies, Inc. Kansas City, MO	\$ 934,955.01
Double S Construction Poteau, OK	\$ 955,551.00
Kraus Construction Fort Smith, AR	\$ 958,386.00
BRB Contracting, Inc. Topeka, KS	\$ 971,596.00
M. Phillips Construction Magazine, AR	\$ 989,280.00
TNT, Inc. Van Buren, AR	\$ 1,102,406.00
AJ Greenwood Excavation & Plumbing Van Buren, AR	\$ 1,136,864.00
Goodwin & Goodwin, Inc. Fort Smith, AR	\$ 1,154,242.00
CoBar Contracting, Inc. N. Little Rock, AR	\$ 1,156,467.40
Forsgren, Inc. Fort Smith, AR	\$ 1,183,703.00
Crawford Construction Co. Fort Smith, AR	\$ No Bid
KAJACS Contractors, Inc. Poplar Bluff, AR	\$ No Bid

RESOLUTION NO. \_\_\_\_\_

6 M

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE TRAIL AND LAND USE AGREEMENTS WITH THE ARKANSAS DEPARTMENT OF PARKS AND TOURISM IN CONJUNCTION WITH THE LAKE FORT SMITH STATE PARK

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

The Mayor is hereby authorized to execute the Boston Mountain Trail and Land Use Agreement, Shepherd Spring Trail and Land Use Agreement and Shepherd Springs Dam Trail and Land Use Agreement with the Arkansas Department of Parks and Tourism in conjunction with the Lake Fort Smith State Park.

This resolution adopted this \_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** October 29, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Trail and Land Use Agreements for  
Lake Fort Smith State Park

Subsequent to the lease negotiations with Arkansas State Parks for the operation of the Lake Fort Smith State Park, they inquired about the possibility of developing trails outside of the park boundaries within the city's surrounding watershed properties. Staff indicated a willingness to consider trail development as an accessory use to the park under a separate joint-use styled agreement independent from the lease for the park operations.

Trail and land use agreements were developed for three trails to be overseen by the Arkansas State Parks. The agreements provide that the trails are established and maintained according to the standards set by the Arkansas Trails System Maintenance Manual and also places care and use standards for property for a distance of 100 feet of either side of the trail. The Boston Mountain Trail will create an approximate 8.5 mile loop trail that is intended for use by both hikers and non-motorized mountain bicycles. The Shepherd Spring Trail is approximately 1.7 miles in length and will establish a return loop to the park as part of the Ozark Highlands Trail on the north side of Frog Bayou. It is limited to only hikers. The Shepherd Springs Dam Trail is an approximate 0.54 mile loop to be located on top of the remnant degraded Shepherd Springs Dam. It will be used mainly by State Park staff for conducting interpretive hikes and night sky observation programs for park patrons. A copy of the trail and land use agreement for each trail, which includes an exhibit of the trail's route, is attached.

The trail and land use agreements each specify an initial 35-year and 25-year renewal term which coincides with those stated by the lease for the operation of the State Park. Each agreement places individual management and caretaking requirements on Arkansas State Parks and provides for the suspension, or termination, of trail use for failure to comply with the terms of the agreement or if the trail use becomes detrimental to the city's watershed management for the water supply. The city does not assume any responsibility for maintenance or damages to the trail improvements.

Arkansas State Parks has agreed to the terms and conditions of the trail and land use agreements and they have been approved by the Department of Parks and Tourism Commission. Staff recommends that the trail and land use agreements be submitted to the Board for consideration and the attached Resolution authorizing the Mayor's execution be approved.

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

attachment

pc: Jeff Dingman

## BOSTON MOUNTAIN TRAIL AND LAND USE AGREEMENT

THIS TRAIL AND LAND USE AGREEMENT made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the City of Fort Smith, Arkansas, a municipal corporation organized and existing under and by virtue of the laws of the State of Arkansas, hereinafter called "City" and the State of Arkansas, Arkansas Department of Parks and Tourism, hereinafter called "ADPT."

### W I T N E S S E T H:

In exchange of the mutual terms and conditions set forth in this Agreement, the parties agree as follows:

#### 1. Description.

The City hereby grants to ADPT the nonexclusive, restricted right to occupy and use for the construction, operation and maintenance of a foot travel hiking and non-motorized bicycle trail, hereinafter known as the Boston Mountain Trail, across the following described properties owned by the City to wit:

A part of the Northwest Quarter of the Northwest Quarter (NW/4/NW/4) of Section 30, Township 12 North, Range 29 West, the East Quarter (E/4) of Section 24, Township 12 North, Range 30 West, the Southwest Quarter(SW/4), the Southeast Quarter of the Northwest Quarter (SE/4/NW/4), and the Northeast Quarter (NE/4) of Section 19, Township 12 North, Range 29 West,

Which trail, together with a strip of adjacent land area ("adjacent land area") shall be no more than 200 feet in width, more particularly described as lying 100 feet on each side of the centerline of the trail as constructed. Said trail and adjacent land area being more particularly shown on Exhibit "A" attached hereto and hereby made a part of this instrument.

#### 2. Purpose.

In conjunction with a certain Lease Agreement by and between the City of Fort Smith, Arkansas, and the State of Arkansas, Arkansas Department of Parks and Tourism entered into on May 7, 2008, and filed of record as Document Number 2008005583 in the records of the Circuit Clerk, Crawford County, Arkansas, the purpose of this Agreement is to allow the ADPT to develop and maintain a foot travel hiking and non-motorized bicycle trail and the use of the adjacent land area for bird watching, nature photography, nature study, or other similar mutually agreed to nature

conservation low-impact, pedestrian activities and uses by ADPT patrons, volunteers, employees, contractors, researchers, or any other agent acting on behalf of or for the benefit of ADPT. The nonexclusive right granted by paragraph 1 and described in this paragraph does not otherwise limit the City's use and control of its property.

### 3. City's Water Supply.

The parties acknowledge that the trail and the adjacent land area are located in the watershed properties surrounding the domestic water supply reservoir operated by the City. The primary operational guideline for use of the Boston Mountain Trail and adjacent land area will be to not impair or interfere with the land's conservation value as watershed protection, as may be established by the City, of the source water quality for the City's water supply reservoir. In the event the City, or any state or federal regulatory agency having jurisdiction, issues a finding, order or regulation which prohibits, limits or otherwise affects the proposed Boston Mountain Trail or adjacent land area, ADPT agrees to discontinue the impacted function and otherwise comply with each finding, order or regulation. The City reserves for itself the unrestricted right of ingress and egress and the unrestricted right or use of any of its properties for any and all functions and uses related to the City's caretaking, water supply, watershed conservation, and management operations.

### 4. Rules and Regulations for Public Use.

- (a) No motorized vehicles will be allowed within the Boston Mountain Trail corridor or on adjacent land area except for maintenance purposes.
- (b) No mountain bicycles will be allowed within the adjacent land area.
- (c) Horses will not be permitted within the Boston Mountain Trail corridor or on adjacent land area.
- (d) No campsites, picnic tables, picnic sites or restrooms will be developed or allowed and camping, campfires, or overnight stays will not be permitted within the Boston Mountain Trail corridor or on adjacent land area.

### 5. Care and Use of the Property.

- (a) The Boston Mountain Trail shall be established and maintained by ADPT according to the standards established in the Arkansas Trails System Maintenance Manual and

its subsequent adoptions or revisions. ADPT shall install as needed any handrails, steps, water bars, culverts or bridges.

- (b) The Boston Mountain Trail shall be signed by ADPT with both markings and informational signs noting regulations for trail use as set forth herein. ADPT may post instructional, informative and interpretive signs as needed for the public's use and enjoyment of the trail. No signs shall be posted by anyone other than the ADPT without the written approval of City.
- (c) The Boston Mountain Trail shall be signed by ADPT at trail head and at reasonable number of points to indicate the approximate boundaries of the City and Forest Service properties and the entering into or exiting from the same. Rules and regulations for public use related to City property will be posted at these locations unless relief of such requirement for a specific location is requested by ADPT and waived in writing by City.
- (d) Any secondary, volunteer or renegade trails and roads which develop shall be blocked and attempted to be obliterated by ADPT, and ADPT shall post signs prohibiting their use.
- (e) Trail users shall be requested to report observed violations of rules and regulations to ADPT, and ADPT shall promptly investigate such reports, take corrective actions as required and report in writing violations or problems observed to City.
- (f) ADPT shall inspect trail and observe adjacent lands and remove trash or other discarded items not less frequently than quarterly.
- (g) ADPT shall promptly report in writing to City any activity on lands covered under this Agreement, or as may be observed on other adjoining City property, that may be harmful to the City's water supply or adverse to watershed protection.

#### 6. Historic Preservation and Cultural Resources.

If during the construction or implementation of this project, any historic properties or cultural resources are discovered or identified, ADPT will immediately stop the project and notify the City of such discovery or identification. The City will then evaluate the discovery or identification of these sites through the Arkansas Historic Preservation Program and appropriate mitigation measures will

be determined. It is the intent of the parties at the time of entering into this Agreement that all historic properties or cultural resources will be avoided and left undisturbed. Any uses or activities that are to be introduced, or anticipated to occur, as a result of the parties entering into this Agreement shall be directed away from historic properties or cultural resources now known to exist and restricted by the Arkansas Historic Preservation Program.

7. Consent for Additional Facilities.

Subsequent to initial construction of the Boston Mountain Trail, ADPT shall not construct new or additional facilities without the prior written approval of the City. ADPT shall not make application for, or accept, any grant or financial assistance for any operation, construction, maintenance or improvement activity, or for reimbursement of any expense, related to the Boston Mountain Trail and the adjacent property area without the prior written approval of the City. The City may, but is not required to, withhold approval based on the terms of any grant or financial assistance from a third party proposed to be used by the APDT for financing.

8. Term and Option to Renew.

The initial term of this Agreement shall commence as if entered into on May 7, 2008, the date on which the City and ADPT entered into the Lease Agreement for the operation of the Lake Fort Smith State Park for public purposes. Beginning with the initial date of the initial term, the primary term of this Agreement shall be for a period of thirty-five (35) years. The ADPT is granted an option to renew the Agreement on the same terms and conditions for an additional period of twenty-five (25) years. In order to exercise said option to renew, ADPT must give written notice to City of ADPT's intention to exercise its option to renew not more than one (1) year prior to but at least six (6) months prior to the end of the initial Agreement term. In the event ADPT should fail to use or maintain the Lake Fort Smith State Park for a period of time in excess of six (6) months (whether during the primary term or option term), then this Agreement shall automatically terminate.

9. Liability to Improvements.

The City shall in no case be liable for any damage or injury to the Boston Mountain Trail herein consented to which may be caused by any action of the City or which may result from future operations undertaken by the City in the management of its watershed properties, and no claim or right to compensation shall accrue from such exercise of the City's land ownership or property rights.

10. Waiver.

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

11. Non-Assignment.

ADPT shall not assign this Agreement without the prior written consent of City.

12. Independent Status.

Nothing in this Agreement shall be deemed to constitute ADPT as the agent of the City for any purpose.

13. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and ADPT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14. Hold Harmless.

In regard to loss, expense, damage, liability, claims or demands, whether at law or in equity for actual or alleged injuries to person or property arising out of any negligent act or omission by the Arkansas Department of Parks & Tourism, its employees or agents in the performance of this agreement, the Arkansas Department of Parks & Tourism agrees with the City of Fort Smith that: (a) it will cooperate with the City in the defense of any action or claim brought against the City seeking the forgoing damages or relief; (b) the Arkansas Department of Parks & Tourism will in good faith cooperate with the City should the City present any claims of the forgoing in nature against the Arkansas Department of Parks & Tourism to the Claims Commission of the State of Arkansas; (c) the Arkansas Department of Parks & Tourism will not take any action to frustrate or delay the prompt hearing on claims of the forgoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing provided, however, the Arkansas Department of Parks & Tourism reserves its right to assert in good faith all claims and defenses available to it in any

proceedings in said Claims Commission or other appropriate forum. The obligation of this paragraphs shall survive the expiration or termination of this Agreement.

15. General Provisions.

- (a) The captions used in the various paragraphs of this Agreement are for informational purposes and shall not be considered to be part of the text of the Agreement.
- (b) Any references to ADPT shall be construed as a reference to the State of Arkansas acting through both the Parks, Recreation and Travel Commission and the Arkansas Department of Parks and Tourism.
- (c) The provisions of this Agreement shall be construed according to the laws of the State of Arkansas.
- (d) In the event that either party to this Agreement determines that the other party is in default or breach of any provision of this Agreement (specifically including, without limitation, the primary operational guideline for the interaction of the park facilities and water reservoir is to protect the water quality of the water reservoir) the following procedure shall apply. The party making such a determination shall provide to the other at the address indicated below a written description of the alleged default or breach of this Agreement. The other party shall, within fifteen (15) days, provide a written response to the notice of breach from the other party. If that exchange of communications does not resolve the alleged breach of this Agreement, either party may request a meeting at which the chief executive officers of both parties (for the City, the chief executive shall be the City Administrator, for the ADPT, the chief executive shall be the Director of the Arkansas Department of Parks and Tourism) must appear within fifteen (15) days from the date of notice of the holding of such a meeting. If that meeting does not resolve the alleged default or breach, the City may revoke, and ADPT shall suspend, any use of the trail and adjacent land area authorized under this Agreement. Either party may then initiate an action with a court having jurisdiction. No such litigation shall be initiated before the foregoing procedures have been followed except on good faith allegations that an emergency exists requiring intervention of a court having jurisdiction.

(e) Any notice required to be given pursuant to this Agreement may be given to the following addresses:

City of Fort Smith  
c/o Director of Utilities  
P.O. Box 1908  
Fort Smith, AR 72902

Arkansas Department of Parks and Tourism  
State Parks Division  
c/o Director  
1 Capitol Mall  
Little Rock, AR 72201

This Agreement shall not be altered except in writing and approved by the appropriate officials of City and ADPT.

THIS AGREEMENT is executed as of the day first set forth above and each signator verifies that he or she is authorized to execute this Agreement for the purposes described herein.

Approved by the Arkansas State Parks, Recreation, and Travel Commission on the 18<sup>th</sup> day of October 2012.

CITY OF FORT SMITH

ARKANSAS DEPARTMENT OF PARKS  
and TOURISM

By: \_\_\_\_\_  
Mayor

By:   
Richard W. Davies, Executive Director

ATTEST:

- and -

By: \_\_\_\_\_  
City Clerk

By:   
Greg Butts, Director of State Parks Division

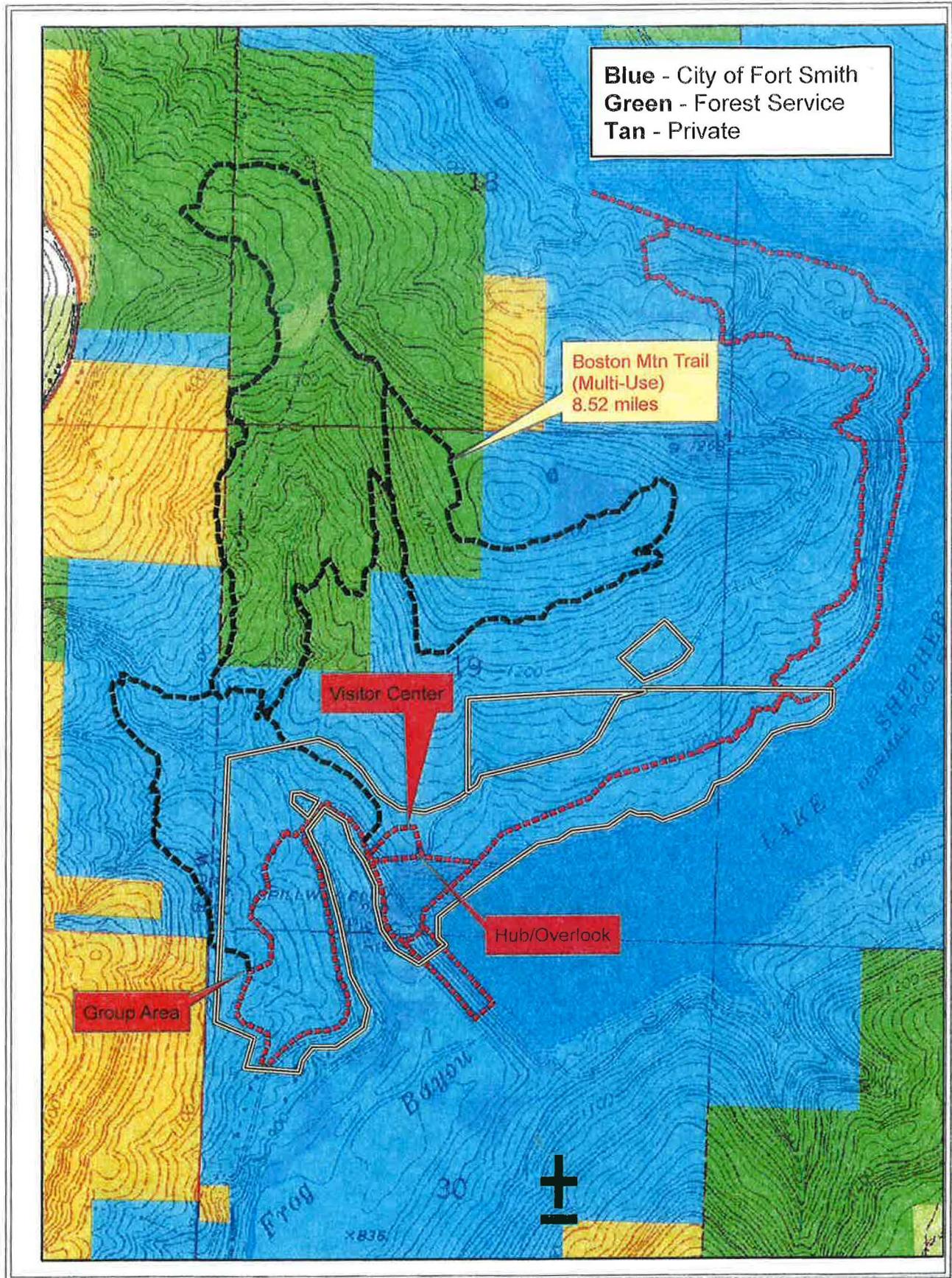


EXHIBIT A

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 ) SS  
County of Pulaski )

On this 24<sup>th</sup> day of October, 2012, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Pulaski, Arkansas, appeared in person the within named Richard W. Davies, who stated that he is the Executive Director of the Arkansas Department of Parks and Tourism, and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said agency, and further stated and acknowledged that he had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24<sup>th</sup> day of October, 2012.



Savannah Mitchell

My Commission Expires:

12/16/2021

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
  )  
  )     SS  
County of PULASKI

On this 24<sup>th</sup> day of OCTOBER, 2012, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of PULASKI, Arkansas, appeared in person the within named Greg Butts, who stated that he is the Director State Parks Division of the Arkansas Department of Parks and Tourism, and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said agency, and further stated and acknowledged that he had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24<sup>th</sup> day of OCTOBER, 2012.



Alicia Davis

My Commission Expires:  
4/12/15



SHEPHERD SPRING TRAIL AND LAND USE AGREEMENT

THIS TRAIL AND LAND USE AGREEMENT made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_, by and between the City of Fort Smith, Arkansas, a municipal corporation organized and existing under and by virtue of the laws of the State of Arkansas, hereinafter called "City" and the State of Arkansas, Arkansas Department of Parks and Tourism, herein after called "ADPT."

W I T N E S S E T H:

In exchange of the mutual terms and conditions set forth in this Agreement, the parties agree as follows:

1. Description.

The City hereby grants to ADPT the nonexclusive, restricted right to occupy and use for the construction, operation and maintenance of a foot travel hiking trail, hereinafter known as the Shepherd Spring Trail, across the following described properties owned by the City to wit:

A part of Northwest Quarter (NW/4) of Section 20, the Southwest Quarter (SW/4) of Section 17, and the Southeast Quarter (SE/4) of Section 18, all in Township 12 North, Range 29 West, Crawford County, Arkansas,

Which trail, together with a strip of adjacent land area ("adjacent land area") shall be no more than 200 feet in width, more particularly described as lying 100 feet on each side of the centerline of the foot trail as constructed. Said trail and adjacent land area being more particularly shown on Exhibit "A" attached hereto and hereby made a part of this instrument.

2. Purpose.

In conjunction with a certain Lease Agreement by and between the City of Fort Smith, Arkansas, and the State of Arkansas, Arkansas Department of Parks and Tourism entered into on May 7, 2008, and filed of record as Document Number 2008005583 in the records of the Circuit Clerk, Crawford County, Arkansas, the purpose of this Agreement is to allow the ADPT to develop and maintain a foot travel hiking trail and the use of the adjacent land area for bird watching, nature photography, nature study, or other similar mutually agreed to nature conservation low-impact, pedestrian activities and uses by ADPT patrons, volunteers, employees, contractors, researchers, or any other agent acting on behalf of or for the benefit of ADPT. The nonexclusive right granted by paragraph 1 and described in this paragraph does not otherwise limit the City's use and control of its property.

3. City's Water Supply.

The parties acknowledge that the trail and the adjacent land area are located in the watershed properties surrounding the domestic water supply reservoir operated by the City. The primary operational guideline for use of the Shepherd Spring Trail and adjacent land area will be to not impair or interfere with the land's conservation value as watershed protection, as may be established by the City, of the source water quality for the City's water supply reservoir. In the event the City, or any state or federal regulatory agency having jurisdiction, issues a finding, order or regulation which prohibits, limits or otherwise affects the proposed Shepherd Springs Trail or adjacent land area, ADPT agrees to discontinue the impacted function and otherwise comply with each finding, order or regulation. The City reserves for itself the unrestricted right of ingress and egress and the unrestricted right or use of any of its properties for any and all functions and uses related to the City's caretaking, water supply, watershed conservation, and management operations.

4. Rules and Regulations for Public Use.

- (a) No motorized vehicles will be allowed within the Shepherd Spring Trail corridor or on adjacent land area except for maintenance purposes.
- (b) No mountain bicycles will be allowed within the Shepherd Spring Trail corridor or on adjacent land area.
- (c) Horses will not be permitted within the Shepherd Spring Trail corridor or on adjacent land area.
- (d) No campsites, picnic tables, picnic sites or restrooms will be developed or allowed and camping, campfires, or overnight stays will not be permitted within the Shepherd Spring Trail corridor or on adjacent land area.

5. Care and Use of the Property.

- (a) The Shepherd Spring Trail shall be established and maintained by ADPT according to the standards established in the Arkansas Trails System Maintenance Manual and its subsequent adoptions or revisions. ADPT shall install as needed any handrails, steps, water bars, culverts or bridges.
- (b) The Shepherd Spring Trail shall be signed by ADPT with both markings and informational signs noting regulations for trail use as set forth herein. ADPT may post instructional, informative and interpretive signs as needed for the public's use and enjoyment of the trail. No signs shall be posted by anyone other than the ADPT without the written approval of City.
- (c) The Shepherd Spring Trail shall be signed by ADPT at trail head and at reasonable number of points to indicate the approximate boundary of the City property and the

entering into the same. Rules and regulations for public use related to City property will be posted at these locations unless relief of such requirement for a specific location is requested by ADPT and waived in writing by City.

- (d) Any secondary, volunteer or renegade trails and roads which develop shall be blocked and attempted to be obliterated by ADPT, and ADPT shall post signs prohibiting their use.
- (e) Trail users shall be requested to report observed violations of rules and regulations to ADPT, and ADPT shall promptly investigate such reports, take corrective actions as required and report in writing violations or problems observed to City.
- (f) ADPT shall inspect trail and observe adjacent lands and remove trash or other discarded items not less frequently than quarterly.
- (g) ADPT shall promptly report in writing to City any activity on lands covered under this Agreement, or as may be observed on other adjoining City property, that may be harmful to the City's water supply or adverse to watershed protection.

#### 6. Historic Preservation and Cultural Resources.

If during the construction or implementation of this project, any historic properties or cultural resources are discovered or identified, ADPT will immediately stop the project and notify the City of such discovery or identification. The City will then evaluate the discovery or identification of these sites through the Arkansas Historic Preservation Program and appropriate mitigation measures will be determined. It is the intent of the parties at the time of entering into this Agreement that all historic properties or cultural resources will be avoided and left undisturbed. Any uses or activities that are to be introduced, or anticipated to occur, as a result of the parties entering into this Agreement shall be directed away from historic properties or cultural resources now known to exist and restricted by the Arkansas Historic Preservation Program.

#### 7. Consent for Additional Facilities.

Subsequent to initial construction of Shepherd Spring Trail, ADPT shall not construct new or additional facilities without the prior written approval of the City. ADPT shall not make application for, or accept, any grant or financial assistance for any operation, construction, maintenance or improvement activity, or for reimbursement of any expense, related to the Shepherd Spring Trail and the adjacent property area without the prior written approval of the City. The City may, but is not required to, withhold approval based on the terms of any grant or financial assistance from a third party proposed to be used by the APDT for financing.

#### 8. Term and Option to Renew.

The initial term of this Agreement shall commence as if entered into on May 7, 2008, the date on which the City and ADPT entered into the Lease Agreement for the operation of the Lake Fort Smith State Park for public purposes. Beginning with the initial date of the initial term, the primary term of this Agreement shall be for a period of thirty-five (35) years. The ADPT is granted an option to renew the Agreement on the same terms and conditions for an additional period of twenty-five (25) years. In order to exercise said option to renew, ADPT must give written notice to City of ADPT's intention to exercise its option to renew not more than one (1) year prior to but at least six (6) months prior to the end of the initial Agreement term. In the event ADPT should fail to use or maintain the Lake Fort Smith State Park for a period of time in excess of six (6) months (whether during the primary term or option term), then this Agreement shall automatically terminate.

9. Liability to Improvements.

The City shall in no case be liable for any damage or injury to the Shepherd Spring Trail herein consented to which may be caused by any action of the City or which may result from future operations undertaken by the City, in the management of its watershed properties and no claim or right to compensation shall accrue from such exercise of the City's land ownership or property rights.

10. Waiver.

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

11. Non-Assignment.

ADPT shall not assign this Agreement without the prior written consent of City.

12. Independent Status.

Nothing in this Agreement shall be deemed to constitute ADPT as the agent of the City for any purpose.

13. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and ADPT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14. Hold Harmless.

In regard to loss, expense, damage, liability, claims or demands, whether at law or in equity for actual or alleged injuries to person or property arising out of any negligent act or omission by the Arkansas Department of Parks & Tourism, its employees or agents in the performance of this

agreement, the Arkansas Department of Parks & Tourism agrees with the City of Fort Smith that: (a) it will cooperate with the City in the defense of any action or claim brought against the City seeking the forgoing damages or relief; (b) the Arkansas Department of Parks & Tourism will in good faith cooperate with the City should the City present any claims of the forgoing in nature against the Arkansas Department of Parks & Tourism to the Claims Commission of the State of Arkansas; (c) the Arkansas Department of Parks & Tourism will not take any action to frustrate or delay the prompt hearing on claims of the forgoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing provided, however, the Arkansas Department of Parks & Tourism reserves its right to assert in good faith all claims and defenses available to it in any proceedings in said Claims Commission or other appropriate forum. The obligation of this paragraphs shall survive the expiration or termination of this Agreement.

15. General Provisions.

- (a) The captions used in the various paragraphs of this Agreement are for informational purposes and shall not be considered to be part of the text of the Agreement.
- (b) Any references to ADPT shall be construed as a reference to the State of Arkansas acting through both the Parks, Recreation and Travel Commission and the Arkansas Department of Parks and Tourism.
- (c) The provisions of this Agreement shall be construed according to the laws of the State of Arkansas.
- (d) In the event that either party to this Agreement determines that the other party is in default or breach of any provision of this Agreement (specifically including, without limitation, the primary operational guideline for the interaction of the park facilities and water reservoir is to protect the water quality of the water reservoir) the following procedure shall apply. The party making such a determination shall provide to the other at the address indicated below a written description of the alleged default or breach of this Agreement. The other party shall, within fifteen (15) days, provide a written response to the notice of breach from the other party. If that exchange of communications does not resolve the alleged breach of this Agreement, either party may request a meeting at which the chief executive officers of both parties (for the City, the chief executive shall be the City Administrator, for the ADPT, the chief executive shall be the Director of the Arkansas Department of Parks and Tourism) must appear within fifteen (15) days from the date of notice of the holding of such a meeting. If that meeting does not resolve the alleged default or breach, the City may

revoke, and ADPT shall suspend, any use of the trail and adjacent land area authorized under this Agreement. Either party may then initiate an action with a court having jurisdiction. No such litigation shall be initiated before the foregoing procedures have been followed except on good faith allegations that an emergency exists requiring intervention of a court having jurisdiction.

- (e) Any notice required to be given pursuant to this Agreement may be given to the following addresses:

City of Fort Smith  
c/o Director of Utilities  
P.O. Box 1908  
Fort Smith, AR 72902

Arkansas Department of Parks and Tourism  
State Parks Division  
c/o Director  
1 Capitol Mall  
Little Rock, AR 72201

This Agreement shall not be altered except in writing and approved by the appropriate officials of City and ADPT.

THIS AGREEMENT is executed as of the day first set forth above and each signator verifies that he or she is authorized to execute this Agreement for the purposes described herein.

Approved by the Arkansas State Parks, Recreation, and Travel Commission on the 18<sup>th</sup> day of October 2012.

CITY OF FORT SMITH

ARKANSAS DEPARTMENT OF PARKS  
and TOURISM

By: \_\_\_\_\_  
Mayor

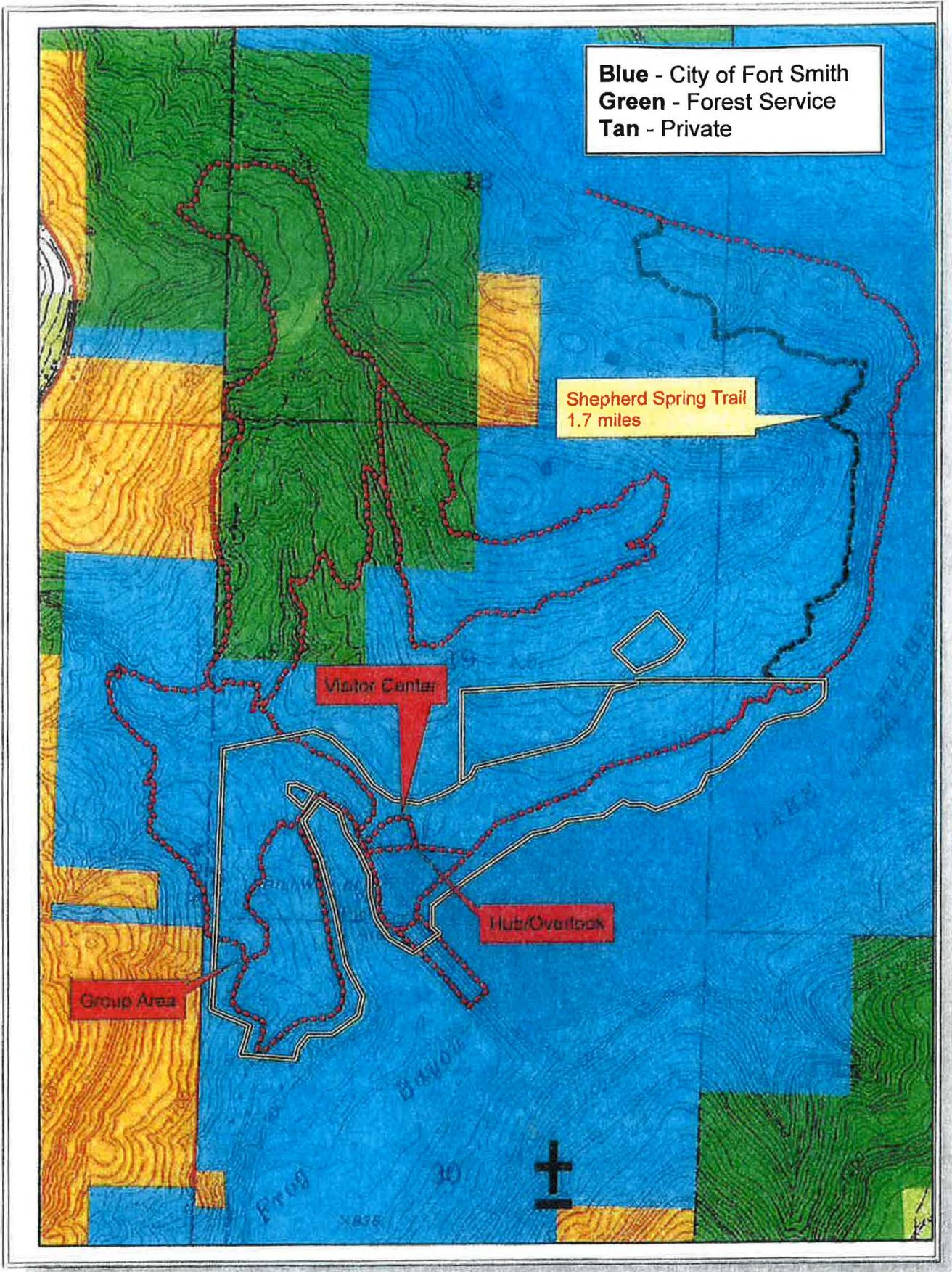
By:   
Richard W. Davies, Executive Director

ATTEST:

- and -

By: \_\_\_\_\_  
City Clerk

By:   
Greg Butts, Director of State Parks Division



**EXHIBIT A**



ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
  )     SS  
County of PULLASKI )

On this 24<sup>TH</sup> day of OCTOBER, 2012, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of PULLASKI, Arkansas, appeared in person the within named Greg Butts, who stated that he is the Director State Parks Division of the Arkansas Department of Parks and Tourism, and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said agency, and further stated and acknowledged that he had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24<sup>TH</sup> day of OCTOBER, 2012.



Alicia Dean

My Commission Expires:

4/12/15

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
  )  
County of Sebastian     )     SS

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person Sandy Sanders and Sherry Gard to me personally well known, who stated that they were the Mayor and Clerk of the City of Fort Smith, Arkansas, a municipal corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said city, and further stated and acknowledged that they had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

## SHEPHERD SPRINGS DAM TRAIL AND LAND USE AGREEMENT

THIS TRAIL AND LAND USE AGREEMENT made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between the City of Fort Smith, Arkansas, a municipal corporation organized and existing under and by virtue of the laws of the State of Arkansas, hereinafter called "City" and the State of Arkansas, Arkansas Department of Parks and Tourism, herein after called "ADPT."

### W I T N E S S E T H:

In exchange of the mutual terms and conditions set forth in this Agreement, the parties agree as follows:

#### 1. Description.

The City hereby grants ADPT the nonexclusive right to occupy and use for the construction, operation and maintenance of a foot travel hiking trail, hereinafter known as the Shepherd Springs Dam Trail, across the following described properties owned by the City to wit:

A part of Northwest Quarter of the Northeast Quarter (NW/4/NE/4) , and the Northeast Quarter of the Northwest Quarter (NE/4NW/4) of Section 30, Township 12 North, Range 29 West, Crawford County, Arkansas,

Which trail, together with the adjacent land area ("adjacent land area") on the crest of the west portion of the former Shepherd Springs Dam. Said trail and adjacent land area being more particularly shown on Exhibit "A" attached hereto and hereby made a part of this instrument.

#### 2. Purpose.

In conjunction with a certain Lease Agreement by and between the City of Fort Smith, Arkansas, and the State of Arkansas, Arkansas Department of Parks and Tourism entered into on May 7, 2008, and filed of record as Document Number 2008005583 in the records of the Circuit Clerk, Crawford County, Arkansas, the purpose of this Agreement is to allow the ADPT to develop and maintain a foot travel hiking trail and the use of the adjacent land area for bird watching, nature photography, nature study, or other similar mutually agreed to nature conservation low-impact, pedestrian activities and uses by ADPT patrons, volunteers, employees, contractors, researchers, or any other agent acting on behalf of or for the benefit of ADPT. The nonexclusive right granted by paragraph 1 and described in this paragraph does not otherwise limit the City's use and control of its property.

#### 3. City's Water Supply.

The parties acknowledge that the trail and the adjacent land area are located in the watershed properties surrounding the domestic water supply reservoir operated by the City. The primary

operational guideline for use of the Shepherd Springs Dam Trail and adjacent land area will be to not impair or interfere with the land's conservation value as watershed protection, as may be established by the City, of the source water quality for the City's water supply reservoir. In the event the City, or any state or federal regulatory agency having jurisdiction, issues a finding, order or regulation which prohibits, limits or otherwise affects the proposed Shepherd Springs Dam Trail or adjacent land area, ADPT agrees to discontinue the impacted function and otherwise comply with each finding, order or regulation. The City reserves for itself the unrestricted right of ingress and egress and the unrestricted right or use of any of its properties for any and all functions and uses related to the City's caretaking, water supply, watershed conservation, and management operations.

4. Rules and Regulations for Public Use.

- (a) No motorized vehicles will be allowed within the Shepherd Springs Dam Trail corridor or on adjacent land area except for maintenance purposes.
- (b) No mountain bicycles will be allowed within the trail corridor or on adjacent land area.
- (c) Horses will not be permitted within the Shepherd Springs Dam Trail corridor or on adjacent land area.
- (d) No campsites, picnic tables, picnic sites or restrooms will be developed or allowed and camping, campfires, or overnight stays will not be permitted within the Shepherd Springs Dam Trail corridor or on adjacent land area.

5. Care and Use of the Property.

- (a) The Shepherd Springs Dam Trail shall be established and maintained by ADPT according to the standards established in the Arkansas Trails System Maintenance Manual and its subsequent adoptions or revisions. ADPT shall install as needed any handrails, steps, water bars, culverts or bridges.
- (b) The Shepherd Springs Dam Trail shall be signed by ADPT with both markings and informational signs noting regulations for trail use as set forth herein. ADPT may post instructional, informative and interpretive signs as needed for the public's use and enjoyment of the trail. No signs shall be posted by anyone other than the ADPT without the written approval of City.
- (c) The Shepherd Springs Dam Trail shall be signed by ADPT at entry points into City property. Rules and regulations for public use related to City property will be posted at these locations unless relief of such requirement for a specific location is requested by ADPT and waived in writing by City.

- (d) Any secondary, volunteer or renegade trails and roads which develop shall be blocked and attempted to be obliterated by ADPT, and ADPT shall post signs prohibiting their use.
- (e) Trail users shall be requested to report observed violations of rules and regulations to ADPT, and ADPT shall promptly investigate such reports, take corrective actions as required and report in writing violations or problems observed to City.
- (f) ADPT shall inspect trail and observe adjacent lands and remove trash or other discarded items not less frequently than quarterly.
- (g) ADPT shall promptly report in writing to City any activity on lands covered under this Agreement, or as may be observed on other adjoining City property, that may be harmful to the City's water supply or adverse to watershed protection.

#### 6. Historic Preservation and Cultural Resources.

If during the construction or implementation of this project, any historic properties or cultural resources are discovered or identified, ADPT will immediately stop the project and notify the City of such discovery or identification. The City will then evaluate the discovery or identification of these sites through the Arkansas Historic Preservation Program and appropriate mitigation measures will be determined. It is the intent of the parties at the time of entering into this Agreement that all historic properties or cultural resources will be avoided and left undisturbed. Any uses or activities that are to be introduced, or anticipated to occur, as a result of the parties entering into this Agreement shall be directed away from historic properties or cultural resources now known to exist and restricted by the Arkansas Historic Preservation Program.

#### 7. Consent for Additional Facilities.

Subsequent to initial construction of the Shepherd Springs Dam Trail, ADPT shall not construct new or additional facilities without the prior written approval of the City. ADPT shall not make application for, or accept, any grant or financial assistance for any operation, construction, maintenance or improvement activity, or for reimbursement of any expense, related to the Shepherd Springs Dam Trail and the adjacent property area without the prior written approval of the City. The City may, but is not required to, withhold approval based on the terms of any grant or financial assistance from a third party proposed to be used by the APDT for financing.

#### 8. Term and Option to Renew.

The initial term of this Agreement shall commence as if entered into on May 7, 2008, the date on which the City and ADPT entered into the Lease Agreement for the operation of the Lake Fort Smith State Park for public purposes. Beginning with the initial date of the initial term, the primary

term of this Agreement shall be for a period of thirty-five (35) years. The ADPT is granted an option to renew the Agreement on the same terms and conditions for an additional period of twenty-five (25) years. In order to exercise said option to renew, ADPT must give written notice to City of ADPT's intention to exercise its option to renew not more than one (1) year prior to but at least six (6) months prior to the end of the initial Agreement term. In the event ADPT should fail to use or maintain the Lake Fort Smith State Park for a period of time in excess of six (6) months (whether during the primary term or option term), then this Agreement shall automatically terminate.

9. Liability to Improvements.

The City shall in no case be liable for any damage or injury to the Shepherd Springs Dam Trail herein consented to which may be caused by any action of the City or which may result from future operations undertaken by the City, in the management of its watershed properties and no claim or right to compensation shall accrue from such exercise of the City's land ownership or property rights.

10. Waiver.

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

11. Non-Assignment.

ADPT shall not assign this Agreement without the prior written consent of City.

12. Independent Status.

Nothing in this Agreement shall be deemed to constitute ADPT as the agent of the City for any purpose.

13. Severability.

Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and ADPT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

14. Hold Harmless.

In regard to loss, expense, damage, liability, claims or demands, whether at law or in equity for actual or alleged injuries to person or property arising out of any negligent act or omission by the Arkansas Department of Parks & Tourism, its employees or agents in the performance of this agreement, the Arkansas Department of Parks & Tourism agrees with the City of Fort Smith that: (a) it will cooperate with the City in the defense of any action or claim brought against the City seeking

the forgoing damages or relief; (b) the Arkansas Department of Parks & Tourism will in good faith cooperate with the City should the City present any claims of the forgoing in nature against the Arkansas Department of Parks & Tourism to the Claims Commission of the State of Arkansas; (c) the Arkansas Department of Parks & Tourism will not take any action to frustrate or delay the prompt hearing on claims of the forgoing nature by the said Claims Commission and will make reasonable efforts to expedite said hearing provided, however, the Arkansas Department of Parks & Tourism reserves its right to assert in good faith all claims and defenses available to it in any proceedings in said Claims Commission or other appropriate forum. The obligation of this paragraphs shall survive the expiration or termination of this Agreement.

15. General Provisions.

- (a) The captions used in the various paragraphs of this Agreement are for informational purposes and shall not be considered to be part of the text of the Agreement.
- (b) Any references to ADPT shall be construed as a reference to the State of Arkansas acting through both the Parks, Recreation and Travel Commission and the Arkansas Department of Parks and Tourism.
- (c) The provisions of this Agreement shall be construed according to the laws of the State of Arkansas.
- (d) In the event that either party to this Agreement determines that the other party is in default or breach of any provision of this Agreement (specifically including, without limitation, the primary operational guideline for the interaction of the park facilities and water reservoir is to protect the water quality of the water reservoir) the following procedure shall apply. The party making such a determination shall provide to the other at the address indicated below a written description of the alleged default or breach of this Agreement. The other party shall, within fifteen (15) days, provide a written response to the notice of breach from the other party. If that exchange of communications does not resolve the alleged breach of this Agreement, either party may request a meeting at which the chief executive officers of both parties (for the City, the chief executive shall be the City Administrator, for the ADPT, the chief executive shall be the Director of the Arkansas Department of Parks and Tourism) must appear within fifteen (15) days from the date of notice of the holding of such a meeting. If that meeting does not resolve the alleged default or breach, the City may revoke, and ADPT shall suspend, any use of the trail and adjacent land area authorized under this Agreement. Either party may then initiate an action with a court

having jurisdiction. No such litigation shall be initiated before the foregoing procedures have been followed except on good faith allegations that an emergency exists requiring intervention of a court having jurisdiction.

- (e) Any notice required to be given pursuant to this Agreement may be given to the following addresses:

City of Fort Smith  
c/o Director of Utilities  
P.O. Box 1908  
Fort Smith, AR 72902

Arkansas Department of Parks and Tourism  
State Parks Division  
c/o Director  
1 Capitol Mall  
Little Rock, AR 72201

This Agreement shall not be altered except in writing and approved by the appropriate officials of City and ADPT.

THIS AGREEMENT is executed as of the day first set forth above and each signator verifies that he or she is authorized to execute this Agreement for the purposes described herein.

Approved by the Arkansas State Parks, Recreation, and Travel Commission on the 18<sup>th</sup> day of October 2012.

CITY OF FORT SMITH

ARKANSAS DEPARTMENT OF PARKS  
and TOURISM

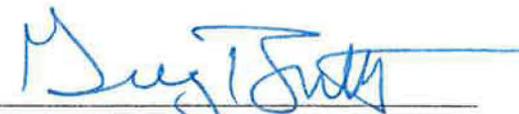
By: \_\_\_\_\_  
Mayor

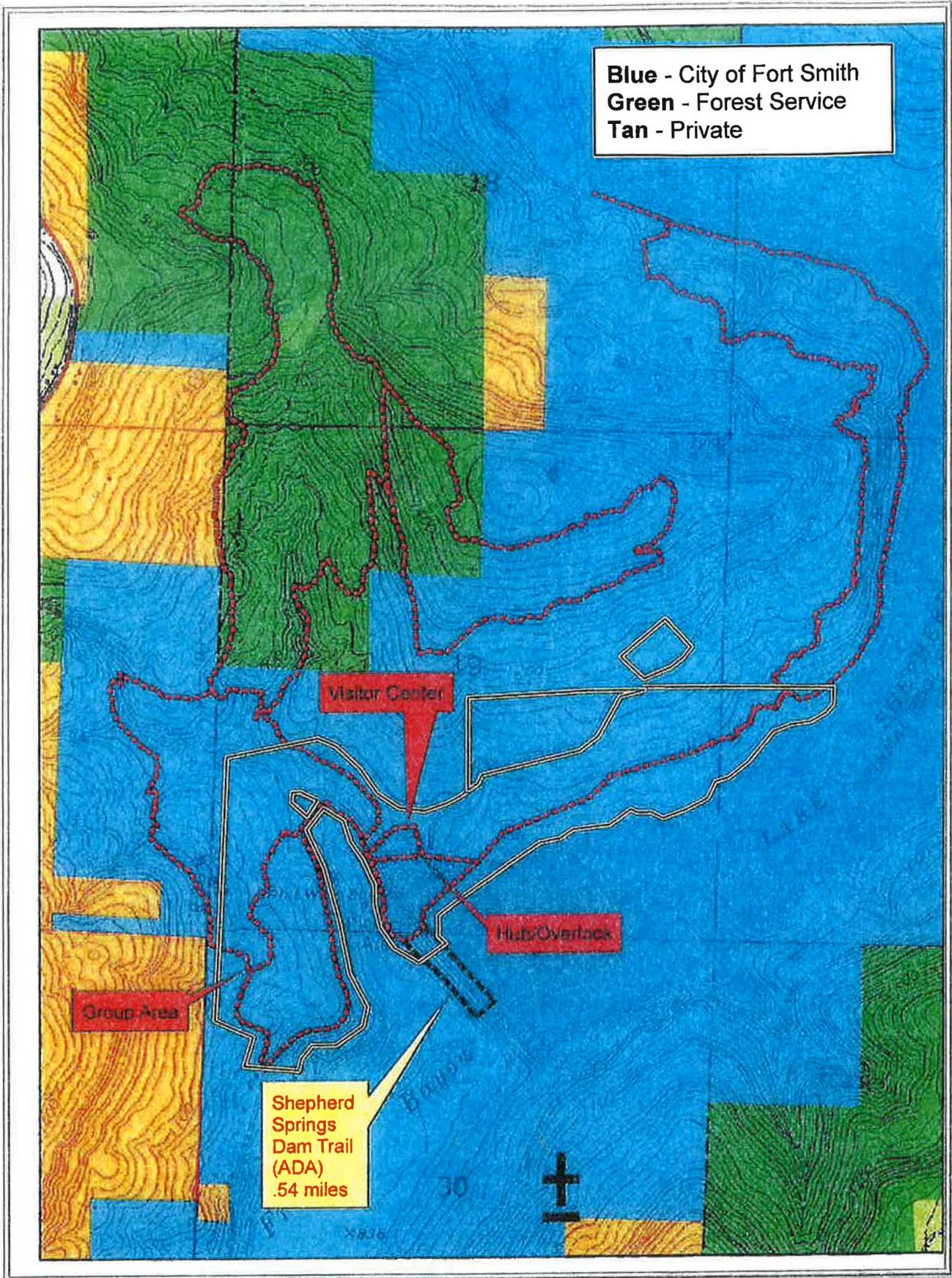
By:   
Richard W. Davies, Executive Director

ATTEST:

- and -

By: \_\_\_\_\_  
City Clerk

By:   
Greg Butts, Director of State Parks Division



Blue - City of Fort Smith  
 Green - Forest Service  
 Tan - Private

Visitor Center

Hub/Overlook

Group Area

Shepherd Springs Dam Trail (ADA) .54 miles

EXHIBIT A

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 ) SS  
County of Pulaski )

On this 24<sup>th</sup> day of October, 2012, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Pulaski, Arkansas, appeared in person the within named Richard W. Davies, who stated that he is the Executive Director of the Arkansas Department of Parks and Tourism, and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said agency, and further stated and acknowledged that he had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 24<sup>th</sup> day of October, 2012.



Savannah Mitchell

My Commission Expires:

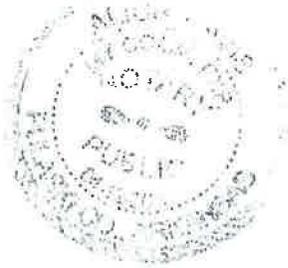
12/16/2021

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 ) SS  
County of PULASKI )

On this 29<sup>th</sup> day of OCTOBER, 2012, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of PULASKI, Arkansas, appeared in person the within named Greg Butts, who stated that he is the Director State Parks Division of the Arkansas Department of Parks and Tourism, and is duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said agency, and further stated and acknowledged that he had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 29<sup>th</sup> day of OCTOBER, 2012.



Alicia Davis

My Commission Expires:

4/12/15

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
  )     SS  
County of Sebastian     )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person Sandy Sanders and Sherri Gard to me personally well known, who stated that they were the Mayor and Clerk of the City of Fort Smith, Arkansas, a municipal corporation, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said city, and further stated and acknowledged that they had executed the same for the consideration, uses and purposes therein mentioned and set forth, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AMENDMENT NUMBER ONE TO THE AGREEMENT WITH CDM SMITH, INC., FOR PROVIDING ENGINEERING SERVICES FOR THE WASTEWATER MANAGEMENT PLAN UPDATE

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

SECTION 1: Amendment Number One to the Agreement with CDM Smith, Inc., for providing engineering services associated with the Wastewater Management Plan Update, Project Number 12-10-E1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute Amendment Number One to the Agreement in the amount of \$ 59,925.00, for professional engineering services, adjusting the Agreement to an amount of \$418,817.00.

This Resolution adopted this \_\_\_\_\_ day of November 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## MEMORANDUM

**TO:** Ray Gosack, City Administrator

**DATE:** October 31, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Wastewater Management Plan Update  
Project 12-10-E1

In April of this year the Board authorized an engineering agreement with CDM Smith for updating the city's 1993 wastewater management plan. As discussed in the March 19th memo accompany the Resolution authorizing that agreement, the management plan has been the blueprint for a series of wastewater treatment and collection system improvements that the city has undertaken over the past several years to address wet weather sewer overflows. Earlier discussions with the U.S. Department of Justice and EPA regarding the city's efforts to eliminate wet weather overflows and bypasses, identified the need for an update to the wastewater management plan.

One of the tasks included in the management plan update is to examine wastewater treatment plant improvements completed since the original management plan was prepared and to identify treatment plant and system improvements that will be needed to ensure reliable operations. One system asset that has been identified as critical to uninterrupted service is the 48-inch interceptor line serving the Massard wastewater treatment plant. This interceptor, constructed in 1966 and at depths of 20 to 30 feet, is 5,800 feet in length and is the only line transporting wastewater to the Massard plant. The internal condition of this 45 year old interceptor is unknown and we do not have equipment capable of inspecting this line. CDM Smith has made arrangements for RedZone Robotics to perform a detailed, internal inspection of this line utilizing a multi-sensor robotic inspection platform. This robotics platform will collect data on the pipe condition utilizing digital CCTV, sonar, and laser technology. Field data will be processed and a final report prepared detailing pipe condition. The results of this inspection will be utilized to plan any necessary repairs, rehabilitation or replacement that might be necessary. An exhibit showing the location of this interceptor line is attached.

I have attached a Resolution authorizing the Mayor to execute Amendment Number One to the Agreement with CDM Smith for an amount of \$59,925. Funds for these services are available from the 2012 sales tax and use tax bonds issued for continuation of wet weather sewer improvements.

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

attachment

pc: Jeff Dingman

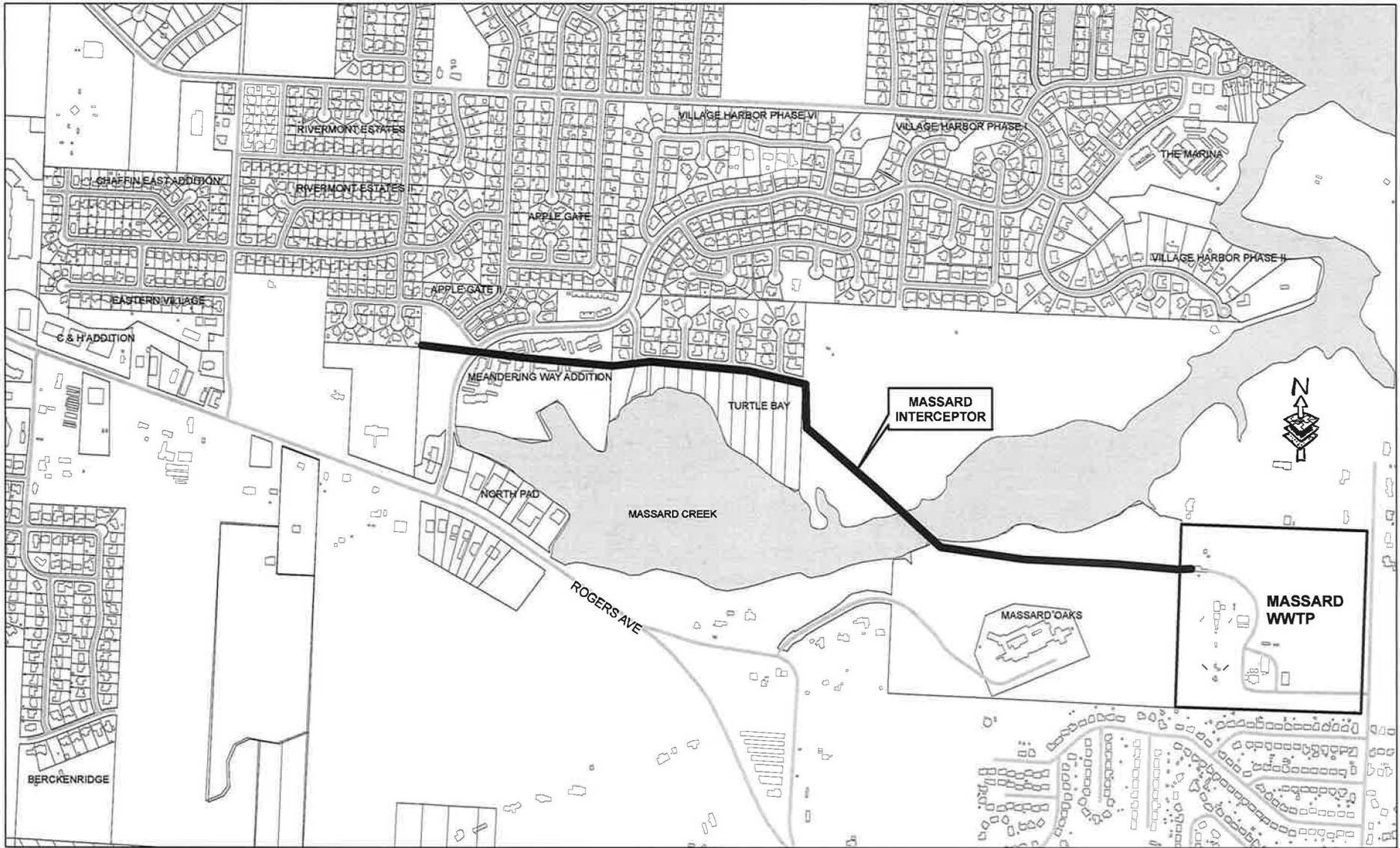


Exhibit A

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDED AGREEMENT WITH ARKANSAS VALLEY ELECTRIC COOPERATIVE CORPORATION AND ARKANSAS ELECTRIC COOPERATIVE CORPORATION FOR TERMS AND CONDITIONS FOR INTERCONNECTION AND PARALLEL OPERATION OF THE LEE CREEK HYDRO GENERATION FACILITY

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

The Mayor is hereby authorized to execute an Amended Agreement with the Arkansas Valley Electric Cooperative Corporation and Arkansas Electric Cooperative Corporation, attached hereto as an exhibit, setting out the terms and conditions for interconnection and parallel operation of the Lee Creek Hydro Generation facility.

This Resolution adopted this \_\_\_\_\_ day of October 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** November 1, 2012

**FROM:** Steve Parke, Director of Utilities

**SUBJECT:** Lee Creek Interconnection Agreement with  
Arkansas Valley Electric Cooperative Corporation  
and Arkansas Electric Cooperative Corporation

The Lee Creek water treatment facility operates a hydropower electric generator as part of the license granted by the Federal Energy Regulatory Commission. Arkansas Valley Electric Cooperative Corporation (AVECC) operates the power distribution system and service connection to the Lee Creek facility. At that time AVECC purchased the electricity it distributed through its system from OG&E. AVECC was both the electric power supplier to, and power purchaser from, the Lee Creek facility. OG&E no longer serves AVECC as a wholesale customer and AVECC now purchases its power from the Arkansas Electric Cooperative Corporation (AECC).

The arrangement between AVECC and AECC is different in that AVECC now sells the power to us and AECC is responsible for purchasing the power we generate. There are no physical changes to be made as the incoming and outgoing power is still transmitted across the same lines. However, this change in power supply and purchase does require that we amend our interconnection and parallel operation agreement with AVECC to include and identify AECC as the power purchaser. The power purchase is regulated by the Arkansas Public Service Commission and remains unchanged. The actual purchase price can vary from month to month based upon the fuel adder provision included in the calculation. The fuel adder is determined by the cost of fuel burned at AECC's generation plants and the cost of purchased energy. Historically, the purchase price paid to the city for any power generation exported onto the grid is \$0.03 per kilowatt hour.

The attached Resolution authorizes the Mayor to execute the agreement for Amended Terms and Conditions for Interconnection and Parallel Operation of City of Fort Smith's Hydro Generation Facility, Arkansas Valley Electric Cooperative Corporation and Arkansas Electric Cooperative Corporation. This agreement should be submitted for the Board's consideration at its next scheduled meeting.

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

attachment

pc: Jeff Dingman

**AMENDED TERMS AND CONDITIONS FOR  
INTERCONNECTION AND PARALLEL OPERATION OF  
CITY OF FORT SMITH'S HYDRO GENERATION FACILITY,  
ARKANSAS VALLEY ELECTRIC COOPERATIVE CORPORATION,  
AND  
ARKANSAS ELECTRIC COOPERATIVE CORPORATION**

THIS AMENDED AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2012, by and among City of Fort Smith, Arkansas hereinafter referred to as the "Producer", Arkansas Valley Electric Cooperative Corporation hereinafter referred to as the "Cooperative", and Arkansas Electric Cooperative Corporation hereinafter referred to as "AECC". This Amended Agreement shall supersede the "Terms and Conditions for Interconnection and Parallel Operation of City of Fort Smith's Hydro Generation Facility and Arkansas Valley Electric Cooperative Corporation" made on 25 November 1992.

**PURPOSE**

The Producer intends to own and operate an electric power generating facility using generation from a renewable energy source (water). The Producer's generation facility meets the requirements of a "qualifying facility" pursuant to the rules of the Federal Energy Regulatory Commission hereafter referred to as "FERC" and the Arkansas Public Service Commission hereinafter referred to as "Commission". The Producer desires to operate the generating facility in parallel with the Cooperative's electric system for the purpose of generating power for the Producer's own consumption, or for sale to AECC or both.

The Cooperative will permit the Producer to interconnect and operate the Producer's generating facility in parallel with the Cooperative's electric system for the purpose of delivering power to AECC for purchase from the Producer under the terms and conditions of this Amended Agreement and the terms and conditions of AECC's QF-1 rate or its successor rate.

**FACILITY**

The electric power generation facility to which this Amended Agreement applies is described as follows:

Make	KVAERNER
Model	Horizontal Tubular Kaplan
Serial #	0209
Fuel or Energy Source	Water
Nameplate Output Rating	1563 (Turbine) kW
Maximum Effective Output	1500 @ 0.9 P.F. kW
Operating Voltage	4160 Volts
Connection	60 hertz, three phase
Excitation	Static



output from the Producer's generation facility and the Producer shall reimburse the Cooperative and AECC for all damages which result, if the generation facility fails to meet and operate in compliance with all standards and requirements of a qualifying facility.

2. Cooperative Service: The Cooperative will supply electric service to the Producer in accordance with an existing Agreement for Electric Service and any and all amendments which may hereafter be executed by the two parties. The charges by the Cooperative to the Producer for all power and energy supplied by the Cooperative shall be in accordance with the Rate Schedules which are a part of that Agreement for Electric Service.
3. Producer Service: Under this Amended Agreement, AECC will receive and pay for the power and energy which the Producer delivers into the Cooperative's system at the point of "In and Out Metering" using a meter(s) of AECC's choosing at a rate equal to AECC's QF-1 rate for Qualifying Facilities as approved by the Commission less the amount shown in the QF-1 rate for Avoided Transmission Cost and Losses. Capacity payments shall only be made by AECC for power that is readily dispatchable, at any time, when called upon by AECC and only in the event that AECC has a need for such capacity. This rate, or its successor, is subject to change from time to time and when so changed, the new rate shall apply to this Amended Agreement.
4. Rules and Regulation: Interconnection, parallel operation, sales and purchases of electricity under this Amended Agreement and the applicable Rate Schedules will be subject to all applicable FERC and Commission Rules and Regulations, and to the Cooperative's Rules and Regulations which may be changed from time to time, and upon filing with and approval by the Commission to become effective and binding as a matter of law without any further notice.
5. Installation: The Producer shall be solely responsible for all expenses, installation, maintenance, and operation of all facilities and equipment to the point of interconnection with the Cooperative's existing electric system. The Producer's generation facility shall be designed and installed in accordance with applicable codes, regulations and prudent engineering practice.

The interconnection facilities installed and maintained by the Cooperative or AECC shall remain the property of the Cooperative or AECC under its complete ownership and control.

6. Interconnection Information: At least 60 days in advance of initial interconnection, the Producer shall submit a plan showing the electrical design of the generating installation, including equipment for interconnection with the Cooperative's system.

The written plan shall include at least: (a) a complete wiring diagram, (b) a physical layout sketch, and (c) a description of electrical characteristics and specifications of the Producer's

generation facility and interconnection equipment. The Producer shall also provide such additional information as may be required by the Cooperative or AECC.

The Cooperative will notify the Producer in writing of any conditions which it discovers that might prevent safe interconnection within 30 days from receipt of the plan and requested information. The Cooperative will review the plan to insure the safety and protection of the Cooperative's electric system but shall in no way be liable or responsible of the performance of Producer's generation facility or interconnection equipment as a result of any review or acceptance of such plan. The Cooperative does not guarantee the adequacy of the Producer's equipment to perform its intended function.

7. Metering: At or near the interface point between the Cooperative's facilities and the Producer's facilities a set of "In and Out Metering" shall be installed by the Cooperative or AECC and each meter shall be equipped to prevent reverse metering. The Producer shall pay for all power and energy recorded by the "In" metering in accordance with Section 2 of this Amended Agreement and AECC shall pay for all power and energy recorded by the "Out" metering in accordance with Section 3 of this Amended Agreement.

The metering shall be installed, operated and maintained by the Cooperative or AECC, at its expense and shall remain the property of the Cooperative or AECC. The metering shall be used to measure power flow and provide any other monitoring or load research information desired by the Cooperative or AECC. Any connection to the metering by the Producer for supplementary metering or load research information must be approved by the Cooperative and AECC and any costs associated with such connection shall be the responsibility of the Producer.

The meter(s) will, by comparison with accurate standards, be tested and calibrated as often as necessary. If a meter is found to be inaccurate, it shall be resorted to an accurate condition or replaced at the expense of the Cooperative or AECC.

In the event Producer requests the Cooperative or AECC to test a meter, the Producer shall deposit with the Cooperative or AECC a Meter Test Fee as filed in the Cooperative's Rules and Regulations. If the meter is found to be within the accuracy limits established by the Cooperative's Rules and Regulations, the entire Meter Test Fee will be retained in order to help defray the expense in testing the meter(s). In all other cases, the Meter Test Fee shall be refunded to the Producer.

Any meter(s) registering not more than an average error of 2% fast or 2% slow shall be deemed accurate. The readings of any meter(s) which are disclosed to have been inaccurate shall be corrected according to the percentage of inaccuracy as determined by the tests. The error found shall be considered to have existed for a period of no more than 6 months preceding the test or for the time the meter(s) has been in service at the location, if less

than 6 months, or from the actual time the meter(s) became damaged, if such time can positively be determined and is less than 6 months prior to the time of the test.

8. Synchronizing and Automatic Disconnection: The Producer will furnish, install, operate, and maintain in good order and repair all equipment required for the safe operation of the Producer's generation facility in parallel with the Cooperative's electric system. The equipment will have the capability to both establish and maintain synchronism with the Cooperative's electrical system and to automatically disconnect the Producer's generation facility from the Cooperative's electric system in the event of an outage of the Cooperative's electric system or a malfunction of the Producer's generation facility. Appendix "A" in this Amended Agreement presents a schematic that shows the minimum equipment required for interconnection synchronization.
  
9. Protection of the Producer's Generation Facility: The Producer's generation facility will also be designed, installed, and maintained to be self-protected from normal and abnormal conditions in the Cooperative's electric system. The conditions for which the generation facility shall be self-protected shall include, but not be limited to, failures, interruptions, voltage and wave form fluctuations, overvoltage, undervoltage, over current, frequency deviation and faults. The self-protection features and mechanisms will provide protective functions in accordance with Cooperative's Rules and Regulations, operating procedures and sectionalizing schemes. Specialized protective functions may be required by the Cooperative when, in the sole judgment of the Cooperative, the particular generation facility characteristics and electric system characteristic so warrant. In the event that the Producer's generation facility is automatically or manually deenergized and/or disconnected as a result of an outage of the Cooperative's distribution system, parallel operation will not be reinitiated until the Cooperative's distribution system has been restored to continuous operation for at least five minutes. In the event that the Producer's generation facility is automatically or manually deenergized and/or disconnected as a result of malfunctions of the Producer's generation facility, parallel operation will not be reinitiated until the Cooperative is notified.
  
10. Protection of Cooperative's Property: The Producer at all times shall protect the property of the Cooperative and AECC on the premises of the Producer and shall permit no person other than the employees and agents of the Cooperative or AECC and other persons authorized by law to inspect, work on, open, or otherwise handle the wires, meters, or other facilities of the Cooperative or AECC.

In case of loss or damage to the property of the Cooperative or AECC on account of any carelessness, neglect, tampering, or misuse by the Producer's agents, servants, or employees, the Producer shall reimburse the Cooperative or AECC for the cost of any necessary repairs or replacement of such facilities or the value of such facilities.

11. Indemnification: The law requires that the Producer's generation facility and equipment shall not cause damage to the Cooperative's or AECC's electric system or equipment or present an undue hazard to utility personnel.

The Cooperative or AECC shall not be liable for any loss or damage to property or injuries to or death of persons, whether suffered by Producer, its agents, or employees, or by any third person, persons, or corporations, resulting from or arising out of or in any way connected with the Producer's "on premises" facilities, including the location, interconnection, installation, maintenance, use or operation of Producer's generation facility or interconnection equipment, or from electric energy present therein or escaping therefrom. Producer agrees to indemnify and save the Cooperative and AECC harmless from all such loss, damages, injuries or death; provided, said indemnity and hold harmless obligation shall not be applicable if the cause is the sole negligence or intentional acts of the Cooperative or AECC or its agents or employees. The Cooperative or AECC shall not be liable for any consequential damages.

12. Liability Insurance: In the event that a court or administrative agency of competent jurisdiction makes a determination reasonably implying the need for liability insurance coverage by the Producer or if the absence of such coverage actually results in a disproportionate increase in the Cooperative's insurance or self-insurance costs, the Producer will be required to procure and prove liability coverage in an amount commensurate with the exposure.

13. Quality of Service: The Producer's generating facility will generate power at the nominal voltage and frequency of the Cooperative's electric system at the Producer's delivery point. The Producer's generation facility shall generate at a power factor that is as near one hundred percent (100%) as is practicable. In no case will the generation facility generate at less than ninety percent (98%) leading (consuming vars). In the event that the power factor limit is not met, the Producer will provide proper power factor correction or reimburse the Cooperative for the cost of any required correction directly attributable to the Producer's generation facility.

The overall quality of the power provided by the Producer's generation facility including, but not limited to, the effects of harmonic distortion, voltage regulation, switching surges, and power factor, will be such that the Cooperative's electric system is not adversely affected by the Producer's generation facility. In the event that adverse effects are directly attributable to the Producer's generation facility, the Producer will correct the cause of such effects or reimburse the Cooperative for the cost of any required correction.

14. Access: The Producer shall give the duly authorized agents and employees of the Cooperative and AECC full and free access to the premises of the Producer for the purpose of operating or inspecting the disconnect switch and metering, inspecting the generation,

facility, or for any other purpose incidental to the electric service supplied or purchased by the Cooperative or AECC. If the Producer erects or maintains locked gates or other barriers, the Producer will furnish the Cooperative and AECC with convenient means to circumvent the barriers for access to the disconnect switch and metering.

15. Legal Compliance: The Producer's generation facility, including any interconnection equipment, shall meet the requirements of the National Electrical Safety Code and the National Electrical Code and any applicable codes, city or county ordinances and standards, and state and federal laws and regulations. If required, the Producer's generation facility shall be inspected and approved as necessary by any public authority having jurisdiction before being interconnected with the Cooperative's electric system.
16. Notice to Commence Parallel Operation and Inspection: The Producer will give the Cooperative not less than 30 days' notice of the Producer's intent to energize the Producer's generation facility and initiate parallel operation. Such notice will include the submission for inspection and review by the Cooperative and AECC of at least: (a) this executed Amended Agreement, (b) documentation of the modification of the interconnection information previously supplied to the Cooperative as required by Section 6 of this Amended Agreement, and (c) the proposed dates(s) for initial energization and start up testing. The Producer will not initiate parallel operation of the Producer's generation facility until permission to do so is granted in writing from the Cooperative.

The Cooperative will have the option prior to the scheduled energization of the Producer's generation facility to inspect the facility and perform such tests as may be reasonably required to ensure the safe interconnection and proper parallel operation of the Producer's generation facility. The Cooperative shall have the right to have a representative present at the initial energization and start up testing of the Producer's generation facility. The Cooperative reserves the right to inspect and test the generation facility for the protection of the Cooperative's electric system without any intent or responsibility for the warranting of the design or performance of the Producer's generation facility.

The Cooperative will either notify the Producer in writing of any conditions which it discovers that might prevent safe interconnection and proper parallel operation or give written permission to interconnect and initiate parallel operation within 30 days from receipt of adequate notification and documentation.

17. Notice of Modification: The Producer will not make any changes affecting the characteristics, performance, or protection of the Producer's generation facility without notifying the Cooperative and AECC in advance. In the event the proposed changes may affect the interconnection and parallel operation with the Cooperative's system, the Cooperative or AECC may exercise the right to review the changes and examine the generation facility after the changes are made.

18. Disclaimer: The responsibility of the Producer regarding his use of the electric service supplied by the Cooperative and his generation of electric power is not set aside, and the Cooperative or AECC shall in no way be liable or responsible, on account of any inspections or recommendations by the Cooperative or AECC which are made as a courtesy to the Producer or as a protection to the electric service supplied by the Cooperative to its other customers. The Cooperative and AECC reserve the right, but assume no duty, to inspect the Producer's installation, generation facilities, and interconnection equipment for suspected unsafe condition. The Cooperative and AECC make no representations concerning and expressly disclaim any expertise, special knowledge or responsibility relating to the design or performance of the Producer's generation facility. The Cooperative's willingness to sell and AECC's willingness to purchase power from the Producer's generation facility will in no way be construed to be a warranty of efficiency, cost effectiveness, safety, durability or reliability of the Producer's generation facility and interconnection equipment. The Producer understands and agrees to undertake and assume all risks of a producer of electric energy by operation of his generation facility.
19. Refusal to Purchase: The Cooperative or AECC may, at certain times and as operating conditions warrant, reasonably refuse to accept part or all of the output of the Producer's generation facility. Such refusal shall be based on system emergency constraints, special operation requirements, adverse effects of the Producer's generation facility on the Cooperative's or AECC's system or violation by the Producer of the terms of this Amended Agreement.
20. Force Majeure: The Cooperative and AECC shall not be liable for either direct or consequential damages resulting from failures, interruptions, or voltage and wave form fluctuations occasioned by causes reasonably beyond the control of the Cooperative or AECC, including, but not limited to, an act of God or public enemy, sabotage and/or vandalism, accidents, fire, explosion, labor disturbances, strikes, order of any court or judge granted in any bona fide adverse legal proceeding or action, or any order of any commission, tribunal or governmental authority having jurisdiction.
21. Term: The acceptance of this instrument by the Cooperative and AECC shall constitute an agreement between the Producer, Cooperative, and AECC which shall continue in force for an initial term of one (1) year(s) from the date of execution by the parties. After the initial term, this Amended Agreement shall continue in effect from year to year thereafter subject to cancellation by any party upon at least 30 days prior written notice to the other parties.
22. Assignment: This Amended Agreement and all other terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto, save that no assignment hereof shall be effective without the written consent of the Cooperative and AECC being first obtained.

IN WITNESS HEREOF, the Cooperative, AECC, and the Producer have caused this Amended Agreement to be executed in triplicate as of the day, month and year first above written.

City of Fort Smith, Arkansas

\_\_\_\_\_  
Sandy Sanders  
Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Arkansas Valley Electric Cooperative Corporation

\_\_\_\_\_  
William H. Peters  
Chief Executive Officer

\_\_\_\_\_  
Date

Arkansas Electric Cooperative Corporation

\_\_\_\_\_  
Ricky Bittle  
Vice President  
Planning, Rates and Dispatching

\_\_\_\_\_  
Date