Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith D. Lau
Ward 2 – Andre' Good
Ward 3 – Mike Lorenz
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
Special Meeting / Study Session
December 10, 2013 ~ 12:00 Noon
Fort Smith Public Library Community Room
3201 Rogers Avenue

SPECIAL MEETING

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)

1. Items regarding acquisition of property for the Mill Creek Pump Station and Equalization Tank Project

   A. Resolution authorizing the City Administrator to accept an offer made by property owner for the acquisition of real property in connection with the Mill Creek Pump Station and Equalization Tank Project *($147,500.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

   B. Resolution authorizing acquisition of real property in connection with the Mill Creek Pump Station and Equalization Tank Project *($86,000.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

ADJOURN

STUDY SESSION

1. Review framework for a board governance policy ~ *Requested at the July 2013 Board of Directors Retreat* ~

2. Discuss establishment of a beautification committee ~ *Requested at the July 2013 Board of Directors Retreat* ~

3. Review request for placement of a communication tower in Carol Ann Cross Park *(Verizon Wireless / Smith Communications)*

4. Review preliminary agenda for the December 17, 2013 regular meeting

The City of Fort Smith ARKANSAS

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

MEDIA RELEASE

December 5, 2013

Directors Keith Lau, Pam Weber, Kevin Settle and Philip H. Merry, Jr. have called a special meeting for 12:00 Noon, Tuesday, December 10, 2013 at the Fort Smith Public Library Community Room to consider the following:

- Items regarding acquisition of property for the Mill Creek Pump Station and Equalization Tank Project

  A. Resolution authorizing the City Administrator to accept an offer made by property owner for the acquisition of real property in connection with the Mill Creek Pump Station and Equalization Tank Project *($147,500.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

  B. Resolution authorizing acquisition of real property in connection with the Mill Creek Pump Station and Equalization Tank Project *($86,000.00 / Utility Department / Budgeted - 2012 Sales and Use Tax Bonds)*

The regularly scheduled study session will occur immediately following the special meeting.

For agenda information, please contact the City Clerk's Office at 784-2208. Once finalized, the agenda for the special meeting and regularly scheduled study session will be posted on the City's website, www.fortsmithar.gov.

Sherri Gard

Sherri Gard, City Clerk

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

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RESOLUTION NO._____ SM-1A

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO
ACCEPT AN OFFER MADE BY PROPERTY OWNER FOR THE ACQUISITION
OF REAL PROPERTY IN CONNECTION WITH THE MILL CREEK
PUMP STATION AND EQUALIZATION TANK 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 for the purchase of 3.59 acres at 501 Navy Road designated as 10-01-P, Tract 1, for the Mill Creek Pump Station Wet Weather Improvements, Project Number 10-01-C1, made by the following property owner:

Tract No.	Owner	Amount
1	B & B Properties, LLC	$ 147,500.00

and to make payment for same in connection with the acquisition of real property interests.

This Resolution adopted this _____ day of December 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____npr

RESOLUTION NO. _____ SM-1B

RESOLUTION AUTHORIZING ACQUISITION OF REAL PROPERTY IN CONNECTION WITH THE MILL CREEK PUMP STATION AND EQUALIZATION TANK PROJECT

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

SECTION 1: The following value for the property acquisition designated as 10-01-P, Tract 1, for the Mill Creek Pump Station and Equalization Tank, Project 10-01-C1 was previously approved, and acquisition of the real property was authorized by the Board of Directors of the City of Fort Smith on September 3, 2013 by Resolution R-139-13:

Tract No.	Owner	Appraised Value
1	B & B Properties, LLC	$86,000.00

The City Administrator, or his designated agent, and the City Attorney are hereby authorized to acquire the real property for the above listed appraisal amount.

SECTION 2: In the event the property 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 property herein described and make a deposit of just compensation of the values of the property listed herein. All such actions previously taken for this project are hereby confirmed.

This Resolution adopted this ____ day of December 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____npr

MEMORANDUM

December 6, 2013

TO: Mayor and Board of Directors

FROM : Ray Gosack, City Administrator

SUBJECT: Property Acquisition for Sanitary Sewer Project

The staff met Thursday morning with Steve Beam to discuss acquisition of the property he and his family own on Navy Rd. The property is needed for a wet weather sanitary sewer project. The project helps the city comply with the EPA requirements for remedying the overflows and backups of sanitary sewage. Discussions with Mr. Beam about the acquisition of his property were initiated early this year.

I began Thursday's discussion by asking Mr. Beam about the bank loan that was mentioned at Tuesday night's board meeting. The loan is $200,000, and the collateral for the loan is the subject property and a $200,000 CD held by Mr. Beam (see attached loan agreement). Since the loan is backed by a CD of the same amount as the loan, it's reasonable to assume that the bank is not relying on the property having a value of $200,000. The loan was taken out in July of this year and expires next month.

In July 2013, Steve Beam Construction filed a materialman's lien (copy attached) on the subject property in the amount of $206,280. Mr. Beam concurred that any discussions about purchase price for the property would fully resolve this lien. He said that there are no other encumbrances on the property.

We then began discussing a purchase price for the property. Mr. Beam opened with an offer of $160,000. I stated at Tuesday's board meeting there was discussion of $147,500. I also mentioned

that some board members seemed to be willing to add the cost of litigation ($20,000) to the city's appraisal price ($86,000). I asked Mr. Beam if he would consider accepting $106,000. Mr. Beam said that he would agree to the $147,500 that he mentioned at Tuesday night's meeting. I told Mr. Beam that I wasn't sure if there was enough board support for a payment in this range. I asked if he could consider a figure in the range of $115,000 which is closer to the appraisal/legal fee figure. Mr. Beam said at least three times that $147,500 was as low as he would go, and that he wouldn't go any lower than that figure. Mr. Beam believes this figure takes into account the value of the fill material placed on the property (even though the property elevation is still 6' below the 100-year flood elevation).

I want to emphasize that none of these figures are based on the fair market value information generated by the city that we use in negotiations for all other property acquisitions by the city. The figures are based solely on negotiations in an attempt to arrive at a price agreeable with Mr. Beam and the board.

In order that we move forward with this land acquisition, we have 2 resolutions for the board's consideration. The first would accept Mr. Beam's final offer and authorize acquisition for $147,500. The second resolution would authorize the use of eminent domain proceedings. The approval of either resolution will let us get under way with the public benefit project of improving the sanitary sewer system.

- Ray

Attachments

attn: Steve Parke

2013F-11892 6
2013F-11892
Certificate of Record
FORT SMITH DISTRICT
SEBASTIAN COUNTY, ARKANSAS
SHARON BROOKS, CO CLERK & RECORDER
07/29/2013 11:20:38AM
Fee: 40.00 Pages: 6

ACCOUNT AND AFFIDAVIT OF ACCOUNT MATERIALMAN'S OR LABORER'S LIEN

Steve Beam Construction, Inc., a corporation, by Steve Beam, the President of such corporation, states on oath;

1. That Steve Beam Construction, Inc. sold and delivered to B & B Properties, LLC the materials and furnished the labor listed and set forth in the statement of account which is attached hereto as Exhibit "A" and incorporated herein. The final delivery of such materials or furnishing of such labor occurred within the last 120 days.

2. That the attached statement of account is true and correct, and that there is now due and owing to Steve Beam Construction, Inc. after allowing all credits, the sum of $206,280.00.

3. That such materials and labor was furnished for and used in the construction of excavation and embankment work, which was constructed on the following described property in Sebastian County, Arkansas:

DESCRIPTION: SEE EXHIBITS "B" AND "C"

4. That Steve Beam Construction, Inc. claims a lien on this property to secure the sum of $206, 280.00 and that more than 10 days ago caused notice to be served, copy of which is attached hereto as Exhibit "D".

By: Steve Beam
President, Steve Beam Construction, Inc.

VERIFICATION

STATE OF ARKANSAS
COUNTY OF SEBASTIAN

SUBSCRIBED AND SWORN TO BEFORE ME A NOTARY PUBLIC ON THIS THE 29TH DAY OF JULY, 2013

Allison Taylor
NOTARY PUBLIC

MY COMMISSION EXPIRES:

ALLISON TAYLOR
Arkansas - Sebastian County
Notary Public - Comm# 12383545
My Commission Expires Aug 15, 2021

2013F-11892
CHRISTOPHER CONLEY - CUSTOMER TOOK ORIG

6/40

and Cml 360

FIXED RATE LOAN

BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	
B and B Properties LLC 1104 M St Barling AR 72923-1832	SIMMONS FIRST NATIONAL BANK 501 MAIN ST. P.O. BOX 7009 PINE BLUFF, AR 71601	TAX ID #**-***4575 Loan Number 85976793 Date 07/25/13 Maturity Date 01/25/14 Loan Amount $ 200,000.00 Renewal Of

For value received, I promise to pay to you, or your order, at your address listed above the **PRINCIPAL** sum of Two hundred thousand & no/100 Dollars $ 200,000.00

☒ **Single Advance:** I will receive all of this principal sum on N/A. No additional advances are contemplated under this note.

☐ **Multiple Advance:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of $ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____.

☒ **Closed End Credit:** You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from July 25, 2013 at the rate of 2.20 % per year until January 25, 2014.

☐ **Variable Rate:** This rate may then change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____.
A change in the interest rate will take effect _____.

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %. The rate may not change more than _____ % each _____.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____.

ACCRUAL METHOD: Interest will be calculated on a Actual/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____.

☒ **LATE CHARGE:** If a payment is made more than 10 days after it is due, I agree to pay a late charge of 10% of the Past Due Payment amount with a $250.00 Maximum and a $25.00 Minimum.

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____.

PAYMENTS: I agree to pay this note as follows:

☒ **Interest:** I agree to pay accrued interest At Maturity January 25, 2014

☒ **Principal:** I agree to pay the principal At Maturity - January 25, 2014

☐ **Installments:** I agree to pay this note in _____ payments. The first payment will be in the amount of $ _____ and will be due _____. A payment of $ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____.

PURPOSE: The purpose of this loan is Mortgage Commercial Property.

ADDITIONAL TERMS:

LOAN PAYMENTS RECEIVED ON SATURDAY WILL BE CREDITED THE FOLLOWING BUSINESS DAY.

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SECURITY

SECURITY INTEREST: I give you a security interest in all of the Property described below that I own or have sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property.

☐ **Accounts and Other Rights to Payment:** All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which I have by law or agreement against any account debtor or obligor.

☐ **Inventory:** All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ **Equipment:** All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule I give to you, but such a list is not necessary to create a valid security interest in all of my equipment.

☐ **Instruments and Chattel Paper:** All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.

☐ **General Intangibles:** All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use my name.

☐ **Documents:** All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.

☐ **Farm Products and Supplies:** All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ **Government Payments and Programs:** All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.

☐ **Investment Property:** All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.

☒ **Deposit Accounts:** All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.

☒ **Specific Property Description:** The Property includes, but is not limited by, the following:

SFNB CD #101741445 in the name of Steve Beam
501 Navy Rd, Fort Smith, AR 72903

I am giving you a security interest in property to secure this loan. I understand that I must keep this property insured against loss, expense or damage due to fire, theft, collision or other such risks in the amounts you require. If I fail to do so, you are authorized to purchase insurance to protect your interest in the property, and may add the cost to the amount I owe you.

If applicable, enter real estate description and record owner information: _____

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.

Borrower/Owner State of organization/registration (if applicable) Arkansas

ADDITIONAL TERMS OF THE SECURITY AGREEMENT

GENERALLY - This agreement secures this note and any other debt I have with you, now or later. However, it will not secure other debts if you fail with respect to such other debts, to make any required disclosure about this security agreement or if you fail to give any required notice of the right of rescission. If property described in this agreement is located in another state, this agreement may also, in some circumstances, be governed by the law of the state in which the Property is located.

NAME AND LOCATION - My name indicated on page 1 is my exact legal name. If I am an individual, my address is my principal residence. If I am not an individual, my address is the location of my chief executive offices or sole place of business. If I am an entity organized and registered under state law, my address is located in the state in which I am registered, unless otherwise indicated on page 2. I will provide verification of registration and location upon your request. I will provide you with at least 30 days notice prior to any change in my name, address, or state of organization or registration.

OWNERSHIP AND DUTIES TOWARD PROPERTY - I represent that I own all of the Property, or to the extent this is a purchase money security interest I will acquire ownership of the Property with the proceeds of the loan. I will defend it against any other claim. Your claim to the Property is ahead of the claims of any other creditor. I agree to do whatever you require to protect your security interest and to keep your claim in the Property ahead of the claims of other creditors. I will not do anything to harm your position. I will not use the Property for a purpose that will violate any laws or subject the Property to forfeiture or seizure.

I will keep books, records and accounts about the Property and my business in general. I will let you examine these records at any reasonable time. I will prepare any report or accounting you request, which deals with the Property.

I will keep the Property in my possession and will keep it in good repair and use it only for the purpose(s) described on page 1 of this agreement. I will not change this specified use without your express written permission. I represent that I am the original owner of the Property and, if I am not, that I have provided you with a list of prior owners of the Property.

I will keep the Property at my address listed on page 1 of this agreement, unless we agree I may keep it at another location. If the Property is to be used in another state, I will give you a list of those states. I will not try to sell the Property unless it is inventory or I receive your written permission to do so. If I sell the Property I will have the payment made payable to the order of you and me.

You may demand immediate payment of the debt(s) if the debtor is not a natural person and without your prior written consent; (1) a beneficial interest in the debtor is sold or transferred, or (2) there is a change in either the identity or number of members of a partnership, or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation.

I will pay all taxes and charges on the Property as they become due. You have the right of reasonable access in order to inspect the Property. I will immediately inform you of any loss or damage to the Property.

If I fail to perform any of my duties under this security agreement, or any mortgage, deed of trust, lien or other security interest, you may without notice to me perform the duties or cause them to be performed. Your right to perform for me shall not create an obligation to perform and your failure to perform will not preclude you from exercising any of your other rights under the law or this security agreement.

PURCHASE MONEY SECURITY INTEREST - For the sole purpose of determining the extent of a purchase money security interest arising under this security agreement: (a) payments on any nonpurchase money loan also secured by this agreement will not be deemed to apply to the Purchase Money Loan, and (b) payments on the Purchase Money Loan will be deemed to apply first to the nonpurchase money portion of the loan, if any, and then to the purchase money obligations in the order which the items of collateral were acquired or if acquired at the same time, in the order selected by you. No security interest will be terminated by application of this formula. "Purchase Money Loan" means any loan the proceeds of which, in whole or in part, are used to acquire any collateral securing the loan and all extensions, renewals, consolidations and refinancing of such loan.

PAYMENTS BY LENDER - You are authorized to pay, on my behalf, charges I am or may become obligated to pay to preserve or protect the secured property (such as property insurance premiums). You may treat those payments as advances and add them to the unpaid principal under the note secured by this agreement or you may demand immediate payment of the amount advanced.

INSURANCE - I agree to buy insurance on the Property against the risks of loss or damage for the amounts you require and to furnish you continuing proof of coverage. I will have the insurance company name you as loss payee on any such policy. You may require added security if you agree that insurance proceeds may be used to repair or replace the Property. I will buy insurance from a firm licensed to do business in the state where you are located. The firm will be reasonably acceptable to you. The insurance will last until the Property is released from this agreement.

If I fail to obtain or maintain this insurance, or name you as a loss payee, you may obtain insurance to protect your interest in the Property. This insurance may include coverages not required of me. This insurance may be written by a company other than one I would choose. It may be written at a rate higher than a rate I could obtain if I purchased the property insurance required by this Contract. You may add the premium

Any person who signs within this box does so to give you a security interest in the Property described on this page. This person does not promise to pay the note. "I" as used in this security agreement will include the borrower and any person who signs within this box.

Date _____

Signed _____

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insurance to the amount I owe you. Any amount you pay will be immediately. This amount will earn finance charges from the date paid.

WARRANTIES AND REPRESENTATIONS - If this agreement includes accounts, I will not settle any account for less than its full value without your written permission. I will collect all accounts until you tell me otherwise. I will keep the proceeds from all the accounts and any goods which are returned to me or which I take back in trust for you. I will not mix them with any other property of mine. I will deliver them to you at your request. If you ask me to pay you the full price on any returned items or items retaken by myself, I will do so. You may exercise my rights with respect to obligations of any account debtors, or other persons obligated on the Property, to pay or perform, and you may enforce any security interest that secures such obligations.

If this agreement covers inventory, I will not dispose of it except in my ordinary course of business at the fair market value for the Property, or at a minimum price established between you and me.

If this agreement covers farm products I will provide you, at your request, a written list of the buyers, commission merchants or selling agents to or through whom I may sell my farm products. In addition to those parties named on this written list, I authorize you to notify at your sole discretion any additional parties regarding your security interest in my farm products. I remain subject to all applicable penalties for selling my farm products in violation of my agreement with you and the Food Security Act. In this paragraph the terms farm products, buyers, commission merchants and selling agents have the meanings given to them in the Federal Food Security Act of 1985.

If this agreement covers chattel paper or instruments, either as original collateral or proceeds of the Property, I will note your interest on the face of the chattel paper or instruments.

REMEDIES - I will be in default on this security agreement if I am in default on any note this agreement secures or if I fail to keep any promise contained in the terms of this agreement. If I default, you have all of the rights and remedies provided in the note and under the Uniform Commercial Code. You may require me to make the secured property available to you at a place which is reasonably convenient. You may take possession of the secured property and sell it as provided by law. The proceeds will be applied first to your expenses and then to the debt. I agree that 10 days written notice sent to my last known address by first class mail will be reasonable notice under the Uniform Commercial Code. My current address is on page 1.

PERFECTION OF SECURITY INTEREST - I authorize you to file a financing statement covering the Property. I will comply with, facilitate, and otherwise assist you in connection with obtaining possession of or control over the Property for purposes of perfecting your security interest under the Uniform Commercial Code.

ADDITIONAL TERMS OF THE NOTE

APPLICABLE LAW - This note and any agreement securing this note will be governed by the laws of the State of Arkansas and federal law, including, but not limited to, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges allowed by the provisions of Section 731 of the Gramm-Leach-Bliley Financial Modernization Act of 1999, which amended section 44 of the Federal Deposit Insurance Act, being codified at 12 U.S.C.

Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

PAYMENTS - Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INTEREST - If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal sum outstanding at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to in this note (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE - The index will serve only as a device for setting the interest rate on this note. You do not guarantee by selecting this index, or the margin, that the interest rate on this note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers.

POST MATURITY RATE - For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS - If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS - If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you. "Right to receive money from you" means:

(1) any deposit account balance I have with you;
(2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
(3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

DEFAULT - I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the Property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

REMEDIES - If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued unpaid charges).
(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
(4) You may refuse to make advances to me or allow purchases on credit by me.
(5) You may use any remedy you have under state or federal law.
(6) You may make use of any remedy given to you in any agreement securing this note.

By selecting any one or more of these remedies you do not give up your right to use later any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to consider later the event a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES - I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER - I give up my rights to require you to do certain things. I will not require you to:

(1) demand payment of amounts due (presentment);
(2) obtain official certification of nonpayment (protest); or
(3) give notice that amounts due have not been paid (notice of dishonor).

OBLIGATIONS INDEPENDENT - I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval.

FINANCIAL INFORMATION - I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGES 1 AND 2). I have received a copy on today's date.

Steve Beam, Operating Manager

SIGNATURE FOR LENDER: _____

John Craig
Com Ln Officer, NMLS ID:637715

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SS 1

MEMORANDUM

December 5, 2013

TO: Mayor and Board of Directors

FROM : Ray Gosack, City Administrator

SUBJECT: Board Governance Policy

Creating a board governance policy is one of the priorities from this year's board of directors retreat. A board governance policy provides for transparent, responsive, and accountable representation of the public. It embodies the principles and procedures that help the board and staff function effectively.

I recommend that we proceed with preparation of the policy by using a 4-step approach.

1. Determine what topics to include in a governance policy.

2. Draft a policy based on the board's selected topics.

3. Review the draft policy with the board at a study session.

4. Adopt the policy.

Step 1 is planned for the December 10th study session. The staff has identified a variety of possible topics that could be included in a board governance policy. That list is attached. As the board reviews each topic, please consider:

- Is the topic needed or appropriate for Fort Smith's board governance policy? Not all of the listed topics may be desirable for Fort Smith's policy.

- For each topic, are there any particular points the board wants to be certain are addressed when the policy is drafted?

- Are there other topics not on the attached list that should be included in the policy?

- Some topics, such as meeting procedures and agenda preparation, are already covered in the city's municipal code. Should these topics be:

  ✓ Excluded from the board governance policy to avoid duplication and possible contradiction?

  ✓ Included, in detail, in the governance policy so that everything can be found in one document?

  ✓ In the governance policy, make a brief reference (including a hyperlink) to the pertinent section of the municipal code. This approach would avoid contradictions while alerting a reader that the topic is addressed in the municipal code?

Once the board determines which topics should be included, the staff will prepare a draft policy for the board's review at a study session. I anticipate a draft policy will be ready for a study session review in March. Please let me know if there's any questions or a need for more information.

– Ray

Attachment

BOARD GOVERNANCE POLICY

Possible Topics

1. Statement of Values (e.g., listen to the community, collaborate with each other, lead and reason together, professionalism)

2. Statement of Responsibilities of Mayor, Vice Mayor, and Board Members

3. Code of Ethics for Board Members (serve with integrity, avoid personal gain, refrain from attacking the integrity and motives of others, not condone unethical/illegal activity)

4. Code of Conduct (Do's and Don'ts during meetings)

5. Board Decision-Making Process (e.g., effective use of time, being mindful of limited resources, opportunity for public interaction, business like process, sticking to the point, dissents and protests of board decisions, finality of decisions)

6. Responsibility of City Attorney is to the City and Its Officials Collectively; Making Requests of the City Attorney

7. Conduct of Officials with Regard to Litigation Against the City

8. Public Participation (board meetings, public hearings, town hall meetings, neighborhood ward meetings, boards/commissions/committees)

9. Open, Transparent Government (access to public meetings and records)

10. Duty to Act Consistently with City Policy When Representing the City

11. Filling Vacancies on the Board of Directors by Appointment

12. Executive Session Discussions to Remain Confidential

13. Sanctioning/Censure of Board Members

14. Ceremonial Events

15. Endorsement of Candidates by Board Members (permissible, but not during public

meetings)

16. Use of City Equipment, Property and Technology by Board Members

17. Agenda Process (already specified in municipal code)

18. Meeting Procedures (already specified in municipal code)

19. Training and Professional Development for Board Members

20. Travel Authorizations (purposes of travel and types of travel expenses which will be paid by city)

21. Relationship between Board, City Administrator, Staff, Public, and Media

22. Staff Conduct

23. Orientation of New Board Members

24. Communications with Boards, Commissions and Committees

SS2

Fort Smith Department of Sanitation
Responsible Environmental Management

MEMORANDUM

December 5, 2013

To: Ray Gosack, City Administrator

From: T. Baridi Nkokheli, Director

Subject: 2014 Beautification Committee Establishment

The Board of Directors identified the establishment of a beautification committee as a priority during their retreat held in July 2013. Formal establishment of the committee will require a Board approved ordinance, however, further information and clarification from the Board concerning their specific goals and objectives for the committee is requested before the ordinance is drafted.

Department staff researched beautification efforts and the establishment of beautification committees in other towns and cities within the United States. Based on our research, staff recommends establishment of a seven (7) person committee, including a peer elected chairperson, made up of members selected by the Board of Directors. Members would serve three (3) year staggered terms. Furthermore, staff recommends employing a part time Beautification and Recycling Coordinator to administer the work of the committee and serve as a liaison between the City and the volunteer committee.

The purpose and goal of the committee, as we see it, will be to create public awareness by involving local citizens in beautification efforts, neighborhood cleanups, litter reduction, and solid waste diversion. The committee will act as the liaison for the City of Fort Smith with Keep America Beautiful (KAB) and Keep Arkansas Beautiful. They will also be responsible for completion of the annual KAB litter index. The committee will research and develop plans for updating and beautifying the physical appearance of Fort Smith by targeting areas that could be enhanced by litter removal, landscaping, and the planting of flowers and/or trees. They may also be asked to provide advice to the Planning Department for modifications and additions to the unified development ordinance (UDO) with regards to landscaping codes. The committee will strive to ensure that waste reduction methods and procedures are brought to the general public's attention to promote recycling and environmentally friendly initiatives that will teach youths and adults about solid waste management as well as motivate them to become involved in programs such as litter clean up and recycling. The committee will provide the resources and support required to assume the lead in coordinating all interested parties concerned about beautification, litter reduction, and recycling to bring about a concerted effort of all interested parties doing their part to effect real change. The DOS would also like to see increased participation in recycling programs by local businesses.

Programs will consist of community volunteers conducting litter pickups, community cleanups, graffiti removal, illegal dumpsite cleanups, and beautification projects such as planting gardens, trees, and flowers. Sponsors could donate goods such as garbage bags, gloves, and equipment to help with these projects. The costs associated with these programs would include advertising and producing brochures and/or flyers for promotion. Statistics could be reported to the committee, showing how much litter is abated and solid waste diverted from these programs. The coordinator will work closely with solid waste collection managers who will provide guidance on recycling to promote environmental awareness.

The Department of Sanitation requested and the necessary funding was approved to employ a part time coordinator in the 2014 Budget. Funding for the activities of the committee will be derived from grants (e.g. litter prevention and recycling grants) and other fundraising activities employed by the committee.

Department staff will draft an ordinance establishing the beautification committee following discussion at the December 10, 2013 study session.

Please contact me should you have any questions or would like additional information.

NK

SS3

PARKS RECREATION
FORT SMITH

Memo:

December 6, 2013

To: Ray Gosack, City Administrator
From: Mike Alsup, Parks and Recreation Director Mike Alsup
Re: Carol Ann Cross Park, communications tower request

The area surrounding Carol Ann Cross Park has poor cellular service. Residents find it difficult to make calls and receive data in this area. The ambulance service has experienced outages in areas like this when transmitting vital patient statistics to the hospital. There is a need for improved reception in this area and to relieve the surrounding towers of the current demand. Due to restrictions on where towers may be located, City property such as a park or water tank site are the ideal sites in this area.

In order to keep the number of communications towers to a minimum, City code requires providers to allow for co-location of other cellular companies antennae on their tower. The proposals received will allow for three to four additional companies to locate on the tower. A maximum height of 200 feet is another requirement. The Westower proposal is for a 160 foot tower and Smith proposal is for a 170 foot tower.

Earlier this year a representative of Westower Communications who represents AT&T approached me about the possibility of placing a communications tower in Carol Ann Cross Park. The matter was brought to the Parks Commission, and the concept of placing a tower in the park was approved. During the process of approvals, Smith Communications who represents Verizon also approached me with the same request. Both companies made offers to place a tower on the south end of the park. Westower was further in the process, having held a public meeting, and chose to proceed to the Planning Commission although they were told a contract ready for signature was required prior to going to the Commission. The contract was never returned from their review of the City's alterations. The Planning Commission tabled their request until the City is ready to proceed.

I asked Westower and Smith to provide their best rates along with images of what the tower would look like from different vantage points and site location. Following is a synopsis of their offers.

	Monthly Rate	Co-locater Monthly Rate	Other
Westower	$1,200	$250	
Smith	$1,500	$300	$2,500 to be used by the City for trees

Both companies bid the flag pole or slick stick tower. The antennae and wiring are concealed within the pole with this type tower. Both will provide fencing and landscaping around the compound to be approved by the City. At the end of each five year period, the rates will increase 15%. Both are required to provide space for other communications companies to co-locate on the tower.

Smith Communications offer is more lucrative for the City; therefore, Smith provided a lease agreement for review. After review, the City Attorney and Smith's attorney have agreed to the lease agreement. Upon the Board indicating its willingness to consider placing such a tower on city property, Smith will seek approval of the Conditional Use Agreement from the Planning Commission and then present the agreement to the Board at a regular meeting for final approval.

Please call me if you have any questions.

Smith Communications - EXHIBIT 4 & EXHIBIT 5 -- 65 X 65 with Underground Utility Easements and Access along Existing Road
ACCESS EASEMENT ALONG EXISTING ROAD
UNDER GROUND UTILITY EASEMENT
ACCESS EASEMENT ALONG EXISTING ROAD
UNDER GROUND UTILITY EASEMENT
65 X 65
250 ft
151 ft
© 2013 Google
Google earth

Smith Communications - 65 X 65 Compound Layout

Smith Communications - EXHIBIT 8a - 170 ft. Flagpole From North

Smith Communications - 170 ft. Flagpole From South at Methodist Village