

Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith 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
REGULAR MEETING
September 2, 2014 ~ 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 214

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 AUGUST 19, 2014 REGULAR MEETING

ITEMS OF BUSINESS:

1. Presentation: Recognize Scott Barr family, 2014 Air National Guard Military Family of the Year
2. Public hearing and ordinance to close and vacate a portion of public right-of-way located in Fairfax, an addition to the City of Fort Smith, Arkansas (*Portion of South 10th Street - Baldor Electric Company*)
3. Public hearing and ordinance to close and vacate a portion of public right-of-way located in Chaffee Crossing, City of Fort Smith, Arkansas (*Portion of Veterans Avenue – The Degen Foundation*)
4. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Residential Detached to General Commercial / Rezoning: from Residential Estate One (RE-1) to Commercial Heavy (C-5) by extension located at 9900 Highway 71 South*)

5. Ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*September 2014 Amendments*)
6. Ordinance adopting the 2012 Edition of the National Fire Protection Association Life Safety Code and other provisions relating thereto
7. Resolution adopting Board Best Practices ~ *Lau/Lorenz placed on agenda at the August 26, 2014 study session ~*
8. Items regarding Whirlpool Corporation
 - A. Resolution approving and authorizing execution of cooperation and reimbursement agreement
 - B. Resolution accepting donation of right-of-way for Jenny Lind Road & Ingersoll Avenue Widening, Project No. 07-01-A
9. Items regarding property interests in connection with the replacement of Sewer Lift Station No. 17
 - A. Resolution authorizing acquisition of real property interests in connection with the replacement of Sewer Lift Station No. 17 (*\$2,500.00 / Utility Department / Budgeted – 2012 Sales Tax and Use Tax Bonds*)
 - B. Resolution authorizing the City Administrator to accept an offer made by a property owner for the acquisition of real property interests for the replacement of Sewer Lift Station No. 17 (*\$146,000.00 / Utility Department / Budgeted – 2012 Sales Tax and Use Tax Bonds*)
10. Consent Agenda
 - A. Resolution authorizing the Mayor to execute an agreement and Authorization No. 1 for engineering services with Burns and McDonnell for the design of fluoridation feed systems at the Lee Creek and Lake Fort Smith Water Treatment Plants (*\$180,000.00 / Utility Department / Not Budgeted – Capital Improvement Fund*)
 - B. Ordinance declaring an exceptional situation and waiving the requirements for competitive bidding for the lease purchase of radio communication equipment and authorizing the Mayor and City Administrator to negotiate and execute all necessary lease documents regarding said agreement (*\$255,558.70 / Transit Department / Budgeted – General Fund & Federal Transit Administration (FTA) 80% grant reimbursement*)

- C. Resolution authorizing the Mayor to execute Authorization No. 2 to the agreement with CDM Smith, Inc. for providing engineering services with the Massard Wastewater Treatment Plant Odor Control Improvements (\$68,550.00 / Utility Department / Budgeted – 2012 Sales Tax and Use Tax Bonds)
- D. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for the Ben Geren Aquatics Center Water and Sewer Extensions (\$51,344.27 / Utility Department / Budgeted - 2012 Sales Tax and Use Tax Bonds)
- E. Resolution accepting bid for the purchase of self-contained breathing apparatus (SCBA) (\$696,945.00 / Fire Department / Budgeted – Assistance to Firefighters Grant)
- F. Resolution accepting bids for the purchase of water and wastewater chemicals for 2014-2015 (Annual bid / Various Departments)
- G. Resolution allowing the sale of surplus vehicles and equipment at public auction

OFFICIALS FORUM ~ presentation of information requiring no official action

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

- Mayor
- Directors
- City Administrator

ADJOURN



RACHEL RODEMANN • TIMES RECORD

Senior Master Sgt. Scott Barr and his wife, Cindy Barr, show their sons, Andrew, 7, and Isaac, 12, parts on a retired A-10 Thunderbolt II “Warthog” on Tuesday at the 188th Air National Guard in Fort Smith. The Barr family was chosen as Air National Guard Family of the Year for 2014.

188th Family Singled Out

BARRS FROM FORT SMITH NAMED NATIONAL MILITARY FAMILY OF YEAR

By Rachel Rodemann

TIMES RECORD • RRODEMANN@SWTIMES.COM

Early today in Norman, Okla., a Fort Smith family will be honored as the National Military Family Association 2014 Family of the Year.

Lt. Col. Anderson Neal Jr., former commander of the 188th Fighter Wing Maintenance Group, nominated the Barr family — Senior Master Sgt. Scott Barr, his wife, Cindy Barr, and their two sons, Andrew, 7, and Isaac, 12.

Scott Barr served with the 188th for 22 years, and Cindy Barr has been a member of the 188th Key Volunteers for the past two. The family was named the Arkan-

sas Air Guard Family of the Year earlier this year, and eventually beat out 91 other families for the national title.

“It is a tremendous honor for our families to be recognized like this for their volunteer efforts,” said Maj. Heath Allen, 188th executive officer.

“This is a very huge honor,” agreed Cindy Barr.

“The magnitude of the honor hasn’t really hit me yet,” she said Tuesday afternoon at the 188th air base in Fort Smith. “It’s unbelievable, it really is. I’m so proud that we are representing the 188th.”

After multiple deployments that included re-

cent tours in Afghanistan and Iraq, Scott Barr knows well the void the volunteers help fill for families back home.

“To be able to not worry as much about your family back home when you’re out doing your job is a huge deal. You can focus on whatever you’re supposed to do.”

“It means a lot for me to be able to serve,” Cindy said, choking back tears. “Scott serves in everything he does. He is the epitome of service. Just being able to keep up with him is a big thing, being able to continue that legacy with the 188th.”

“The Key Volunteers take care of the families

during deployments,” said Scott Barr, bragging on his wife with a smile.

Though Scott Barr retired from the 188th in May, Cindy Barr said she doesn’t foresee her role as a Key Volunteer ending any time soon.

“He thinks it’s hysterical that I have to come to Guard drill and he gets to stay home,” she said, bringing a laugh from her husband and sons. “Once a Key Volunteer, always a Key Volunteer, I’ve been told.”

Four Star Gen. Frank J. Grass will present the award to the Barr family today during the 2014 National Volunteer Workshop in Norman.

SEE FAMILY PAGE 6A

FAMILY: Nonprofit Group Founded In 1969

CONTINUED FROM PAGE 1A

The National Military Family Association, which was founded in 1969, is a nonprofit organization that focuses on issues that are important

to families in the military.

In June, the 188th Fighter Wing, which last fall celebrated its 60th anniversary, became the 188th Wing to reflect the

September 2, 2014 Regular Meeting

Air Guard unit's transition from a jet fighter mission to an MQ-9 Reaper remotely piloted aircraft and intelligence, surveillance and reconnaissance wing.

ORDINANCE NO. _____

**AN ORDINANCE ENTITLED, AN ORDINANCE TO CLOSE AND VACATE
A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED IN
FAIRFAX, AN ADDITION TO THE CITY OF FORT SMITH, ARKANSAS**

WHEREAS, a petition was duly filed with the Board of Directors of the City of Fort Smith, Arkansas, on the 6th day of August 2014, asking the Board of Directors to vacate and abandon certain street right-of-way located in Fairfax, an addition to the City of Fort Smith, Arkansas, more particularly described as follow:

Part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Beginning at an existing iron pin marking the Northeast Corner of Lot 14 of Fairfax Subdivision, said point being on the West right of way line of South 10th Street. Thence leaving said right of way line, South 86 degrees 59 minutes 53 seconds East, 49.75 feet to a set rebar with cap marking the Northwest Corner of Lot 67 of Fairfax Subdivision, said point being on the East right of way line of South 10th Street. Thence along the West line of Lots 67 and 68 of Fairfax Subdivision and said right of way line, South 03 degrees 03 minutes 52 seconds West, 90.00 feet to an existing iron pin marking the Southwest Corner of Lot 68 of Fairfax Subdivision. Thence leaving said right of way line, North 86 degrees 59 minutes 48 seconds West, 50.14 feet to a set rebar with cap on the East line of Lot 14 of Fairfax Subdivision, same being the West right of way line of South 10th Street. Thence along the East line of said Lot 14 and said right of way line, North 03 degrees 18 minutes 49 seconds East, 90.00 feet to the Point of Beginning, containing 0.10 of an acre or 4,495.33 square feet and subject to any Easements of Record.

WHEREAS, after notice as required by law, the Board of Directors has at the time and place mentioned in the notice duly published as required by law, heard all persons as desiring to be heard on the questions, and has ascertained that the said street right-of-way as described above has heretofore been dedicated to the public use as street right-of-way and at this time is no longer required for the corporate purposes, and that said portion of the street right-of-way is of

no practical purpose or general purpose to the citizens of Fort Smith and it is in the best interest of the citizens of Fort Smith that the street right-of-way be closed; and that the public interest and welfare will not be adversely affected by the abandonment of the said street right-of-way.

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

SECTION 1: The City of Fort Smith hereby releases, vacates and abandons all of its rights, title and interest, together with the right of the public generally, in and to the street right-of-way designated as follows:

Part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Beginning at an existing iron pin marking the Northeast Corner of Lot 14 of Fairfax Subdivision, said point being on the West right of way line of South 10th Street. Thence leaving said right of way line, South 86 degrees 59 minutes 53 seconds East, 49.75 feet to a set rebar with cap marking the Northwest Corner of Lot 67 of Fairfax Subdivision, said point being on the East right of way line of South 10th Street. Thence along the West line of Lots 67 and 68 of Fairfax Subdivision and said right of way line, South 03 degrees 03 minutes 52 seconds West, 90.00 feet to an existing iron pin marking the Southwest Corner of Lot 68 of Fairfax Subdivision. Thence leaving said right of way line, North 86 degrees 59 minutes 48 seconds West, 50.14 feet to a set rebar with cap on the East line of Lot 14 of Fairfax Subdivision, same being the West right of way line of South 10th Street. Thence along the East line of said Lot 14 and said right of way line, North 03 degrees 18 minutes 49 seconds East, 90.00 feet to the Point of Beginning, containing 0.10 of an acre or 4,495.33 square feet and subject to any Easements of Record.

SECTION 2: A copy of this Ordinance duly certified by the City Clerk shall be filed in the Office of the County for the Fort Smith District of Sebastian County, Arkansas, and recorded in the deed records of said county.

SECTION 3: This Ordinance shall take effect and be in effect from and after its passage.

PASSED AND APPROVED THIS _____ DAY OF SEPTEMBER 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:



Publish One Time

Memo

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 8/29/2014

Re: Ordinance to vacate a portion of South 10th Street right-of-way in Fairfax Subdivision

Baldor Electric Company at 5711 R.S. Boreham Jr. Street has submitted a petition to abandon 90 feet (4,495.33 s.f) of South 10th Street so that the area can be converted to greenspace for use by the company. The portion of South 10th Street proposed for closure is between Lots 67 and 68 and Lot 14 of Fairfax, and south of Baldor Addition, Lot 1. All lots adjacent to the proposed street closure are owned by Baldor Electric Company. Copies of the application, vicinity map, and a map showing the location of the proposed street closure are enclosed. (See Exhibits A, B, & C.)

Staff contacted franchise utilities and appropriate city departments regarding any ongoing or future interests they may have in the street right-of-way. AOG and OG&E have existing infrastructure in the right-of-way and required easements. Enclosed are copies of the executed easements signed by Baldor for the construction, maintenance and operation of the infrastructure. (See Exhibit D & E.)

Staff also notified property owners within 300 feet of the proposed abandonment. We have not received any objections or concerns from surrounding property owners or citizens regarding the requested closing.

Additionally, in keeping with the Board's policy, all applicants requesting right-of-way abandonments are required to sign a Memorandum of Understanding (MOU). An MOU stipulates the applicant or their assigns will not make any claims for compensation in the event the city exercises the power of eminent domain to reclaim the abandoned right-of-way. Enclosed is a copy of the MOU executed by Baldor. (See Exhibit F.)

Enclosed for the board's consideration is an ordinance authorizing the abandonment of the street right-of-way. If approved, the easements and the Memorandum of Understanding will be filed with the ordinance

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

Enc.

CITY OF FORT SMITH, ARKANSAS
REQUEST FOR ABANDONMENT OF PUBLIC RIGHT-OF-WAY OR ALLEY

OFFICE OF THE CITY CLERK
FILED
8-16-14 NT
CITY OF FORT SMITH, ARKANSAS

APPLICATION:

Indicate one contact person for application: _____ Applicant Representative

Applicant (owner)

Representative (engineer, attorney, realtor, etc)

Name: George Moschner

Name: Tim A. Risley

Address: Baldor Electric Company
5711 R.S. Boreham Jr. Street
Fort Smith, AR 72908

Address: #1 Con/Arc Place
6101 Phoenix Ave
Fort Smith, AR 72903

Telephone Number: 479-646-4711

Telephone Number: 479-452-2636

E-Mail: george.moschner@baldor.abb.com E-Mail: trisley@risley-associates.com

Site Address/Location: Portion of South 10th Street

Legal Description of area to be vacated (attach separate sheet if necessary):
See attached

Assessor's Parcel Number for Subject Property: _____

Reason for Request: Convert unused street to green space.

Current Status of Right-of-Way/Easement: None

APPLICANT/REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made, all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval.

I understand that if it is determined following review of the application by city staff that ongoing utility interests must be protected through easement dedications, the applicant or his authorized agent shall be required to develop and submit a fully executed easement. Additionally, I understand that the applicant or agent will be required to execute a Memorandum of Understanding regarding any right-of-way abandonments and understand that no action will be taken by the Board of Directors on an abandonment request until said utility easement, if determined by staff is necessary, and Memorandum of Understanding are on file with the city.

I understand that I shall bear the expense of publication of notice given by the City in addition to the expense of publication of the ordinance after adoption by the Board of Directors.

Name: (printed) Tim A. Risley, AIA

Signature: [Handwritten Signature] Date: 6/20/14

Property Owner(s)/Authorized Agent: *I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is subject of this application and that I/we have read this application and consent to its filing.*

Note: If application is signed by authorized agent, all owners must sign and submit "Authorization of Agent" form.

Application Checklist:

- A list from the Sebastian County Assessor's Office showing all property owners within 300 feet of all perimeter points of the tract being considered for abandonment. (*County Assessor is located in Room 107 of the Sebastian County Courthouse*).
- N/A Abstractor's Certificate of Ownership stating names of all owners of property abutting the property to be vacated
- Petition with signatures of all abutting property owners
- Metes and Bounds legal description of the area to be vacated (Provide hard copy and CD containing legal description in MS Word)
- Hard copy and PDF of survey of the site depicting the perimeter property lines and area within the property to be vacated
- Application Fee of \$150.00. This fee is non-refundable.

The Planning Department will post a sign like the one shown below at area proposed for vacation. Once the sign is posted, it must be left in place until the vacation is approved by the Board of Directors. The planning staff will remove the sign the following day after by the Board of Directors meeting.



AUTHORIZATION OF AGENT

If an agent is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, hereby authorize
Tim A. Risley to act as our agent.
(Print Name of Agent)

(Type or clearly print)

NAME & ADDRESS OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. George Moschner
Baldor Electric Company
5711 R.S. Boreham Jr Street
Fort Smith, AR 72908

George A. Moschner

2. _____

3. _____

4. _____

Vicinity Map Proposed S. 10th Street Closure



August 14, 2014

 Fort Smith City Limits

 Subdivisions

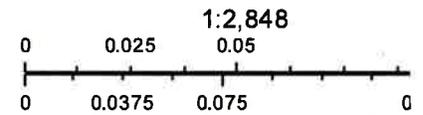
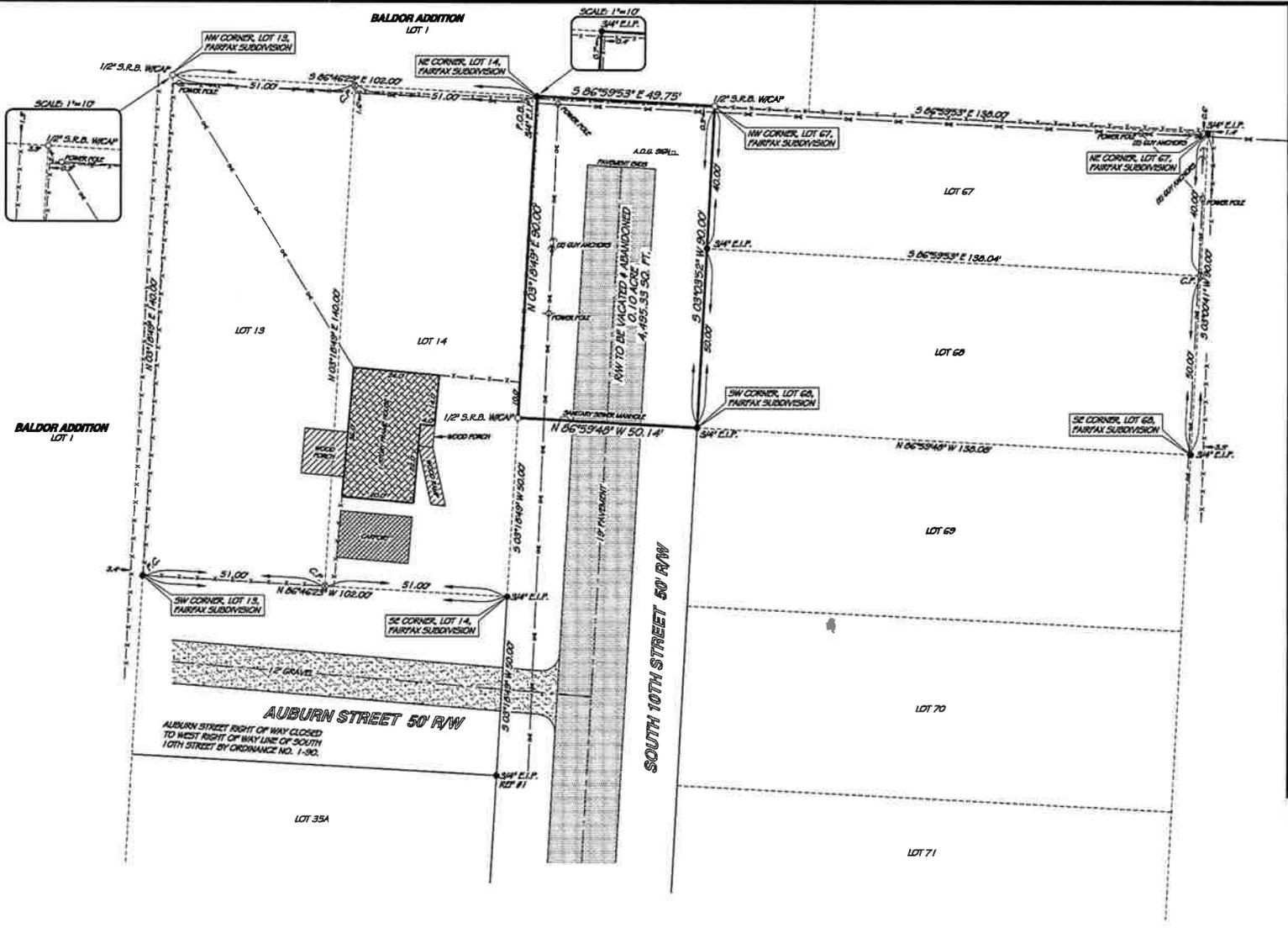


EXHIBIT B

PROPERTY DESCRIPTION

Part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Beginning at an existing iron pin marking the Northeast Corner of Lot 14 of Fairfax Subdivision, said point being on the West right of way line of South 10th Street. Thence leaving said right of way line, South 86 degrees 59 minutes 53 seconds East, 49.75 feet to a set rebar with cap marking the Northwest Corner of Lot 67 of Fairfax Subdivision, said point being on the East right of way line of South 10th Street. Thence along the West line of Lots 67 and 68 of Fairfax Subdivision and said right of way line, South 03 degrees 03 minutes 52 seconds West, 90.00 feet to an existing iron pin marking the Southwest Corner of Lot 68 of Fairfax Subdivision. Thence leaving said right of way line, North 86 degrees 59 minutes 48 seconds West, 50.14 feet to a set rebar with cap on the East line of Lot 14 of Fairfax Subdivision, same being the West right of way line of South 10th Street. Thence along the East line of said Lot 14 and said right of way line, North 03 degrees 18 minutes 49 seconds East, 90.00 feet to the Point of Beginning, containing 0.10 of an acre or 4,495.33 square feet and subject to any Easements of Record.



Satterfield Land Surveyors P.A., Copyright 2014

This plat is copyright material and is provided solely for the use of the person(s) named on this plat and may not be used or distributed to any other person(s) or company for their benefit. No license has been created, expressed or implied to copy the survey without the written consent of Satterfield Land Surveyors, P.A. No one including the person(s) named, may reproduce this plat. Only authentic copies that appear with the surveyor's seal in red may be used. Any copies used without this red seal are considered unauthorized copies and are considered a copyright infringement. After filing with State Surveyor's office, survey becomes public record.

SURVEYOR'S NOTE: This survey was done to mark the corners on the ground and to show observed structures. Utilities located if requested according to utility company records, and/or above ground inspection. This survey was done from description furnished to us or instruction from the person(s) named on this plat. Surveyor has made no investigation or independent search for easements of record, encumbrances, restrictive covenants, ownership title evidence, or any other facts which an accurate and current title search may disclose.

SURVEYOR'S NOTE: This survey was conducted under the supervision of David W. Satterfield, No. 0147, or Ricky Hill, No. 1443, Satterfield Land Surveyors, P.A., Certificate of Authorization No. 718, Satterfield Land Surveyors, P.A., 1-(479)-632-3565 Hwy. 71 North, P.O. Box 640, Alma, AR 72921

SURVEYOR'S DISCLAIMER AND STATEMENT OF USE

This survey was conducted by the written or verbal authorization of the person named as the buyer and/or use by as shown on this plat. No one has the authority to use the data or legal description from this survey except those named or their agents and the survey is only certified to the date shown on this plat. This plat is protected by copyright and any person other than those named using or relying upon this plat will be held responsible. Satterfield Land Surveyors, P.A. will not be responsible or have any liability to any other person or company who uses this plat without written authorization. After filing with State Surveyor's office, survey becomes public record.

REFERENCE DEED	
SURVEY REFERENCES	
1 - SATTERFIELD LAND SURVEYORS - #32,452 - 8/2/09	
BASIS OF BEARING	ARKANSAS STATE PLANE COORDINATES GRID NORTH

<ul style="list-style-type: none"> ○ S.R.B. = SET 1/2" REBAR W/ CAP ○ S.R.A.K. = SET 1/4" NAIL ○ S.R.R.S. = SET RAILROAD SPIKE ○ S.H. = SET NAIL ● E.R.B. = EXISTING REBAR ● E.I.P. = EXISTING IRON PIN ● E.P.A.K. = EXISTING P/N NAIL ● E.H. = EXISTING NAIL ● E.R.R.S. = EXISTING RAILROAD SPIKE ■ = EXISTING GOVERNMENT MONUMENT ■ = EXISTING STONE ▲ = EXISTING STATE MONUMENT ▲ = EXISTING P/N MARKER — = EXISTING FENCE ⊙ = COMPUTED POINT F.C. = FENCE CORNER 	<p>LEGEND</p>
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SEbastian COUNTY, ARKANSAS
SURVEY OF PART OF

**SOUTH 10TH STREET RIGHT OF WAY,
FAIRFAX SUBDIVISION, FORT SMITH, ARKANSAS**

FOR USE BY: TIM RILEY & ASSOCIATES

DRAWN BY: J.D.B.	
SCALE: 1"=20'	
DATE: 6-12-14	
JOB NO. 40,180	

1928 HWY. 71 NORTH, ALMA, ARK. - PHONE No. (479) 632-3565
FAX (479) 632-3002 - WEBSITE: <http://www.satterfield.com>

PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That BALDOR ELECTRIC COMPANY, a Missouri Corporation, with its principal place of business located at 5711 R. S. Boreham, Jr. Street; Fort Smith, Arkansas 72901, hereinafter referred to as GRANTOR for and in consideration of the sum of \$1.00 and other good and valuable consideration, to it in hand paid by the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, hereinafter called GRANTEE, the receipt of all of which is hereby acknowledged, does hereby grant, bargain, sell and convey, unto the said GRANTEE, its successors and assigns a permanent easement for the construction, operation, and maintenance of public or franchise utilities, both above ground and underground, over, across, under and upon the following described lands lying in the City of Fort Smith, Sebastian County, Arkansas, to wit:

A 20.00 foot Utility Easement in part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Commencing at a set rebar with cap marking the Northwest Corner of Lot 67 of Fairfax Subdivision, said point being on the East right of way line of South 10th Street. Thence along the West line of said Lot 67 and said right of way line, South 03 degrees 03 minutes 52 seconds West, 10.00 feet and the Point of Beginning. Thence along the West line of Lots 67 and 68 of Fairfax Subdivision and said right of way line, South 03 degrees 03 minutes 52 seconds West, 80.00 feet to an existing iron pin marking the Southwest Corner of Lot 68 of Fairfax Subdivision. Thence leaving said right of way line, North 86 degrees 59 minutes 48 seconds West, 20.00 feet. Thence North 03 degrees 03 minutes 52 seconds East, 80.00 feet. Thence South 86 degrees 59 minutes 53 seconds East, 20.00 feet to the Point of Beginning.

with right of ingress and egress to and from the same.

TO HAVE AND TO HOLD said easement unto said GRANTEE, its successors and assigns forever.

GRANTOR and its heirs, successors and assigns shall have the right to use the surface of the property within the permanent utility easement above described, provided, that it shall not interfere with the use thereof by the GRANTEE and its successors and assigns, further GRANTOR and its heirs, successors and assigns will not erect a building or structure within this permanent utility easement, and shall provide means of access, acceptable to GRANTEE and its successors and assigns, to and within said permanent utility easement, if fenced.

The consideration paid by the GRANTEE is received and accepted by the GRANTOR(S) in full satisfaction of every right hereby conveyed.

IN WITNESS WHEREOF, the GRANTOR(S) herein has hereunto caused these presents to be executed this 28 day of August 2014.

BY: George E. Moschner
George E. Moschner
Executive Vice President

BY: Larry V. Johnston, Jr.
Larry V. Johnston, Jr.
Vice President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)SS
COUNTY OF SEBASTIAN)

On this 28th day of August, 2014, before me, a Notary Public within and for the aforesaid county and state, duly commissioned and acting, appeared, George Moschner & Larry Johnston, to me personally well known as, or proven to be, the persons whose names appear upon the within and foregoing document and stated that he is the ^{each} VP, VP, respectively of Baldor Electric Company and is ^{each} duly authorized to execute the foregoing conveyance for and on its behalf and he respectively acknowledged to me that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office as such Notary Public at the County and State aforesaid on this 28th day of August 2014.

Sone Phanphengdee
Notary Public

My Commission Expires: September 11, 2022



PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That BALDOR ELECTRIC COMPANY, a Missouri Corporation, with its principal place of business located at 5711 R. S. Boreham, Jr. Street; Fort Smith, Arkansas 72901, hereinafter referred to as GRANTOR for and in consideration of the sum of \$1.00 and other good and valuable consideration, to it in hand paid by the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, hereinafter called GRANTEE, the receipt of all of which is hereby acknowledged, does hereby grant, bargain, sell and convey, unto the said GRANTEE, its successors and assigns a permanent easement for the construction, operation, and maintenance of public or franchise utilities, both above ground and underground, over, across, under and upon the following described lands lying in the City of Fort Smith, Sebastian County, Arkansas, to wit:

A 10.00 foot Utility Easement in part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Beginning at a set rebar with cap marking the Northwest Corner of Lot 67 of Fairfax Subdivision, said point being on the East right of way line of South 10th Street. Thence along the West line of said Lot 67 and said right of way line, South 03 degrees 03 minutes 52 seconds West, 10.00 feet. Thence leaving said West line and said right of way line, North 86 degrees 59 minutes 53 seconds West, 34.80 feet. Thence North 03 degrees 18 minutes 49 seconds East, 10.00 feet. Thence South 86 degrees 59 minutes 53 seconds East, 34.75 feet to the Point of Beginning.

Also,

A 15.00 foot Utility Easement in part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Beginning at an existing iron pin marking the Northeast Corner of Lot 14 of Fairfax Subdivision, said point being on the West right of way line of South 10th Street. Thence leaving said right of way line, South 86 degrees 59 minutes 53 seconds East, 15.00 feet. Thence South 03 degrees 18 minutes 49 seconds West, 90.00 feet. Thence North 86 degrees 59 minutes 48 seconds West, 15.00 feet to a set rebar with cap on the East line of Lot 14 of Fairfax Subdivision, same being the West right of way line of South 10th Street. Thence along the East line of said Lot 14 and said right of way line, North 03 degrees 18 minutes 49 seconds East, 90.00 feet to the Point of Beginning.

with right of ingress and egress to and from the same.

TO HAVE AND TO HOLD said easement unto said GRANTEE, its successors and assigns forever.

MEMORANDUM OF UNDERSTANDING

On _____, 2014, the Board of Directors of the City of Fort Smith passed Ordinance No. _____ closing, vacating and abandoning a portion of South 10th Street right-of-way located in Fairfax Subdivision, an addition to the City of Fort Smith, Sebastian County, Arkansas, more particularly described as follows:

Part of South 10th Street right of way of Fairfax Subdivision, Fort Smith, Sebastian County, Arkansas being more particularly described as follows:

Beginning at an existing iron pin marking the Northeast Corner of Lot 14 of Fairfax Subdivision, said point being on the West right of way line of South 10th Street. Thence leaving said right of way line, South 86 degrees 59 minutes 53 seconds East, 49.75 feet to a set rebar with cap marking the Northwest Corner of Lot 67 of Fairfax Subdivision, said point being on the East right of way line of South 10th Street. Thence along the West line of Lots 67 and 68 of Fairfax Subdivision and said right of way line, South 03 degrees 03 minutes 52 seconds West, 90.00 feet to an existing iron pin marking the Southwest Corner of Lot 68 of Fairfax Subdivision. Thence leaving said right of way line, North 86 degrees 59 minutes 48 seconds West, 50.14 feet to a set rebar with cap on the East line of Lot 14 of Fairfax Subdivision, same being the West right of way line of South 10th Street. Thence along the East line of said Lot 14 and said right of way line, North 03 degrees 18 minutes 49 seconds East, 90.00 feet to the Point of Beginning, containing 0.10 of an acre or 4,495.33 square feet and subject to any Easements of Record.

For good and valuable consideration, the receipt of which is hereby acknowledged, Baldor Electric Company, agrees that in the event the City of Fort Smith, condemns all or a portion of the lands and buildings contiguous to said right-of-way and owned by Baldor Electric Company, their successors or assigns, under the power of eminent domain, that the property owner, their successors or assigns, will make no claim to compensation for the value of the abandoned right-of-way described above. Nothing contained herein shall preclude Baldor Electric Company, or their successors or assigns from claiming compensation for improvements situated on the right-of-way in the event of condemnation. By way of example, and example only, if the City condemns the Baldor Electric Company property and the total land condemned is 100,000 square feet and the abandoned right-of-way constitutes 10,000 square feet of that total, then the value of the land shall be reduced by 10% for condemnation compensation purposes.

3.

ORDINANCE NO. _____

**AN ORDINANCE ENTITLED, AN ORDINANCE TO CLOSE AND VACATE
A PORTION OF PUBLIC RIGHT-OF-WAY LOCATED IN
CHAFFEE CROSSING, CITY OF FORT SMITH, ARKANSAS**

WHEREAS, a petition was duly filed with the Board of Directors of the City of Fort Smith, Arkansas, on the 6th day of August 2014, asking the Board of Directors to vacate and abandon certain street right-of-way located in Chaffee Crossing within the City of Fort Smith, Arkansas, more particularly described as follow:

Part of Government Lot 1 of the Northeast Quarter of Section 5, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being a portion of the 60.0 foot wide Veterans Avenue right-of-way as dedicated by City of Fort Smith Ordinance 69-12 and lying 30.0 feet on each side of the following described centerline:

Commencing at the Southwest Corner of said Section 5, said corner being marked with an existing ½” rebar with cap stamped PLS 1272; Thence along the West Line of said Section 5, N02°38’35”E, 1568.71 feet; Thence leaving said West Line, N90°00’00”E, 1776.18 feet to the westerly line of Phoenix Metals, Lot 1, an addition to the City of Fort Smith, Sebastian County, Arkansas, being filed for record July 5, 2013 as plat 1930; Thence along said westerly line, N50°24’51”E, 393.82 feet to the northwesterly corner of said Lot 1, said corner being marked with an existing concrete nail; Thence along the northerly line of said Lot 1, S39°33’58”E, 307.02 feet to an existing ½” rebar with cap stamped MWC 1369; Thence leaving said northerly line, N50°25’50”E, 1218.11 feet to an existing ½” rebar with cap stamped MWC 1369; Thence S39°33’09”E, 43.13 feet to an existing ½” rebar; Thence N50°23’58”E, 308.08 feet to an existing ½” rebar with cap stamped MWC 1369; Thence N39°32’37”W, 380.42 feet to the Point of Beginning; Thence N50°24’51”E, 1143.35 feet to the Point of Termination. Containing 1.58 acres, more or less.

WHEREAS, after notice as required by law, the Board of Directors has at the time and place mentioned in the notice duly published as required by law, heard all persons as desiring to be heard on the questions, and has ascertained that the said street right-of-way as described above

has heretofore been dedicated to the public use as street right-of-way and at this time is no longer required for the corporate purposes, and that said portion of the street right-of-way is of no practical purpose or general purpose to the citizens of Fort Smith and it is in the best interest of the citizens of Fort Smith that the street right-of-way be closed; and that the public interest and welfare will not be adversely affected by the abandonment of the said street right-of-way.

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

SECTION 1: The City of Fort Smith hereby releases, vacates and abandons all of its rights, title and interest, together with the right of the public generally, in and to the street right-of-way designated as follows:

Part of Government Lot 1 of the Northeast Quarter of Section 5, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being a portion of the 60.0 foot wide Veterans Avenue right-of-way as dedicated by City of Fort Smith Ordinance 69-12 and lying 30.0 feet on each side of the following described centerline:

Commencing at the Southwest Corner of said Section 5, said corner being marked with an existing ½” rebar with cap stamped PLS 1272; Thence along the West Line of said Section 5, N02°38’35”E, 1568.71 feet; Thence leaving said West Line, N90°00’00”E, 1776.18 feet to the westerly line of Phoenix Metals, Lot 1, an addition to the City of Fort Smith, Sebastian County,

Arkansas, being filed for record July 5, 2013 as plat 1930; Thence along said westerly line, N50°24'51"E, 393.82 feet to the northwesterly corner of said Lot 1, said corner being marked with an existing concrete nail; Thence along the northerly line of said Lot 1, S39°33'58"E, 307.02 feet to an existing ½" rebar with cap stamped MWC 1369; Thence leaving said northerly line, N50°25'50"E, 1218.11 feet to an existing ½" rebar with cap stamped MWC 1369; Thence S39°33'09"E, 43.13 feet to an existing ½" rebar; Thence N50°23'58"E, 308.08 feet to an existing ½" rebar with cap stamped MWC 1369; Thence N39°32'37"W, 380.42 feet to the Point of Beginning; Thence N50°24'51"E, 1143.35 feet to the Point of Termination. Containing 1.58 acres, more or less.

SECTION 2: A copy of this Ordinance duly certified by the City Clerk shall be filed in the Office of the County for the Fort Smith District of Sebastian County, Arkansas, and recorded in the deed records of said county.

PASSED AND APPROVED THIS _____ DAY OF SEPTEMBER 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:



Publish One Time

Memo

To: Ray Gosack, City Administrator

From: Wally Bailey, Director of Development Services

Date: 8/29/2014

Re: Ordinance to vacate a portion of Veterans Avenue at Chaffee Crossing

The Degen Foundation located at 6101 Phoenix Avenue has submitted a petition to abandon approximately 1,100 linear feet of Veterans Avenue in Chaffee Crossing. The abandonment will facilitate the proposed Arkansas College of Osteopathic Medicine that will be located on Chad Colley Boulevard and south of Frontier Drive. The petition indicates that the closure is requested because the portion of right-of-way proposed for abandonment bisects the medical school site and is of no value to the school's overall master plan. Copies of the application and a map showing the location of the proposed street closure are enclosed. (See exhibits A and B.)

The section of Veterans Avenue proposed for closure is currently used as the route for trucks which serve the industries shown on the attached Exhibit C. Traffic counts were taken by the Operations Department on Wednesday, August 20 and Thursday, August 21 on the section of the proposed Veterans Avenue street closure. The average daily traffic was 693 vehicles. Of the total counts, 186 vehicles (27% of the daily total) were three axle trucks or larger. Closing of Veterans Avenue will require the trucks to be rerouted east along Frontier Rd, then to Taylor Ave, then to Fort Chaffee Boulevard and then back west along Roberts Boulevard. This rerouting as shown on the exhibit will add an additional round trip mileage between 4 and 5 miles.

Routing the trucks down Wells Lake Road is not an option due to the possible high school and/or expansion of the medical school further west. Routing the trucks down Chad Colley Boulevard is also not an option due to the proximity of the medical school. However, Mitsubishi wind turbine trucks would still have to go this way because of significant truck turning radius requirements. Routing trucks down Massard Road is also not an option due to the significant residential development in that area.

Staff contacted franchise utilities and appropriate city departments regarding any ongoing or future interests they may have in the street right-of-way. OG&E has existing infrastructure in the right-of-way and required an easement. Enclosed is a copy of the executed easement signed by The Degen Foundation for the construction, maintenance and operation of the infrastructure. (See Exhibit D.)

Staff also notified property owners within 300 feet of the proposed abandonment and the industries at Chaffee Crossing that may be affected by the closure. Please see Exhibit E showing the industries contacted and the letter sent to them. The planning department received

two inquiries regarding the proposed closure but we have not received any objections from surrounding property owners or the industries.

Additionally, in keeping with the Board's policy, all applicants requesting right-of-way abandonments are required to sign a Memorandum of Understanding (MOU). An MOU stipulates the applicant or their assigns will not make any claims for compensation in the event the city exercises the power of eminent domain to reclaim the abandoned right-of-way. Enclosed is a copy of the MOU executed by The Degen Foundation. (See Exhibit F.)

Enclosed for the board's consideration is an ordinance authorizing the abandonment of the street right-of-way. If approved, the easement and the Memorandum of Understanding will be filed with the ordinance

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

Enc.

CITY OF FORT SMITH, ARKANSAS
REQUEST FOR ABANDONMENT OF PUBLIC RIGHT-OF-WAY, ALLEY OR PUBLIC
EASEMENT

OFFICE OF THE CITY CLERK
FILED
8-6-14 HJ
CITY OF FORT SMITH, ARKANSAS

APPLICATION:

Indicate one contact person for application: _____ Applicant Representative

Applicant (owner)

Representative (engineer, attorney, realtor, etc)

Name: Tom Webb - ^{The} Degen Foundation

Name: Tim A. Risley

Address: 6101 Phoenix, Suite 4
Fort Smith, AR 72903

Address: 6101 Phoenix
Fort Smith, AR 72903

Telephone Number: 434-3060

Telephone Number: 452-2636

E-Mail: t.webb@acheedu.org

E-Mail: trisley@risley-associates.com

Site Address/Location: Chaffee Crossing - *Portion of Veterans Avenue*

Legal Description of area to be vacated (attach separate sheet if necessary):
See attached Exhibit "A".

Assessor's Parcel Number for Subject Property: _____

Reason for Request: Bisects the medical school site and is of no
value in the overall master plan.

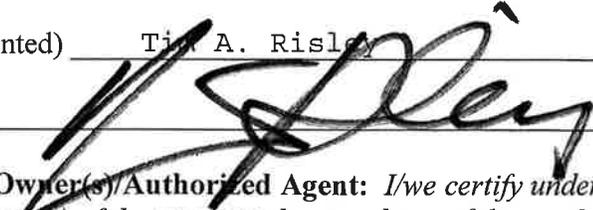
Current Status of Right-of-Way Development: 24' concrete roadway which will
be removed and blocked at the southwest end.

APPLICANT/REPRESENTATIVE: I certify under penalty of perjury that the foregoing statements and answers herein made, all data, information, and evidence herewith submitted are in all respects, to the best of my knowledge and belief, true and correct. I understand that submittal of incorrect or false information is grounds for invalidation of application completeness, determination, or approval.

I understand that if it is determined following review of the application by city staff that ongoing utility interests must be protected through easement dedications, the applicant or his authorized agent shall be required to develop and submit a fully executed easement. No action will be taken by the Board of Directors on an abandonment request until said easement is on file with the city or until staff and/or franchisees have determined that no utility easement is necessary.

I understand that I shall bear the expense of publication of notice given by the City in addition to the expense of publication of the ordinance after adoption by the Board of Directors.

Name: (printed) Tim A. Risley

Signature:  Date: 7/23/14

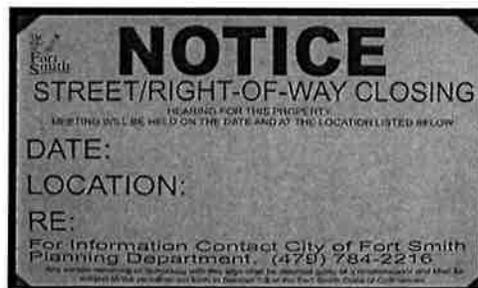
Property Owner(s)/Authorized Agent: *I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is subject of this application and that I/we have read this application and consent to its filing.*

Note: If application is signed by authorized agent, all owners must sign and submit "Authorization of Agent" form.

Application Checklist:

- A list from the Sebastian County Assessor's Office showing all property owners within 300 feet of all perimeter points of the tract being considered for abandonment. (*County Assessor is located in Room 107 of the Sebastian County Courthouse*).
- Abstractor's Certificate of Ownership stating names of all owners of property abutting the property to be vacated
- Petition with signatures of all abutting property owners
- Metes and Bounds legal description of the area to be vacated (Provide hard copy and CD containing legal description in MS Word)
- Hard copy and PDF of survey of the site depicting the perimeter property lines and area within the property to be vacated
- Application Fee of \$150.00. This fee is non-refundable.

The Planning Department will post a sign like the one shown below at area proposed for vacation. Once the sign is posted, it must be left in place until the vacation is approved by the Board of Directors. The planning staff will remove the sign the following day after by the Board of Directors meeting.



AUTHORIZATION OF AGENT

If an agent is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a rezoning by application do hereby authorize Tim A. Risley to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

NAME & ADDRESS OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

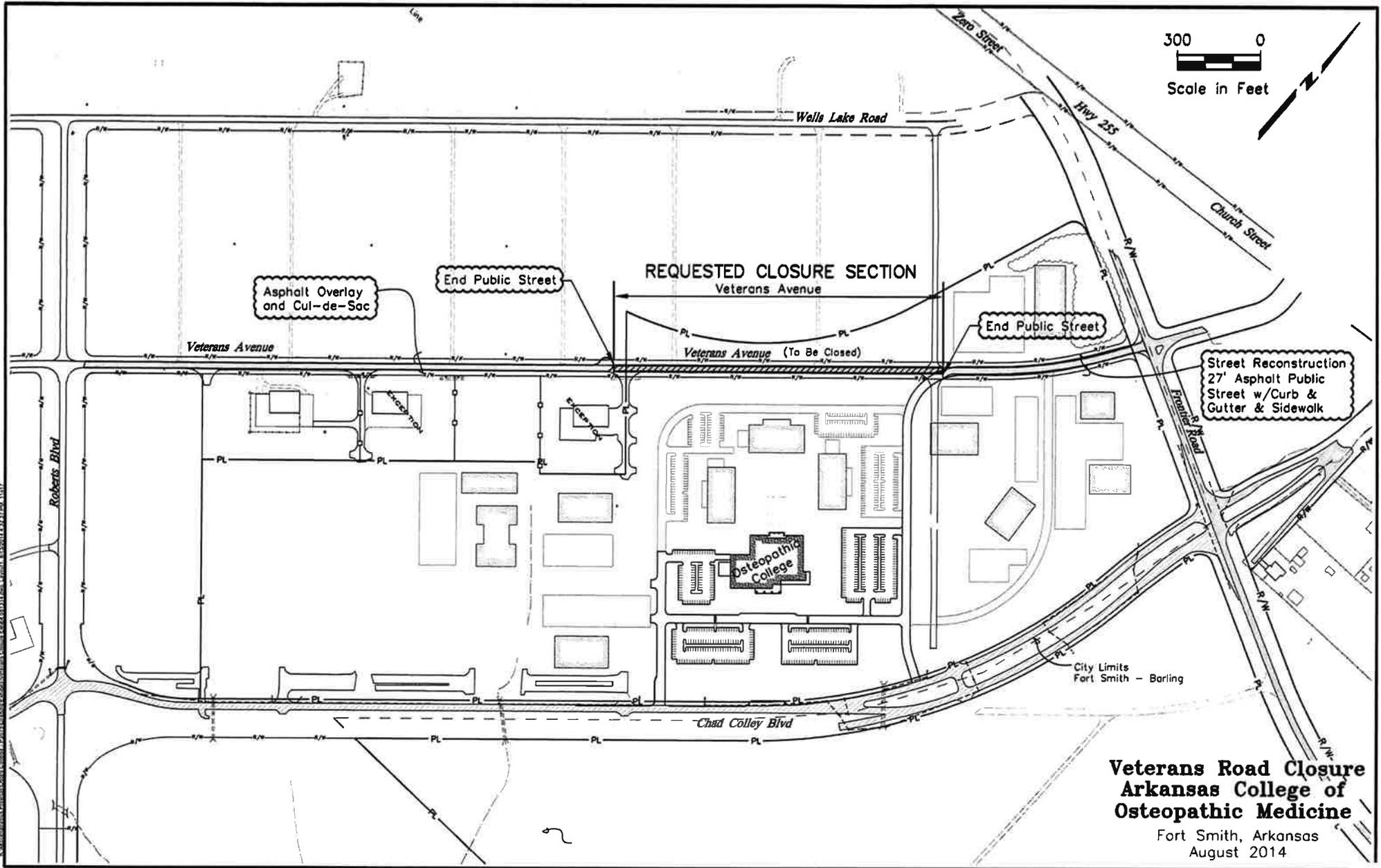
The Degen Foundation
1. Tom Webb
6101 Phoenix, Suite 4
Fort Smith, AR 72903



2. _____

3. _____

4. _____



G:\DRAWINGS\MISC\DWG\TRUCK ROUTE\ Chafee Truck Route.dwg 08/13/14-11:56 RBR EXHIBIT

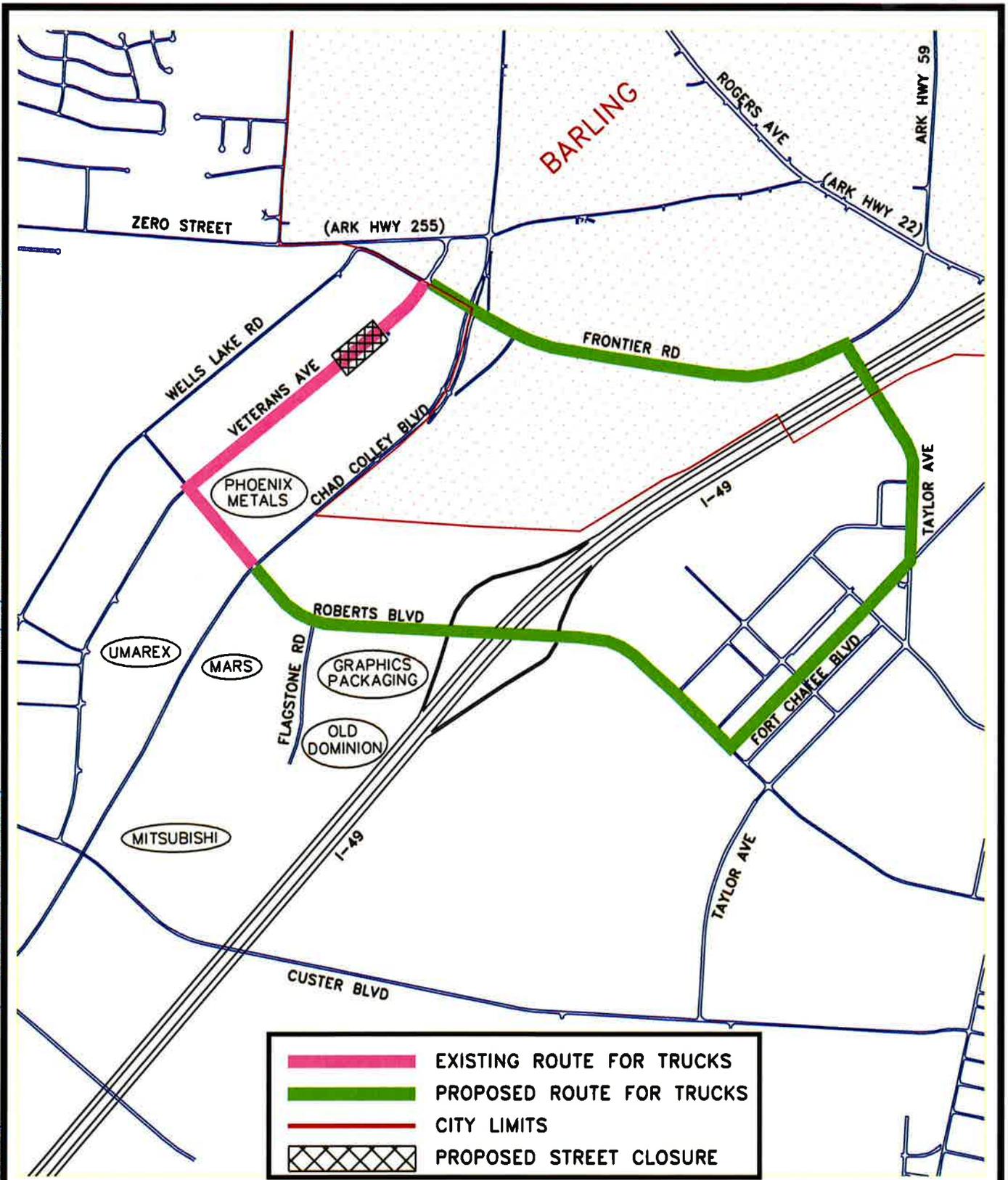


EXHIBIT "A"
PROPOSED TRUCK REROUTING
FORT SMITH, ARKANSAS



Project:	
Date:	AUGUST 2014
Scale:	NONE
Drawn By:	RBR

PUBLIC UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That THE DEGEN FOUNDATION, an Arkansas Corporation, for and in consideration of the sum of \$1.00 and other good and valuable consideration, to it in hand paid by the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, hereinafter called GRANTEE, the receipt of all of which is hereby acknowledged, does hereby grant, bargain, sell and convey, unto the said GRANTEE, its successors and assigns a permanent easement for the construction, operation, and maintenance of public or franchise utilities, both above ground and underground, over, across, under and upon the following described lands lying in the City of Fort Smith, Sebastian County, Arkansas, to wit:

Part of Government Lot 1 of the Northeast Quarter of Section 5, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Said easement being 20.0 feet wide any lying 10.0 feet on each side of the following described centerline:

Commencing at the Southwest Corner of said Section 5, said corner being marked with an existing ½" rebar with cap stamped PLS 1272; Thence along the West Line of said Section 5, N02°38'35"E, 1568.71 feet; Thence leaving said West Line, N90°00'00"E, 1776.18 feet to the westerly line of Phoenix Metals, Lot 1, an addition to the City of Fort Smith, Sebastian County, Arkansas, being filed for record July 5, 2013 as plat 1930; Thence along said westerly line, N50°24'51"E, 393.82 feet to the northwesterly corner of said Lot 1, said corner being marked with an existing concrete nail; Thence along the northerly line of said Lot 1, S39°33'58"E, 307.02 feet to an existing ½" rebar with cap stamped MWC 1369; Thence leaving said northerly line, N50°25'50"E, 1218.11 feet to an existing ½" rebar with cap stamped MWC 1369; Thence S39°33'09"E, 43.13 feet to an existing ½" rebar; Thence N50°23'58"E, 308.08 feet to an existing ½" rebar with cap stamped MWC 1369; Thence N39°32'37"W, 414.88 feet to the Point of Beginning; Thence N50°28'12"E, 1143.33 feet to the Point of Termination. Containing 0.52 acres, more or less.

with right of ingress and egress to and from the same.

TO HAVE AND TO HOLD said easement unto said GRANTEE, its successors and assigns forever.

GRANTOR and its heirs, successors and assigns shall have the right to use the surface of the property within the permanent utility easement above described, provided, that it shall not interfere with the use thereof by the GRANTEE and its successors and assigns, further GRANTOR and its heirs, successors and assigns will not erect a building or structure within this permanent utility easement, and shall provide means of access, acceptable to GRANTEE and its successors and assigns, to and within said permanent utility easement, if fenced.

The consideration paid by the GRANTEE is received and accepted by the GRANTOR(S) in full satisfaction of every right hereby conveyed.

IN WITNESS WHEREOF, the GRANTOR(S) herein has hereunto caused these presents to be executed this 26th day of Aug 2014.

BY: Thomas H. Webb Jr.
SIGNATURE

Thomas H. Webb Jr.
PRINT NAME AND TITLE
Executive Director

ACKNOWLEDGMENT

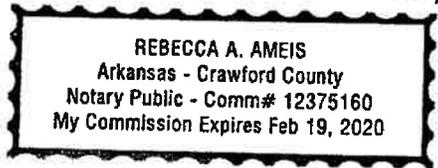
STATE OF ARKANSAS)
CRAWFORD) SS
COUNTY OF SEBASTIAN)

On this 26th day of August, 2014, before me, a Notary Public within and for the aforesaid county and state, duly commissioned and acting, appeared, Thomas H. Webb Jr., to me personally well known as, or proven to be, the person whose name appears upon the within and foregoing document and stated that he is the Executive Director of The Degen Foundation and is duly authorized to execute the foregoing conveyance for and on its behalf and he respectively acknowledged to me that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office as such Notary Public at the County and State aforesaid on this 26th day of August 2014.

Rebecca A. Ameis
Notary Public

My Commission Expires:



Chaffee Crossing Industries
Notified of Proposed Veterans Avenue Closure

Affinity Chemical
7712 Taylor Avenue
Fort Smith, AR 72916

BCD Properties
1122 South 23rd Street
Fort Smith, AR 72901

Aaron Mauch, Plant Manager
Graphics Packaging
10300 Chad Colley Boulevard
Fort Smith, AR 72916

Chris Haas, Plant Manager
Mars Petcare
10000 Roberts Boulevard
Fort Smith, AR 72916

Mitsubishi Hitachi Systems Americas, Inc.
100 Colonial Center Parkway, Suite 500
Lake Mary, FL 32746

Terry Barrow, Terminal Manager
Old Dominion Freight Lines
8101 Flagstone Road
Fort Smith, AR 72916

Adam Witt, Plant Manager
Phoenix Metals
9701 Roberts Boulevard
Fort Smith, AR 72916

August 20, 2014

The City of Fort Smith has received a petition from The Degen Foundation to vacate approximately 1,100 linear feet of Veterans Avenue at Chaffee Crossing. The abandonment will facilitate the proposed Arkansas College of Osteopathic Medicine that will be located on Chad Colley Boulevard and south of Frontier Drive. Attached is a map showing the location of the street right-of-way proposed for abandonment.

The section of Veterans Avenue proposed for closure is currently used as the route for trucks which serve the industries shown on the attached Exhibit C. Closing of Veterans Avenue will require the trucks to be rerouted east along Frontier Rd, then to Taylor Ave, then to Fort Chaffee Boulevard and then back west along Roberts Boulevard. This rerouting as shown on the exhibit will add an additional round trip mileage between 4 and 5 miles.

Routing the trucks down Wells Lake Road is not an option due to the possible high school and/or expansion of the medical school further west. Routing the trucks down Chad Colley Boulevard is also not an option due to the proximity of the medical school. However, Mitsubishi wind turbine trucks would still have to go this way because of significant truck turning radius requirements. Routing trucks down Massard Road is also not an option due to the significant residential development in that area. Enclosed is a map showing the existing route used by trucks and the proposed route.

The Fort Smith Board of Directors will hear the request to abandon the alley at a public hearing on Tuesday, September 2, 2014, 6:00 p.m. at the following location:

Fort Smith Public School Service Center
3205 Jenny Lind Road
Fort Smith, Arkansas

Should you have any interest in the proposed street closing, you are invited to attend the meeting and voice your opinion.

If you have any questions regarding the applicant's petition, feel free to contact the Fort Smith Planning Department at 479-784-2216. You may also send comments or questions regarding the proposed closure to Brenda Andrews at bandrews@fortsmithar.gov

Sincerely,

Brenda Andrews
Senior Planner

Enc.

MEMORANDUM OF UNDERSTANDING

On September 2, 2014, the Board of Directors of the City of Fort Smith passed Ordinance No. _____ closing, vacating and abandoning a portion of Veterans Avenue located in Chaffee Crossing, more particularly described as follows:

Part of Government Lot 1 of the Northeast Quarter of Section 5, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being a portion of the 60.0 foot wide Veterans Avenue right-of-way as dedicated by City of Fort Smith Ordinance 69-12 and lying 30.0 feet on each side of the following described centerline:

Commencing at the Southwest Corner of said Section 5, said corner being marked with an existing ½" rebar with cap stamped PLS 1272; Thence along the West Line of said Section 5, N02°38'35"E, 1568.71 feet; Thence leaving said West Line, N90°00'00"E, 1776.18 feet to the westerly line of Phoenix Metals, Lot 1, an addition to the City of Fort Smith, Sebastian County, Arkansas, being filed for record July 5, 2013 as plat 1930; Thence along said westerly line, N50°24'51"E, 393.82 feet to the northwesterly corner of said Lot 1, said corner being marked with an existing concrete nail; Thence along the northerly line of said Lot 1, S39°33'58"E, 307.02 feet to an existing ½" rebar with cap stamped MWC 1369; Thence leaving said northerly line, N50°25'50"E, 1218.11 feet to an existing ½" rebar with cap stamped MWC 1369; Thence S39°33'09"E, 43.13 feet to an existing ½" rebar; Thence N50°23'58"E, 308.08 feet to an existing ½" rebar with cap stamped MWC 1369; Thence N39°32'37"W, 380.42 feet to the Point of Beginning; Thence N50°24'51"E, 1143.35 feet to the Point of Termination. Containing 1.58 acres, more or less.

For good and valuable consideration, the receipt of which is hereby acknowledged, The Degen Foundation agrees that in the event the City of Fort Smith, condemns all or a portion of the lands and buildings contiguous to said street right-of-way and owned by The Degen Foundation, their successors or assigns, under the power of eminent domain, that the property owner, their successors or assigns, will make no claim to compensation for the value of the abandoned street right-of-way described above. Nothing contained herein shall preclude The Degen Foundation or their successors or assigns from claiming compensation for improvements situated on the abandoned street right-of-way in the event of condemnation. By way of example, and example only, if the City condemns The Degen Foundation property and the total land condemned is 100,000 square feet and the abandoned street right-of-way constitutes 10,000 square feet of that total, then the value of the land shall be reduced by 10% for condemnation compensation purposes.

This Memorandum of Understanding shall be binding on The Degen Foundation, and their successors or assigns.

In witness whereof, this document is executed this 26th day of Aug, 2014

THE DEGEN FOUNDATION

By: Thomas H. Webb Jr.
SIGNATURE

Thomas H. Webb Jr.
PRINTED NAME AND TITLE
Exec. Dir.

ACKNOWLEDGMENT

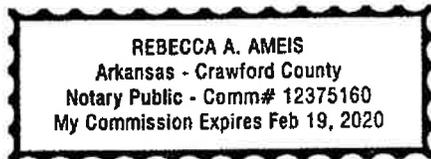
STATE OF ARKANSAS)
 CRAWFORD)SS
COUNTY OF SEBASTIAN)

On this 26th day of August, 2014, before me, a Notary Public within and for the aforesaid county and state, duly commissioned and acting, appeared, Thomas H. Webb, Jr., to me personally well known as, or proven to be, the person whose name appears upon the within and foregoing document and stated that he is the Executive Director of The Degen Foundation and is duly authorized to execute the foregoing conveyance for and on its behalf and he respectively acknowledged to me that he had executed the same for the consideration and purposes therein mentioned and set forth, and I do so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of office as such Notary Public at the County and State aforesaid on this 26th day of August 2014.

Rebecca A. Ameis
Notary Public

My Commission Expires:



ORDINANCE NO. _____**AN ORDINANCE AMENDING THE MASTER LAND USE PLAN MAP AND
REZONING IDENTIFIED PROPERTY AND AMENDING THE ZONING MAP**

WHEREAS, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on August 12, 2014, 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. 18-8-14 to rezone certain properties hereinafter described, and, having considered said request, recommended on August 12, 2014, 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 Residential Detached to General Commercial and the Master Land Use Plan Map is hereby amended to reflect said amendment to-wit:

Lot 5 Didier Place and Part of the Southwest Quarter (SW ¼) of the Northwest Quarter (NW ¼) of Section 14, Township 7 North, Range 32 West, Sebastian County, Arkansas, more particularly described as follows:

Beginning at an existing iron pin on the Westerly right of way line of U.S. Highway 71 being the Southeast corner of said Lot 5; thence S 61°48'42"W, 392.80 feet along the South line of said Lot 5 and said line extended to an existing iron pin; thence N 27°59'01"W, 200.00 feet to an existing iron pin; thence N 61°48'42"E, 217.80 feet to an

existing iron pin on the West line of Didier Place; thence S 27°59'01"E, 100.00 feet to an existing iron pin being the Northwest corner of said Lot 5; thence N 61°48'42"E, 175.00 feet along the Northerly line of said Lot 5 to an existing iron pin on the Westerly right of way line of U. S. Highway 71; thence S 27°59'01"E, 100.00 feet along said right of way line to the point of beginning, containing 1.40 acres, more or less, being subject to public road rights of way and any easements of record.

more commonly known as 9900 Highway 71 South.

SECTION 2: The real property described in Section 1 is hereby rezoned from Residential Estate One (RE-1) to Commercial Heavy (C-5) by Extension, subject to Planning Commission approval of a development plan prior to the issuance of a building permit.

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

PASSED AND APPROVED THIS _____ DAY OF _____, 2014.

ATTEST:

APPROVED:

City Clerk

Mayor

Approved as to form:



Publish One Time



August 25, 2014

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

Re: A request by Ron Brixey, agent, for Planning Commission consideration of a Master Land Use Plan Amendment from Residential Detached to General Commercial and a zone change from Residential Estate One (RE-1) to Commercial Heavy (C-5) by Extension located at 9900 Highway 71 South.

On August 12, 2014, the City Planning Commission held a public hearing to consider the above requests and a request for approval of a development plan.

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for an undeveloped portion of the site to be utilized for climate controlled mini-storages.

Ms. Rice stated that a neighborhood meeting was held on Thursday, August 7, 2014, on site, with two (2) people in attendance. Ms. Rice noted that one neighboring property owner had no issues or problems with the development and the other neighbor had questions regarding the lighting for the facility and the fence.

No one spoke either in favor or in opposition to these requests.

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

Chairman Sharpe called for the vote on the Master Land Use Plan Amendment. The vote was 7 in favor and 0 opposed.

Chairman Sharpe then called for the vote on the rezoning request. The vote was 7 in favor and 0 opposed.

Chairman Sharpe then called for the vote on the request for development plan approval. Motion was made by Commissioner Cooper, seconded by Commissioner Spearman and carried unanimously to amend make approval of the development plan subject to the following:

623 Garrison Avenue
P.O.Box 1908
Fort Smith, Arkansas 72902
(479) 784-2216
FAX (479) 784-2462

- Approval of the master land use plan amendment and rezoning requests by the Board of Directors.
- A lighting plan shall be submitted with the building permit plans verifying that the proposed exterior lighting complies with the Commercial and Outdoor Lighting Requirements-UDO Section 27-602-5.
- All drainage improvements shall be approved by the Engineering Department.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 7 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

A handwritten signature in dark ink that reads "Marshall Sharpe". The signature is written in a cursive style and is positioned above a horizontal line.

Marshall Sharpe, Chairman

MS/lp

cc: File
City Administrator

**Master Land Use Plan
Amendment**

Memo

To: City Planning Commission

From: Planning Staff

Date: July 25th, 2014

Re: Proposed Master Land Use Plan Amendment by Ron Brixey, agent for Thomas and Nancy Spahn, at 9900 Hwy 71 South from Residential Detached to General Commercial (Companion to items #3 & #4)

The Planning Department is receipt of an application from Ron Brixey, agent for Thomas and Nancy Spahn, at 9900 Highway 71 South to amend the Master Land Use Map from Residential Detached to General Commercial to accommodate a proposed Commercial Heavy (C-5) zoning request.

The property is currently zoned Residential Estate One (RE-1). A companion zoning application requests a Commercial Heavy (C-5) zoning district. The Master Land Use Plan is a guide to zoning and development and must be considered with the companion application.

PROPERTY LOCATION AND SIZE

The subject property is on the west side of Hwy 71 South between Didier Road and Brooken Hill Drive. The tract contains an area of 1.4 acres with approximately 100 feet of street frontage along Hwy 71 South.

ADJACENT LAND USE CLASSIFICATIONS AND USES

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

The area to the north is classified as Residential Detached and General Commercial and is developed as retail sales for floors and lights.

The area to the east is classified as General Commercial and is developed as retail sales of pools and spas.

The area to the south is classified as General Commercial and Residential Detached and is developed as greenhouse sales.

The area to the west is classified as Residential Detached and is also developed as Greenhouse sales.

2A

Characteristics and Use:

Criteria for Designation:

Compliance Noted

- | | |
|--|------------|
| • Compatible with and complimentary to surrounding uses. | YES |
| • Located on high volume arterials and collectors | YES |
| • Located as a cluster of like services | YES |
| • Accessible by most modes of transportation | YES |
| • Appropriately located for minimum impact of adjacent uses, and, by volume of activity and trips generated by use | YES |

MASTER STREET PLAN CLASSIFICATION

The Master Street Plan classifies Hwy 71 South as a Boulevard Classification.

STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held Thursday, August 7th on site. Two people were present at the meeting. One neighboring property owner had no issues or problems with the development. The other neighbor had questions regarding the limited lighting for the facility and the requirement for a wood fence. The neighbor indicated that chainlink fencing would provide better security so that neighbors could see what activities occurred at the mini-storages. The neighbor also stated that more lighting for security would be beneficial to the development. A copy of the attendance record and meeting summary are enclosed.

Based on compatibility with surrounding land use classifications and land uses, staff recommends approval of the application contingent upon approval of the companion zoning application.

2B

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: THOMAS SPAHN	
Firm Name:	
Address: 9900 HIGHWAY 71 S, FORT SMITH	
Phone # (day): 479.648.1213	Phone # (cell): Fax #:
Owner Name: THOMAS & NANCY SPAHN	
Owner Address: 9900 HIGHWAY 71 S FORT SMITH AR 72916	
Phone # (day): 479.648.1213	Phone # (cell): Fax #:
Property Address (subject property): 9900 HIGHWAY 71 S	
Subject Property	
Current Land Use: VACANT	
Existing MLUP Classification: GENERAL COMMERCIAL & RES. DETACHED	
Proposed MLUP Classification: GENERAL COMMERCIAL	
Existing Zoning Classification: RE-1 & C-5	
Proposed Zoning Classification: C-5	
Surrounding Property	
Current Land Use: north- VACANT	
south- SHARUMS GARDEN CENTER	
east- RETAIL (POOL STORE/BEST FLOORS)	
west- SHARUMS GARDEN CENTER	
Existing MLUP Classification: north: RESIDENTIAL DETACHED & GEN COMMERCIAL	
south: RES. DETACHED & GEN. COMMERCIAL	
east: GENERAL COMMERCIAL	
west: RESIDENTIAL DETACHED	
Existing Zoning Classification: north: C-5	
south: RE-1	
east: RE-1 & C-5	
west: RE-1	
Pre-Application Meeting Date: June 19, 2014	

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:

20

1. A legal description of the subject property that is to be amended (reclassified). *SEE EXHIBIT 'A'*
2. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property's location. *SEE ATTACHED*
3. The area dimensions of the property in square feet or acres. *1.4 AC TOTAL*

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:
THE PROPERTY TO BE AMENDED IS A PORTION OF A TRACT
LOCATED ON U.S. HIGHWAY 71 S. A MINI STORAGE
COMPLEX IS PROPOSED BEHIND AN EXISTING COMMERCIAL
STRUCTURE WITH EXISTING CONC. DRIVEWAYS TO BE
UTILIZED. THE IMPACT TO EXISTING ROADS & TRAFFIC IS
EXPECTED TO BE MINIMAL

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:
ALL NECESSARY UTILITIES ARE EXISTING

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:
PROPOSED ONE COMMERCIAL BUILDING - NO RESIDENTIAL
BEING 72% PROPOSED DENSITY
MAXIMUM PERMITTED: 75%

7. Identify any known or anticipated environmental concerns:
NONE

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

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

2D

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

N/A

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

N/A

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

N/A

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:

N/A

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. N/A
2. A description of the reasons supporting the amendment and the special circumstances requiring the change: N/A

AUTHORIZATION OF AGENT

QE

If an agent (i.e., contractor) is acting on behalf of the owner(s), all owners must sign in the space provided. This form is necessary only when the person representing this request does not own all the property.

We the undersigned, being owners of real property, and requesting a rezoning by application do hereby authorize HON BRIXEY to act as our agent in the matter.
(Print Name of Agent)

(Type or clearly print)

NAMES OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. NANCY SPAHN

Nancy Spahn
[Signature]

2. THOMAS SPAHN

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

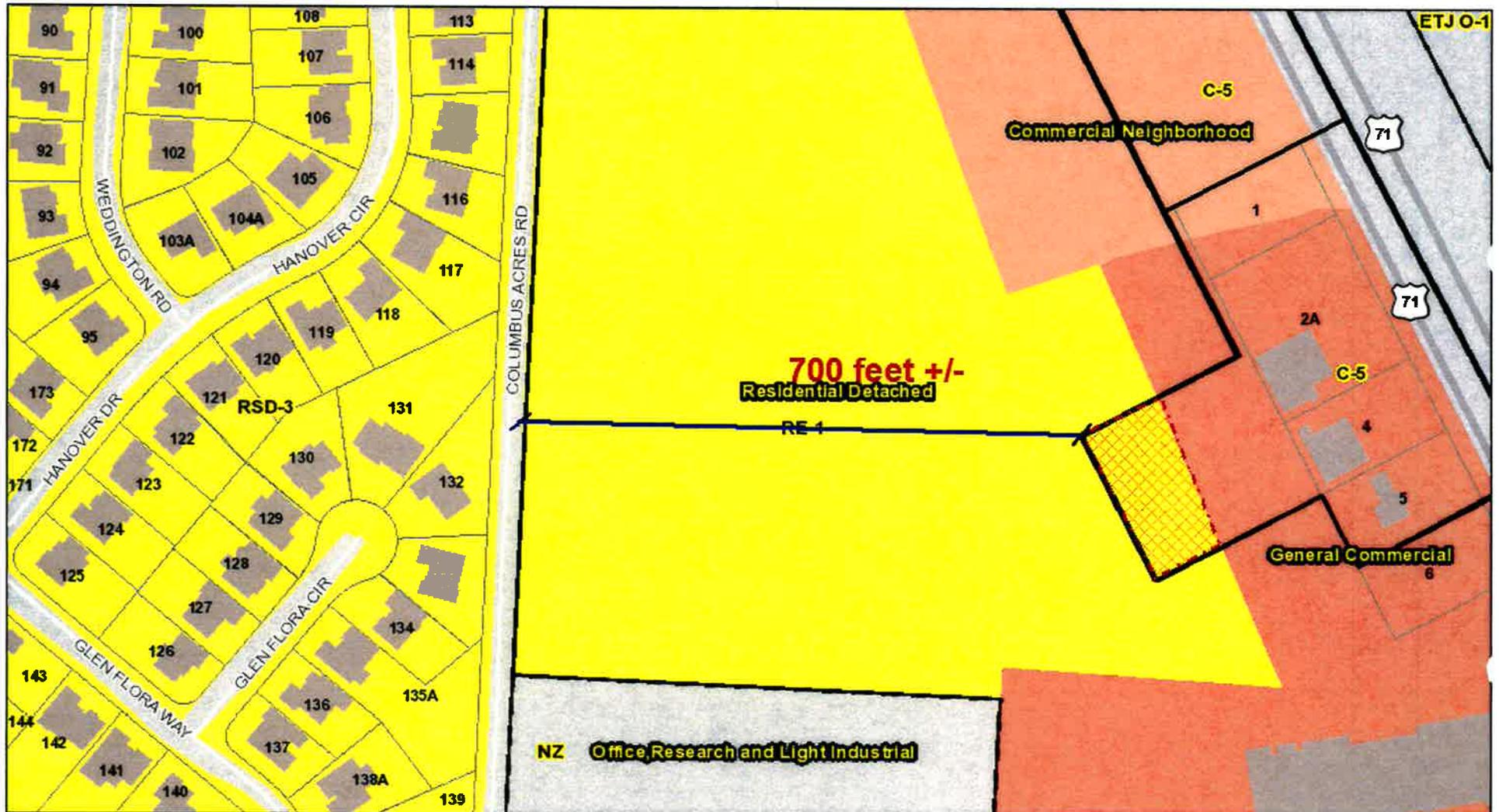
9. _____

10. _____

This form is necessary only when the person representing this request does not own all property.

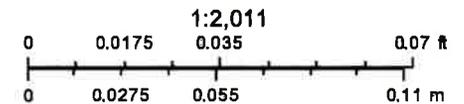
2F

Master Land Use Plan Amendment: From Residential Detached to General Commercial 9900 US Highway 71



August 7, 2014

-  Fort Smith City Limits
-  Zoning
-  Subdivisions
-  Building Footprints



City of Fort Smith GIS
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Memo

To: City Planning Commission

From: Planning Staff

Date: July 25, 2014

Re: Rezoning #18-8-14 - A request by Ron Brixey, agent for Thomas and Nancy Spahn, for Planning Commission consideration of a zoning request from Residential Estate One (RE-1) to Commercial Heavy (C-5) by extension at 9900 Hwy 71 South (Companion to items #2 & #4)

PROPOSED ZONING

The requested zone change will allow an undeveloped portion of the site to be utilized for climate controlled mini-storages.

LOT LOCATION AND SIZE

The subject property is on the west side of Hwy 71 South between Didier Road and Brooken Hill Drive. The tract contains an area of 1.4 acres with approximately 100 feet of street frontage along Hwy 71 South.

REQUESTED ZONING

The requested zoning on this tract is Commercial Heavy (C-5). Characteristics of this zone are as follows:

Purpose:

To provide adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion, and reduce visual clutter. The C-5 zoning district is appropriate in the General Commercial, Office, Research, and Light Industrial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

Permitted Uses:

A wide variety of retail uses including clothing stores, specialty shops and restaurants. Commercial-5 zones also allow professional offices and multi-family apartments, community residential facility and neighborhood group homes are examples of permitted uses.

3A

Conditional Uses:

Orphanage, dormitory, sorority, fraternity, auto vehicle impoundment or holding yard, auto body shop, medical laboratory, beer garden, restaurants with outdoor dining, pet cemetery, bus station, utility substations, museum, parks, educational facilities, police station, community food service, nursing home and churches are examples of uses permitted as conditional uses.

Area and Bulk Regulations:

- Minimum Lot Size – 14,000 square feet
- Maximum Height - 45 feet (1+1)
- Maximum Lot Coverage - 75%
- Minimum Parcel/Lot Size for Rezoning – New District (By Classification) - 2 acres
- Existing District (By Extension) – 14,000 square feet
- Minimum Lot Width – 100 feet
- Front Yard Setback - 25 feet
- Side Yard on Street Side of Corner Lot - 15 feet
- Side Yard Setback – 20 feet
- Rear Yard Setback - 20 feet
- Side/Rear (adjoining SF Residential District/Development) – 30 feet
- Minimum building separation – to be determined by current City building and fire code.
- Required street access – Minor Arterial or higher

EXISTING ZONING

The existing zoning on this tract is Residential Estate One (RE-1).
Characteristics of this zone are as follows:

Purpose:

The purpose of the Residential Estate One zoning district is to provide areas for low-density, large lot single family residential development. Property zoned RE-1 should include tracts that abut or are in close proximity to existing or approved large-lot single family development, making RE-1 an appropriate transition between rural and suburban uses.

Where public facilities and services are not yet available, development in this district shall be designed to allow for the future planned expansion of utilities and services where necessary. RE-1 zoning is appropriate in the Residential Detached, Mixed use Residential, and Mixed use Employment future land use classification of the Master Land Use Plan.

Permitted Uses:

Single-family dwellings and family group homes are examples of permitted uses.

Conditional Uses:

Commercial communication towers, utility substation, country club, parks, college, primary and secondary schools, preschool, nursery schools, police and fire stations, daycare homes and churches are examples of uses permitted as conditional uses.

3B

Area and Bulk Regulations:

Minimum Lot Size – 1 acres	Maximum Height - 35 feet (1+1)
Maximum Density – 1 Dwelling Units/Acre	Maximum Lot Coverage - 20%
Minimum Lot Width of Building Line – 100 feet	
Minimum Street Frontage – 50 feet	
Front Yard Setback - 40 feet	
Side Yard on Street Side of Corner Lot - 40 feet	
Side Yard Setback – 15 feet	
Rear Yard Setback - 20 feet	
Minimum building separation – 15 feet	

SURROUNDING ZONING AND LAND USE

The areas to the north are zoned Residential Estate One (RE-1) and Commercial Heavy (C-5) and contain areas that are undeveloped and developed as retail sales.

The area to the east is zoned Extraterritorial Jurisdiction Open-1(ETJ Open-1) and is undeveloped.

The areas to the south and west are zoned Residential Estate One (RE-1) and contain areas that are undeveloped and developed as retail sales.

LAND USE PLAN COMPLIANCE

The *Master Land Use Plan Map* classifies the site as Residential Detached. A Companion Master Land Use Application to change the Land Use to General Commercial has been submitted. The General Commercial classification is intended to provide opportunities for business transactions and activities to meet the consumer needs of the community. Approval of the zone change will not conflict with the goals and objectives of the Master Land Use Plan.

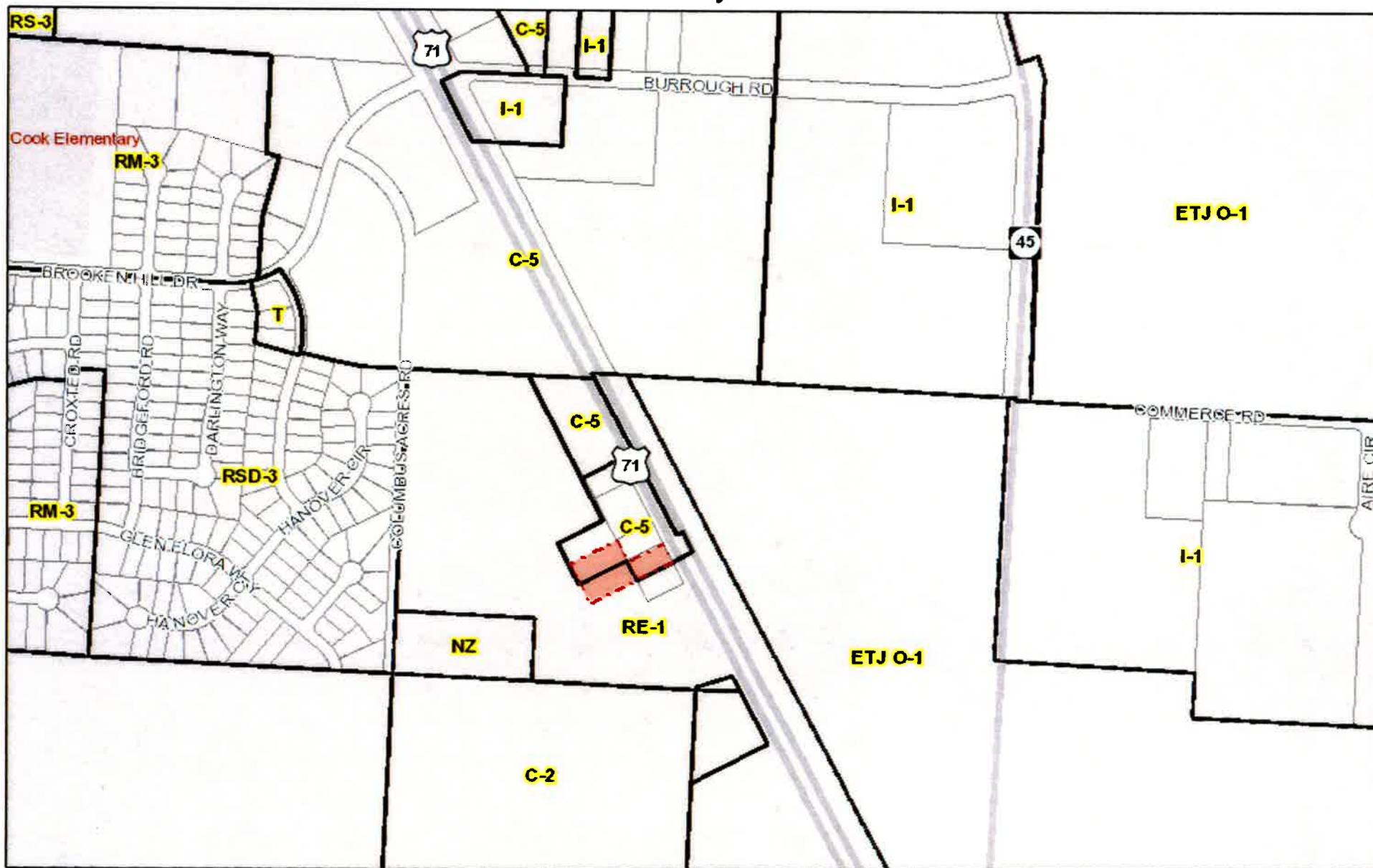
STAFF COMMENTS AND RECOMMENDATIONS

A neighborhood meeting was held Thursday, August 7th on site. Two people were present at the meeting. One neighboring property owner had no issues or problems with the development. The other neighbor had questions regarding the limited lighting for the facility and the requirement for a wood fence. The neighbor indicated that chainlink fencing would provide better security so that neighbors could see what activities occurred at the mini-storages. The neighbor also stated that more lighting for security would be beneficial to the development. A copy of the attendance record and meeting summary are enclosed.

Based on compatibility with surrounding zoning districts, staff recommends approval of the application.

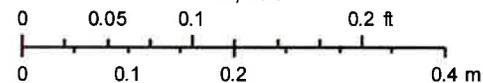
30

Master Land Use Plan Amendment: From Residential Detached to General Commercial 9900 Hwy 71 S



July 21, 2014

1:7,139



- Fort Smith City Limits
- Zoning
- Subdivisions

Nez # 18-8-14

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 EXHIBIT **A**

- 2. Address of property: Property behind and adjacent to 9900 Hwy 71 S
- 3. The above described property is now zoned: RE-1 & C-5
- 4. Application is hereby made to change the zoning classification of the above described property to C-5 by Extension
(Extension or classification)
- 5. Why is the zoning change requested?

Request is made in order to CORRECT the Zone classification to include the entire property and facilitate future development

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

Signed:

Ron Brixey - Brixey Engineering
Owner or Agent Name
(please print)

Owner

P.O. Box 6180 Fort Smith AR 72906
Owner or Agent Mailing Address

Ron Brixey or
Agent

479-646-6394
Owner or Agent Phone Number

3E

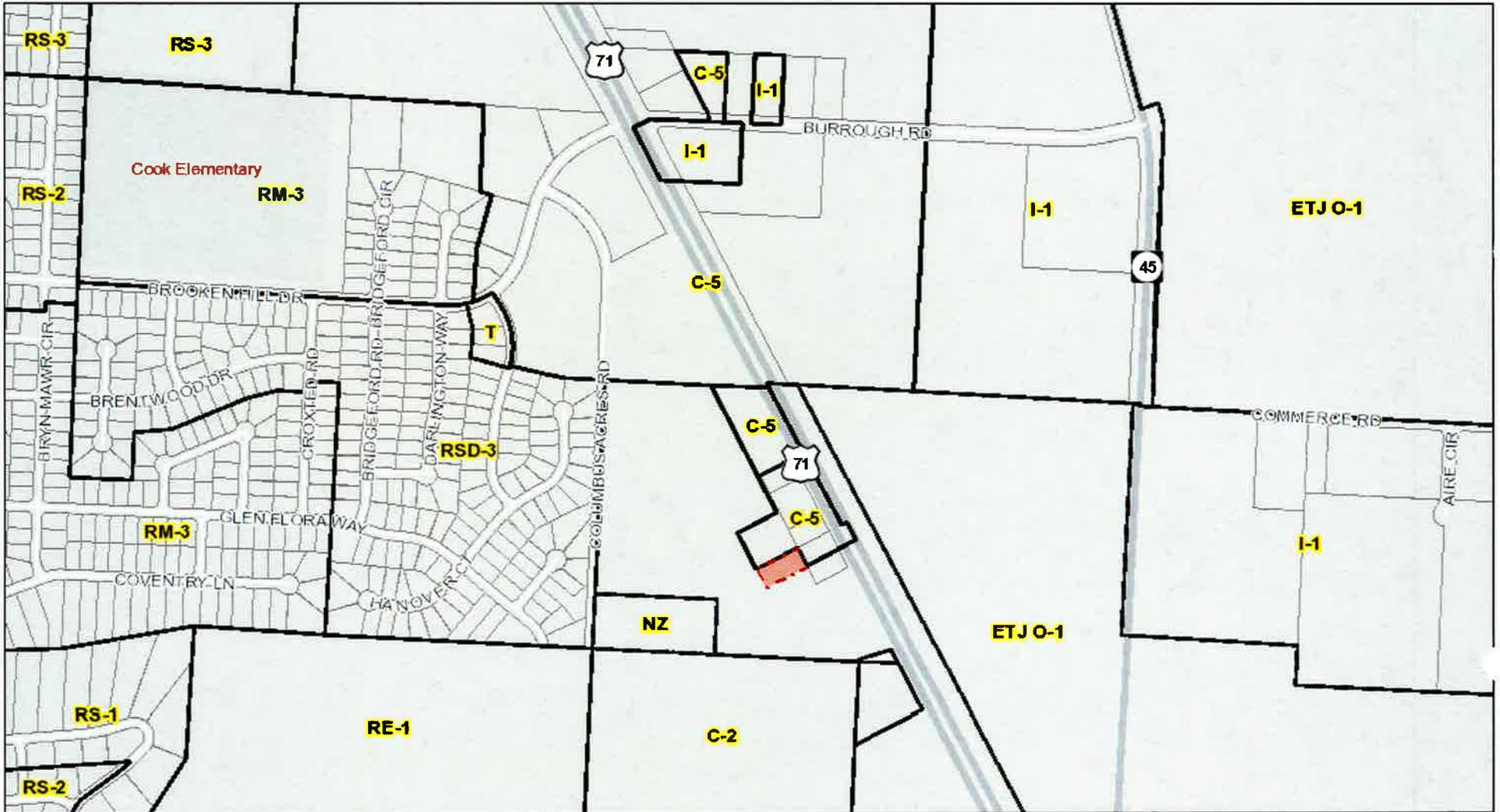
EXHIBIT A

SURVEY DESCRIPTION (9900 Highway 71 S)

Lot 5 Didier Place and Part of the Southwest Quarter (SW1/4) of the Northwest Quarter (NW1/4) of Section 14, Township 7 North, Range 32 West, Sebastian County, Arkansas, more particularly described as follows:

Beginning at an existing iron pin on the Westerly right of way line of U.S. Highway 71 being the Southeast corner of said Lot 5; thence S 61°48'42" W, 392.80 feet along the South line of said Lot 5 and said line extended to an existing iron pin; thence N 27°59'01" W, 200.00 feet to an existing iron pin; thence N 61°48'42" E, 217.80 feet to an existing iron pin on the West line of Didier Place; thence S 27°59'01"E, 100.00 feet to an existing iron pin being the Northwest corner of said Lot 5; thence N 61°48'42" E, 175.00 feet along the Northerly line of said Lot 5 to an existing iron pin on the Westerly right of way line of U.S. Highway 71; thence S 27°59'01" E, 100.00 feet along said right of way line to the point of beginning, containing 1.40 Acres, more or less, being subject to public road rights of way and any easements of record.

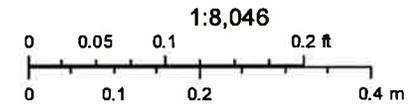
Rezoning #18-8-14: From Residential Estate One Acre (RE-1) to Commercial Heavy (C-5) 9900 US Highway 71



August 5, 2014

- Fort Smith City Limits
- Zoning
- Subdivisions

3F



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

Laylyn Property LLC
P. O. Box 6424
Fort Smith, AR 72906

Phillip White Trust
P. O. Box 6775
Fort Smith, AR 72906

Ina Didier Trust
9701 Thistle Courts
Fort Smith, AR 72908

Rick & Sheryl Williams
4930 Old Chismville Road
Greenwood, AR 72936

Patti & Ed Janes
9814 Highway 71 South
Fort Smith, AR 72916

Raymond Didier
2055 S. Doral Drive
Fayetteville, AR 72701

DRAFT

Planning Commission Meeting Minutes
August 12, 2014

No one was present to speak either in favor or in opposition to this request.

Chairman Sharpe called for the vote on the variance request. Motion was made by Commissioner Howard, seconded by Commissioner Spearman and carried unanimously to amend this request to make approval subject to all construction complying with the submitted development plan with any Planning Commission amendments.

Chairman Sharpe then called for the vote on the variance request as amended. The vote was 7 in favor and 0 opposed.

RECESS BOARD OF ZONING ADJUSTMENT RECONVENE PLANNING COMMISSION

1. Final Plat – Horseshoe Ridge – Lots 1 thru 24 and Tracts A & B – Mickle-Wagner-Coleman

Ms. Brenda Andrews read the staff report indicating that this plat is for the development of single family detached homes.

No one spoke either in favor or in opposition to this final plat.

Chairman Sharpe called for the vote on the final plat and the Subdivision's Protective Covenants and Bill of Assurance. The vote was 7 in favor and 0 opposed. The final plat was approved subject to all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents prior to the plat being filed with the county recorder.

2. A request by Ron Brixey, agent for Thomas & Nancy Spahn, for a Master Land Use Plan Amendment from Residential Detached to General Commercial located at 9900 Highway 71 South. (companion item to items #3 & #4)

3. Rezoning #18-8-14; A request by Ron Brixey, agent for Thomas & Nancy Spahn, for a zone change from Residential Estate One (RE-1) to Commercial Heavy (C-5) by Extension located at 9900 Highway 71 South. (companion item to items #2 & #4)

DRAFT

- 4. A request by Ron Brixey, agent for Thomas & Nancy Spahn, for development plan approval for a mini-storage development located at 9900 Highway 71 South. (companion item to items #2 & #3)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to allow for an undeveloped portion of the site to be utilized for climate controlled mini-storages.

Ms. Rice stated that a neighborhood meeting was held on Thursday, August 7, 2014, on site, with two (2) people in attendance. Ms. Rice noted that one neighboring property owner had no issues or problems with the development and the other neighbor had questions regarding the limited lighting for the facility and the requirement for a wood fence. The neighbor indicated that chainlink fencing would provide better security so that neighbors could see what activities occurred at the mini-storages. The neighbor also stated that more lighting for security would be beneficial to the development.

No one spoke either in favor or in opposition to these requests.

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

- 2. A request by Ron Brixey, agent for Thomas & Nancy Spahn, for a Master Land Use Plan Amendment from Residential Detached to General Commercial located at 9900 Highway 71 South. (companion item to items #3 & #4)**

Chairman Sharpe called for the vote on the Master Land Use Plan Amendment. The vote was 7 in favor and 0 opposed.

- 3. Rezoning #18-8-14; A request by Ron Brixey, agent for Thomas & Nancy Spahn, for a zone change from Residential Estate One (RE-1) to Commercial Heavy (C-5) by Extension located at 9900 Highway 71 South. (companion item to items #2 & #4)**

Chairman Sharpe called for the vote on the rezoning request. The vote was 7 in favor and 0 opposed.

- 4. A request by Ron Brixey, agent for Thomas & Nancy Spahn, for development plan approval for a mini-storage development located at 9900 Highway 71 South. (companion item to items #2 & #3)**

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

- Approval of the master land use plan amendment and rezoning requests by the Board of directors.
- A lighting plan shall be submitted with the building permit plans verifying that the proposed exterior complies with the Commercial and Outdoor Lighting Requirements-UDO Section 27-602-5.
- All drainage improvements shall be approved by the Engineering Department.

Chairman Sharpe then called for the vote on the development plan as amended. The vote was 7 in favor and 0 opposed.

5. Conditional Use #9-8-14; A request by The Hill Firm, agent for River of Life Fellowship, for a conditional use for a new sanctuary for a church located at 6101 Kinkead Avenue.

Ms. Brenda Andrews read the staff report indicating that the purpose of the conditional use request is to allow the construction of a new 6,515 square foot sanctuary located south of the existing church facilities.

Ms. Andrews stated that a neighborhood meeting was held on Monday, August 4, 2014, at 6101 Kinkead Avenue with two (2) neighboring property owners in attendance with no objections to the proposed project.

Mr. Don Bandy, 501 North 66th Street, addressed the Commission with photographs of his water fall. He also advised the Commission that his relatives that live close to this proposed project have more money than they know what to do with.

Chairman Sharpe then called for the vote on the conditional use request. Motion was made by Commissioner Howard, seconded by Commissioner Spearman and carried unanimously to amend this request to make approval subject to the following:

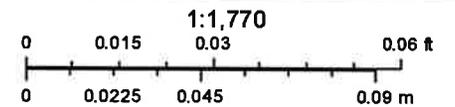
- Construction must comply with the submitted development plan. Changes or amendments to the submitted development plan are permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

Vicinity Map for Rezoning #18-8-14:
9900 US Highway 71

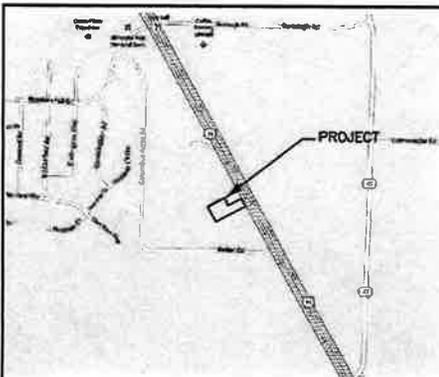


August 27, 2014

 Fort Smith City Limits



City of Fort Smith GIS
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VICINITY MAP
1" = 1000'

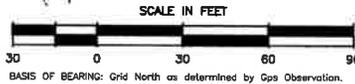
CURRENT ZONING: RE-1 AND C-5
 PROPOSED ZONING: C-5
 AREA: 61060 Sq. Ft. or 1.40 Acres
 LOT COVERAGE: 43,720 Sq. Ft. = 72%

LEGEND

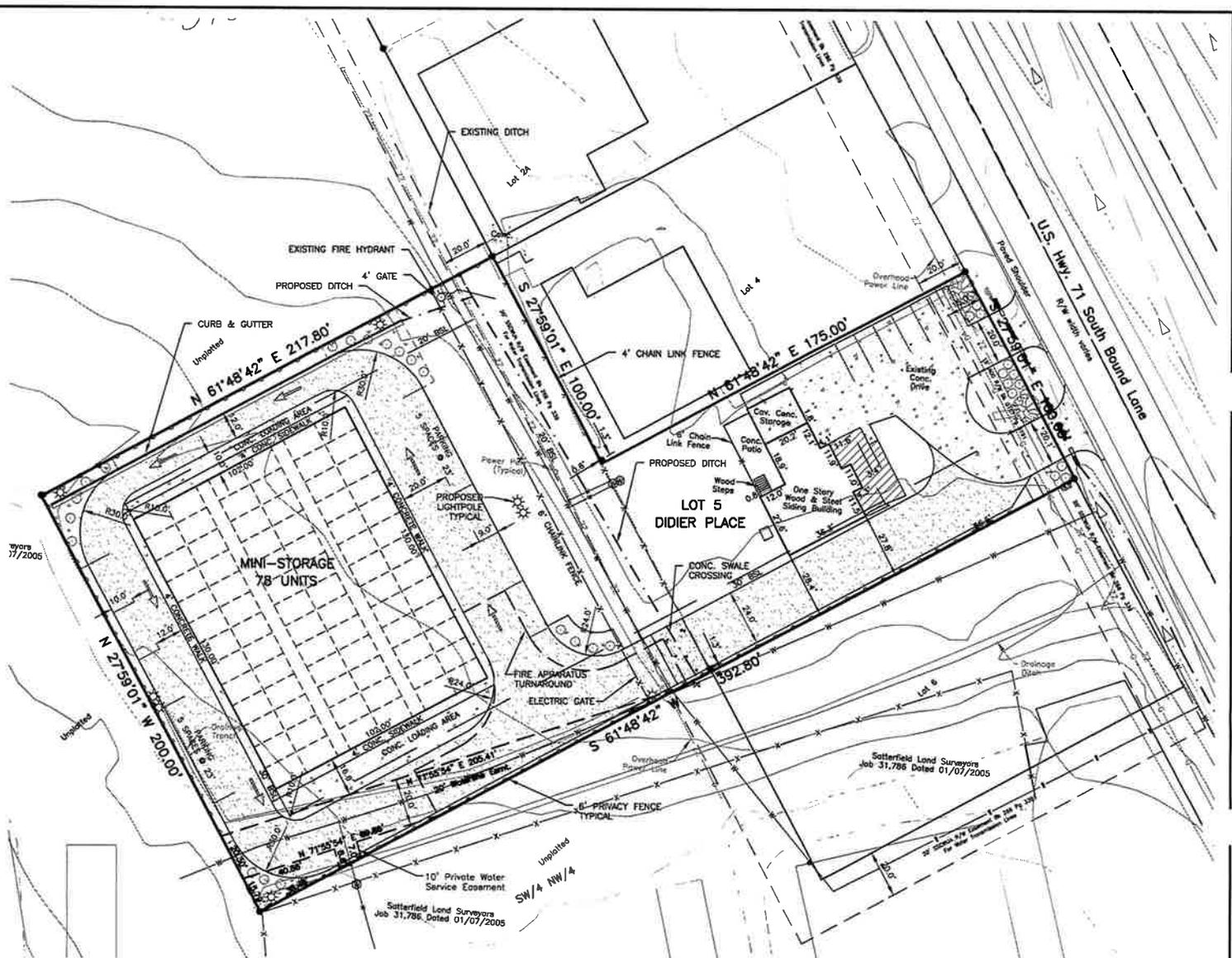
- WATERLINE
- WATER METER
- FIRE HYDRANT
- SAN. SEWER SERVICE
- SEWERLINE
- WATER SERVICE
- EASEMENT LINE
- BUILDING SETBACK LINE
- OVERHEAD ELECTRIC
- CONCRETE CURB
- SIDEWALK
- CONCRETE PARKING
- GRAVEL DRIVE
- PROPOSED LANDSCAPING/SCREENING
- >2" PIN CREPE MYRTLE
- & 3 GAL. BOXWOOD SHRUBS
- LANDSCAPE ISLANDS

TRASH RECEPTACLES - No trash receptacles are proposed.

INTERIOR PARKING - Less than 150 Units @ 4 Spaces Required - 10 spaces Provided
 INTERIOR PARKING LANDSCAPING- 24,247 Sq.Ft. Vehicle Use Area / 1738 Sq.Ft. Interior Landscape Provided (1213 Sq.Ft. required)
 Interior Landscaping will be vegetated in Grasses and be in peninsula form between parking areas.
 Parking Entry Landscaping shall consist of shrubs of evergreen nature, providing a continuous row of vegetation that is equally effective in winter and summer and be a minimum of 24" at planting.



FLOOD ZONE STATEMENT
 THE PROPERTY IS LOCATED IN ZONE "X", BEING OUTSIDE THE 500 YEAR FLOOD ZONE, AS GRAPHICALLY DEPICTED ON F.I.R.M. MAP NO. 05131C0120F, DATED MARCH 2, 2012.



SIDEWALKS - All sidewalks will be elevated 6" above adjacent grade.
 MECHANICAL EQUIPMENT SCREENING - Mechanical equipment will be wall mounted on building, not on detached pad. No screening proposed.

OWNER & DEVELOPER:
 THOMAS & NANCY SPAHN
 9900 HIGHWAY 71 SOUTH
 FORT SMITH, ARKANSAS 72916
 479-648-1213



BRIXEY ENGINEERING & LAND SURVEYING, INC.

CONSULTING ENGINEERS -- LAND SURVEYORS

5223 East Highway 45 P.O. Box 6180 Fort Smith, Arkansas 72906 (479) 646-6394



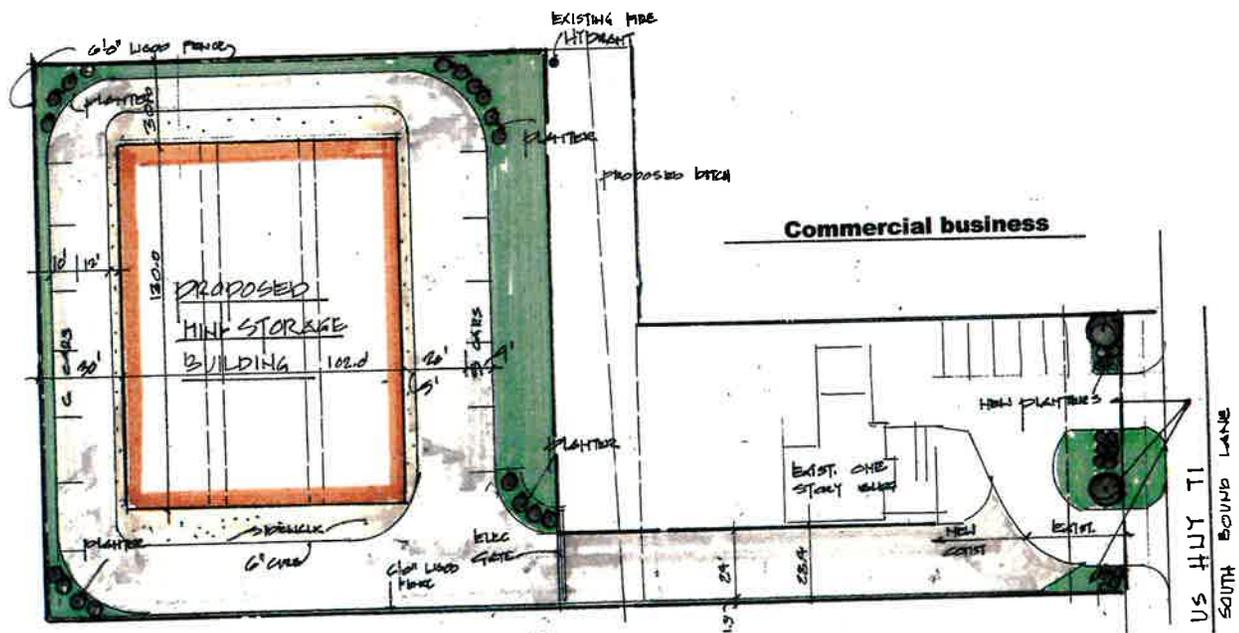
Revison:	07/15/2014 Add Waterline Earm, notes



File Name: G:\ENGINEERING\13-0321 SPAHN SHARUM ESM\SITE PLAN2.dwg

SITE PLAN
 LOT 5A DIDIER PLACE
 FORT SMITH,
 SEBASTIAN COUNTY, ARKANSAS
 Prepared For: Tommy Spahn

Date:	6/09/2014
Drawn By:	RNB
Computed:	RNB
Job No.:	13-0321
Sheet:	
Filed:	



PROPOSED SITE PLAN

preliminary for
PRESTIGIOUS STORAGE
 9900 hwy 71 south
 Fort Smith,
 Arkansas

Sheet
SP-1

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE 2009 UNIFIED DEVELOPMENT
ORDINANCE OF THE CITY OF FORT SMITH**

WHEREAS, the Board of Directors passed and approved Ordinance No. 36-09 which adopted the Unified Development Ordinance on May 19, 2009; and,

WHEREAS, it is necessary to amend certain sections of the Unified Development Ordinance to provide clarity and remove conflicts with other provisions of the municipal code; and,

WHEREAS, the Planning Commission held a public hearing regarding these amendments and recommended on August 12, 2014, that said changes be made; and,

WHEREAS, three (3) copies of September 2014 Amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

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

SECTION 1: The September 2014 Amendments to the Unified Development Ordinance is hereby adopted.

SECTION 2: The codifier shall codify the new sections and amend the existing sections of the Unified Development Ordinance.

SECTION 3: It is hereby found and determined that the adoption of these amendments to the Unified Development Ordinance is necessary to alleviate an emergency created by the lack

of regulation of uses of property within the City of Fort Smith so that the protection of the health, safety and welfare of the inhabitants of the City requires that the amendments be effective, and the amendment is hereby made effective, as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS ____ DAY OF _____, 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:



Publish One Time



August 26, 2014

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

Re: Unified Development Ordinance Amendments

On August 12, 2014, the City Planning Commission held a public hearing to consider amendments to the Unified Development Ordinance.

Mr. Wally Bailey noted the following six (6) proposed Unified Development Ordinance (UDO Amendments):

1. When the UDO was adopted, the section exempting the Commercial Downtown (C-6) zone from the parking requirements was inadvertently omitted. This amendment includes that section in the UDO. (see attached amendment #1)
2. The proposed amendment to the section 27-503-11, subdivision landscaping requirements, makes it clear that this section only applies to residential subdivisions. The landscaping for commercial and industrial developments is installed when each lot is developed. (see attached amendment #2)
3. The current language that establishes criteria for landscaping of industrial developments is ambiguous and inconsistent with another section of the code. The current criteria is different with regard to when landscaping is required and when high quality building materials are required. Using the same criteria for each should provide clarification and consistency. This amendment makes the standard for landscaping industrial properties the same as it is for the architectural design standards. (see attached amendment #3)
4. This amendment corrects an incorrect section reference. (see attached amendment #4)
5. The proposed amendment allows residential subdivisions to have two (2) signs per entrance. Many subdivisions entrances have architectural features on each side of the street entering the subdivision. This amendment will allow a sign on each side of the entrance. (see attached amendment #5)

623 Garrison Avenue
P.O.Box 1908
Fort Smith, Arkansas 72902
(479) 784-2216
FAX (479) 784-2462

6. The land use change permits by right bicycle sales and service with no outdoor storage in all commercial zoning districts, as well as the Industrial Light zoning district. This will allow bicycle shops in many commercial retail developments that are currently zoned Commercial-2. (see attached amendment #6)

No one was present to speak in opposition to these proposed UDO amendments.

Following a discussion by the Commission, Chairman Sharpe called for the vote on the proposed UDO Amendments. The vote was 7 in favor and 0 opposed.

Respectfully Submitted,

CITY PLANNING COMMISSION



Marshall Sharpe, Chairman

MS/lp

cc: File
City Administrator

SEPTEMBER 2014
AMENDMENTS TO THE UNIFIED DEVELOPMENT
ORDINANCE

Memo

To: City Planning Commission
From: Planning Staff
Date: August 8, 2014
Subject: Zoning Ordinance Amendments – Unified Development Ordinance

Planning staff proposes the following amendments:

1. When the UDO was adopted the section exempting the Commercial Downtown (C-6) zone from the parking requirements was inadvertently omitted. This amendment includes that section in the UDO.
2. The proposed amendment makes it clear that this section only applies to residential subdivisions.
3. For consistency, this amendment makes the standard for landscaping Industrial properties the same as it is for architectural design standards.
4. This amendment simply corrects an incorrect section reference.
5. The proposed amendment allows residential subdivisions to have two signs per entrance.
6. The land use change permits by right bicycle sales and service with no outdoor storage in all commercial zoning districts as well as the Industrial Light zoning district.

All of the proposed changes are highlighted on the attached pages. If the Planning Commission agrees with staff we request you recommend approval of these amendments.

6A

SEPTEMBER 2014
AMENDMENTS TO THE UNIFIED DEVELOPMENT
ORDINANCE

1. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate visual screening from the public and adjoining properties
2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.
3. No display of merchandise shall be permitted on public sidewalks or rights-of-way.
4. Special sales merchandise may be temporarily displayed outdoor, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:
 - a. The display shall be limited to the private walk in front of the store.
 - b. No required parking area shall be used as a display or sales area.
5. There shall be no open display in the first twenty (20) feet of the required front yard setback.

27-427 COMMERCIAL DOWNTOWN (C-6)
--

- A. Purpose** To provide for the orderly development of the original downtown area of Fort Smith and the areas immediately adjacent to it. The Commercial Downtown (C-6) Zoning District establishes guidelines and controls that allow for retail and residential development which is compatible with existing and expanding governmental, financial, professional, cultural, historic, and entertainment facilities. Commercial, governmental, and professional uses that serve the metropolitan area are allowed in this zone.
- B. Land Uses.** Permitted, Conditional and Accessory land uses in the C-6 District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.
- C. Area and Bulk Regulations**

Max. Lot Size/Max. Bldg (s.f.)	Min. Lot Width	Max Lot Coverage	Minimum Street Frontage	Max Height
n/a	n/a	100%	n/a	n/a
Setbacks (feet)				
Front Setback	Side Setback	Street Side	Rear Setback	
		206		

6B

n/a n/a **Setback**
n/a n/a

1. Multifamily density: n/a
2. Minimum Parcel/Lot Size for Rezoning to C-6:
 - a. There shall be no new C-6 zones created by classification.
 - b. Existing District (By Extension): 42,000 s.f. (one lot)

D. District Standards

1. New billboards are not permitted in the C-6 Zoning District.
2. Development in the C-6 Zoning District may also be governed by the CBID Design Guidelines, which is a separate process from the Planning and Zoning Department's approval.
3. No minimum parking is required in this zone. If off-street parking is provided, such parking shall conform to Section 27-601-12.

INDUSTRIAL DISTRICTS

27-430	INDUSTRIAL LIGHT (I-1)
---------------	-------------------------------

A. Purpose

To provide for a mixture of light manufacturing, office park, research and development, and limited retail/service retail land uses in an attractive, business park setting. The Industrial Light District may be used as a zoning buffer between mixed uses, commercial uses and heavier industrial uses. The I-1 Zoning District is appropriate with the Office, Research, and Light Industrial (ORLI) and Industry classifications of the Master Land Use Plan.

B. Land Uses

Permitted, Conditional and Accessory land uses in the Industrial Light Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

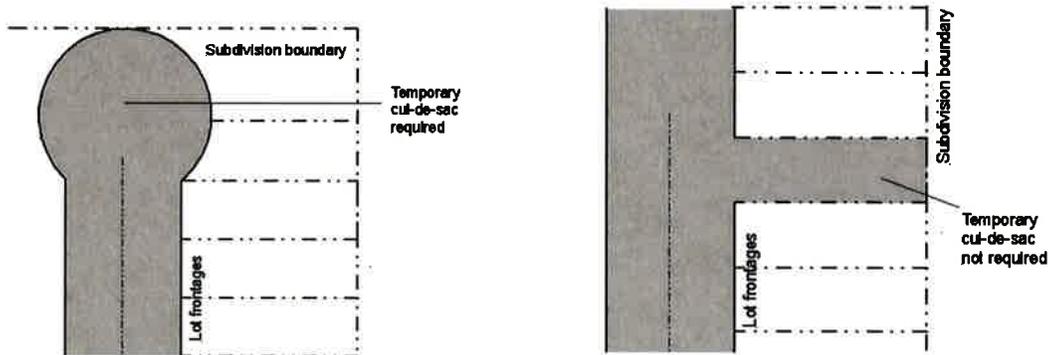
6C

Commercial Downtown (C-6)
UDO, Section 27-427



60

- 3. Dead-end streets shall be designed according to Fort Smith Street Standards.



27-503-11 Landscaping

A. Applicability

The Residential subdivisions shall include perimeter frontage landscaping and subdivision entry landscaping as provided below. Replats of existing residential lots and residential subdivisions with no more than five (5) lots are exempt from perimeter frontage landscaping and subdivision entry landscaping. This requirement does not include residential for multifamily development.

B. Perimeter Frontage Landscaping

Perimeter frontage landscaping shall comply with the following:

1. Perimeter landscaping shall be located along the entire perimeter of the subdivision that fronts the right-of-way of a public street. The perimeter landscaping shall be located on the subdivision property. The landscaping shall be parallel and adjacent to the public right-of-way line.
2. The perimeter landscaping area shall have a minimum width of ten (10) feet.
3. At a minimum, the perimeter landscaping planting strip shall be planted with one (1) tree and ten (10) shrubs for every fifty (50) linear feet of right-of-way frontage.

C. Subdivision Entry Landscaping

1. Applicability. Proposed developments subject to this requirement shall provide subdivision entry landscaping. Subdivision entry landscaping must conform to the standards in subsection (b), below.
2. Standards

6 E

5. Parking lots should be divided into blocks of 40-50 spaces. Where blocks are not easily defined, groups of 20 spaces should be divided by a landscaped median island at least the size of one stall.
6. Accessible parking must be provided according to the City of Fort Smith requirements
7. Parking lots should include appropriately marked locations with racks for bicycle parking.
8. Dead-end parking (parking without a clear turn-around area) should be avoided and shall not be permitted on any non-infill or redevelopment projects.
9. Structured parking (e.g., parking decks or ramps) shall conform to the following:
 - a. Structured parking adjacent to a street shall provide an active front with pedestrian-oriented uses.
 - b. Structured parking shall integrate with adjacent buildings by using similar materials, alignments, and architectural finishes.

F. Phased Development. If a development is to be built in phases, each phase shall include an appropriate share of the proposed streets and circulation system, landscaping and outdoor spaces, screening, and other site and architectural amenities of the entire project. The extent of these improvements shall be determined for each phase of a specific project during the time of project development approval, but may not be based solely upon a proportional or equal share of the entire site. Requirements for a phased project may include off-site improvements

27-602-3 Landscaping and Screening

A. Applicability.

1. The Landscaping and Screening requirements of the Design Guidelines apply to all new multifamily, non-residential development in residential zones, transitional, commercial, and industrial development within the City of Fort Smith. In areas where the Downtown or Belle Grove design standards apply, those standards will control over these in the case of conflict.
2. The Design Guidelines apply to existing multifamily, transitional, commercial, and industrial development within the City of Fort Smith when rehabilitation (renovation, restoration, modification, addition, or retrofit) is proposed to the exterior of a structure or site will: (1) increase the gross square footage of the structure by 50% or greater and (2) shall also

include any cumulative building additions from the effective date of this ordinance that over a five year period amount to a 50% or greater increase in square footage.

3. Rehabilitation projects shall conform to the guidelines to the greatest extent possible.
4. ~~Industrial subdivisions are required to provide perimeter landscaping only.~~

Industrial, storage and distribution buildings when constructed along major arterial or boulevard streets as classified by the master street plan, or adjacent to residential zoning districts or single family development, and/or those buildings at the perimeter of an industrial subdivision shall provide perimeter landscaping only.

5. Parking lots used solely for the display of vehicles at an approved auto and vehicle dealer are required to provide perimeter landscaping only.
6. Development or properties in compliance with these regulations shall not be renovated, remodeled, altered, or repaired so that the site will be in noncompliance with these regulations.

B. Perimeter Landscaping Perimeter landscaping requirements along public rights-of-way are as follows:

1. A ten-foot wide landscaped area is required and shall be located on the property parallel and adjacent to the public street right-of-way line.
2. The minimum requirement for a planting strip will be one (1) tree and ten (10) shrubs for every fifty (50) linear feet of right-of-way frontage.
3. To insure that landscape materials do not constitute a sight hazard, a clear sight visibility triangle shall be observed at all street intersections or intersections of driveways with streets. Within the designated sight visibility triangle, no landscape material exceeding twenty-four (24) inches in height shall be permitted; provided, trees may be permitted as long as only the tree trunk is visible between the ground and eight (8) feet above the ground and the tree does not otherwise present a traffic visibility hazard. The dimensions of the sight visibility triangle are as indicated in the attached diagram for driveways for street intersections.

C. Parking Lot Screening.

Parking lot screening shall be placed in the ten-foot landscaped area reserved for the perimeter landscaping. The parking lot screening can satisfy the perimeter landscaping requirements, when the parking lot screening is installed in compliance

Street Classification

Major Arterial/Boulevard

Freeway

Grand

I-540

Rogers

I-49

Zero

Phoenix Avenue

Wheeler

North 6th

North 10th & 11th

Riverfront

Waldron (Rogers to Grand)

North 50th

South 74th (Phoenix to Dallas)

Massard Road (from Dallas South)

Rye Hill Road East (from Hwy. 71 to Massard)

Custer

Roberts Boulevard

North 23rd (Kelley Highway to Spradling Avenue)

Kelley Highway

Garrison Avenue (Dodson to Rogers)

Taylor Avenue

Highway 71

Highway 271

Towson

Highway 253

Chad Colley

Highway 45

Old Greenwood Road

6H

2. The Design Guidelines apply to existing multifamily, commercial and industrial development within the City of Fort Smith when rehabilitation (renovation, restoration, modification, addition, or retrofit) is proposed to the exterior of a structure or site will: (1) increase the gross square footage of the structure by 50% or greater and (2) shall also include any cumulative building additions from the effective date of this ordinance that over a five year period amount to a 50% or greater increase in square footage.
3. Rehabilitation projects shall conform to the guidelines to the greatest extent possible.
4. Buildings in compliance with these regulations shall not be renovated, remodeled, altered, or repaired so that the building will be in noncompliance with these regulations.

C. Transitional and Commercial Building Design Standards.

1. Any development that contains more than one building shall incorporate a recurring, unifying and identifiable theme for the entire development.
2. The predominant (fifty-one (51) percent of the gross wall area or greater) exterior building facade of all commercial buildings must be of high quality materials such as brick, wood, native stone, tinted glass, stucco, exterior insulated finished systems (EIFS), cementitious siding (e.g., Hardie Board), tinted/textured concrete masonry units, or other siding materials as approved by the Director. Smooth-faced concrete block, plain or untextured tilt-up panels and prefabricated steel panels are prohibited as the predominant facade. Applicants with commercial development adjacent to residential development may incorporate residential materials on the side of the development that faces the residential development.
3. All facades of a building that are visible from the finished grades of adjoining properties or public streets shall have design characteristics similar to the building's front facade. This shall be implemented by requiring the same treatment as discussed in **B C.2** above.
4. All mechanical equipment, heating/cooling systems, trash receptacles and utility boxes shall be completely screened from adjoining properties and street right-of-way.
 - a. For ground-mounted equipment, the screening shall consist of a wall, fence, or approved landscaping or the equipment must be enclosed within a building.

b. Signs required for public health and safety or identification may be displayed on security fencing if placed in conformity with section 27-704-5.

(5) Subdivisions, developments signs: One Two (1 2) signs per entrance, Signage shall not to exceed twenty-four (24) square feet in area per sign. (Ord. No. 3391, as amended, § 10-10(B), 11-1-76; Ord. No. 64-99, § 2, 10-5-99)

27-704-2 Permitted business signs in transitional zones

The following types of signs are permitted and the following regulations shall apply to all signs in transitional zones:

- (1) Flat, single-faced signs may be mounted directly on the facade of a structure, provided that the total sign area does not exceed five (5) percent of the building facade area (building elevation area) as measured from the adjacent street right-of-way.
- (2) Pedestal or monument type signs are permitted and shall conform to the following regulations:
 - a. Such signs, if illuminated, shall be illuminated with indirect lighting only;
 - b. The maximum size of a pedestal or monument sign for a lot or parcel fronting on any local street, identified from time to time by the City of Fort Smith Master Street Plan, shall not exceed twelve (12) square feet;
 - c. The maximum size of a pedestal or monument sign for a lot or parcel fronting on any collector street and arterial street, identified from time to time by the City of Fort Smith Master Street Plan, shall be based upon the length of lot or parcel frontage as outlined as follows:

TABLE INSET:

Frontage Length	Maximum Signage Area
0--99 ft.	18 sq. ft.
100--199 ft.	24 sq. ft.
200 ft. or greater	32 sq. ft.

d. If directional sign(s) are utilized within a development on a lot or parcel, the size of the directional signage shall be considered as part of the maximum sign area for the lot or parcel which contains the directional sign(s) and shall

Appendix A

Districts	RE3	RE1	RS-1	RS-2	RS-3	RS-4	RS-5	RSD-2	RSD-3	RSD-4	RM-2	RM-3	RM-4	RMD	I RH	T	C-1	C-2	C-3	C-4	C-5	C-6	I-1,2	I-3	I-4
P = Permitted Use, C = Conditional Use, A = Accessory Use			R-1	R-2	R-3	R-4	R-6	DP-2	DP-3	DP-4	MF-2	MF-3	MF-4	R-5	I	T1,2,3									
Boat or marine craft dealer																					P			P	P
Car wash - full service																					P				
Car wash self-service																		C	P	P	P	P			
Gasoline service station																				P	P		P	P	P
Motorcycle or ATV sales & service																					P		P	P	P
Tire sales																					P		P	P	P
Truck stop/travel plaza																					C		C	C	
Heavy Consumer Goods Sales or Service																									
Agricultural equipment and supplies (sales & service)																					P	P	P	P	P
Appliance repair - (Large)																					P		P	P	P
Appliance repair (Small)																			P	P	P	P	P	P	P
Bus, truck sales and service																					P		P	P	P
Clothing and personal items (repair)																		P	P	P	P	P			
Commercial, industrial machinery & equipment (sales & service)																					P		P	P	P
Department store, warehouse club or superstore																				P	P				
Computer and software shop																	P	P	P	P	P	P	P		
Electronics and appliances (new)																		P	P	P	P	P	P		
Electronics and appliances (used)																					P		P	P	P
Floor, paint, wall coverings, window treatments																			P	P	P	P	P		
Furniture or home furnishings (new)																			P	P	P	P	P		
Furniture or home furnishings (used)																					P		P	P	P
Furniture repair and upholstery shop																					P		P	P	P
Greenhouse (sales)																					P		P	P	P
Hardware store																			P	P	P	P			
Hardware store (neighborhood)																		P			P		P	P	
Home improvement center																				P	P		P	P	
Lawn and garden supplies																		C	P	P	P	P	P		
Locksmith																		P	P	P	P	P	P		
Lumber yard and building materials																							P	P	P
Mall or shopping center																				P	P				
Manufactured home and mobile home sales and service																					P		P	P	P
Oil and gas equipment (sales and service)																							P	P	P
Sand, gravel, stone, or earth sales and storage																					C		P	P	P
Swimming pool sales and supply store (w/o storage yard)																			P	P	P	P			
Truck or tractor sales and service facility																					P		P	P	P
Durable Consumer Goods Sales or Service																									
Bait and tackle shop																					P		P		
Bicycle sales and service																		C	C	P	P	P	P	P	
Bicycle sales and service (no outside storage)																		P	P	P	P	P	P	P	
Bookstore																					P		P		
Bridal shop																					P		P		
Cameras, photographic supplies and services																					P		P		

BR

Fort Smith
2

Use Matrix

ORDINANCE NO. _____**AN ORDINANCE ADOPTING THE 2012 EDITION OF THE NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE AND OTER PROVISIONS RELATING THERETO**

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

SECTION 1: Section 10-1 of the Fort Smith Municipal Code is amended to read as follows:

There is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain code known as the 2012 Life Safety Code of the National Fire Protection Association, and the whole thereof, of which not less than three (3) copies have been and are now filed in the office of the city clerk; and the same hereby adopted and incorporated as fully as if set out at length herein and the provisions thereof shall be controlling in the limits of the city.

SECTION 2: Section 10-2(a) of the Fort Smith Municipal Code is amended to read as follows:

- (a) The building official is hereby designated as the “authority having jurisdiction” for the 2012 Life Safety Code of the National Fire Protection Association. Whenever the building official shall disapprove an application or refuse to grant a license or permit applied for, or when it is claimed that the provisions of the code do not apply, or that the true intent and meaning of the code has been misconstrued or wrongly interpreted, the applicant making such contention may appeal from the decision of the building official to the fire code board of appeals within thirty (30) calendar days from the date of the decision of the building official.

SECTION 3: EFFECTIVE DATE

This ordinance shall be effective commencing November 1, 2014.

PASSED AND APPROVED THIS _____ DAY OF _____ 2014.

APPROVED: _____
Mayor

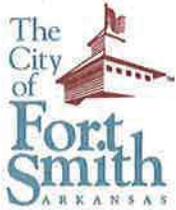
ATTEST:

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 • FAX: 479-783-5338



Mike Richards
Fire Chief

Memo

To: Ray Gosack, City Administrator
From: Mike Richards, Fire Chief *MR*
Date: August 26, 2014
Re: Ordinance Adopting the 2012 NFPA Life Safety Code

The 2012 Arkansas Fire Prevention Code adopted by the Fort Smith Board of Directors on August 5, 2014, references a section of the 2012 version of the National Fire Protection Association (NFPA) Life Safety Code. However, the City is currently operating under the 2003 version of the NFPA Life Safety Code in the Fort Smith Municipal Code in Sections 10-1 and 10-2(a). Therefore, it is necessary to amend those sections and adopt the 2012 version of the NFPA Life Safety Code to be consistent with Arkansas State Laws and the City's Building Safety Division.

The Fort Smith Fire Code Board of Appeals held a meeting on August 26, 2014, to discuss the adoption of the 2012 Life Safety Code. The Board unanimously voted to support the adoption of the 2012 NFPA Life Safety Code. A copy of their letter of support is attached to this memo.

It is our recommendation that Sections 10-1 and 10-2(a) of the Fort Smith Municipal Code be amended to adopt the 2012 NFPA Life Safety Code. Please contact me if you have any questions.

Attachments (1)

cc: Wally Bailey
Jimmie Deer

August 27, 2014

CITY of FORT SMITH, ARKANSAS

ATTN: BOARD of DIRECTORS and MAYOR, Sandy Sanders

Re: Adoption of the Arkansas Fire Prevention Codes

We, the Fire Code Board of Appeals for the City of Fort Smith, urge the Board to adopt the 2012 edition of the NFPA-101 (Life Safety Code). This edition has already been adopted by the State of Arkansas and the CFS should adopt same to be consistent with the State. In fact, should we not adopt the new code, then both the new code and the old code editions would apply which most certainly would create some issues for the Fire Marshals, the Building Department, Design Professionals and Developers within the City.

Sincerely,

Fire Code Board of Appeals,

A handwritten signature in blue ink, appearing to read "James M. Reddick", with a long horizontal flourish extending to the right.

James M. Reddick, Chairman

RESOLUTION NO. _____

A RESOLUTION ADOPTING BOARD BEST PRACTICES

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

The Board Best Practices attached hereto as Exhibit A is hereby adopted. The board shall review the document annually, and more frequently if needed.

This Resolution passed this _____ day of September, 2014.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



No Publication Required

CITY OF FORT SMITH BOARD BEST PRACTICES



Adopted by Resolution No. _____

September 2, 2014

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INTRODUCTION

The responsibilities of modern government depend upon having procedures which help a community function effectively in the current atmosphere of complex laws, rules and regulations. This board best practices document is intended to refine and expand those initial rules of self-government. Creation of the document was identified by the City Board as a priority during a strategic planning retreat in summer 2013.

The board best practices document is a valuable resource for Fort Smith, the City's citizens, the City Board and City administration as all continue to work together for responsive, effective, and efficient local government. The members of the City Board and City administration should be familiar with the contents of this document and keep it close at hand.

Section 1: USE OF THIS DOCUMENT

This board best practices document is designed to provide guidance for the Board and City Administration. It is not to be considered as restrictions or expansions of Board authority. This document is not intended to be an amendment or substitute for state laws, city ordinances, case law, or other authority. Because this document is designed to assist the Board and not to provide substantive rules affecting constituents, it is expressly stated that this document does not constitute land use regulations, official controls, "appearance of fairness rules", public hearing rules or other substantive rules binding upon or to be used by or relied upon by members of the public.

Section 2: STATEMENT OF VALUES

It is hereby the practice of the City to establish the values stated in this Section 2 as core values of City governance. City leaders listen to the community in a way that fully represents the community's interests and goals. Board and staff should make the maximum effort to collaborate, seeking consensus as far as possible. Board members should individually, and collectively, demonstrate the ability to lead and reason together. City leaders exhibit respect for the professionalism and ethical conduct of the City Administrator and staff; and the City Administrator and staff exhibit the same respect and professionalism for the Mayor and City Board. Leaders strive to achieve sustainable outcomes in City policies and administration, with sustainable bottom lines for the community, environment, and for City finances and the local economy. Holding public office is synonymous with public trust. A public officer's relationship with the public is that of a fiduciary. The public expects the utmost of integrity, honesty, and fairness in their dealings with public officials.

Section 3: RESPONSIBILITIES OF MAYOR, VICE MAYOR, AND BOARD MEMBERS

The roles and responsibilities of the Mayor, Vice Mayor, and Board members are as follows. These are in addition to those enumerated throughout the Fort Smith Municipal Code and [Arkansas statutes 14-48-101](#) et. seq. In the event of a conflict, the state statutes and municipal code shall govern.

3.1 Mayor

- Acts as the official head of the city for all ceremonial purposes.
- Selects substitute for City representation when Mayor can't attend.

- Issues proclamations.
- Supervise the preparation of Board meeting agendas by the City Clerk.
- Chairs Board meetings.
- Maintains order, decorum, and the fair and equitable treatment of all speakers at board meetings.
- Keeps discussion and questions focused on the specific agenda item under consideration.
- Recognizes citizens who wish to comment at public meetings.
- Signs documents on behalf of the City.
- Has no vote at board meetings, but may veto actions passed by the board (except personnel items).
- Recognized by the Governor for purposes of military law.

3.2 **Vice Mayor**

The Vice Mayor is elected by the Board at the first regular Board meeting in January of odd-numbered years following the seating of board members elected in the preceding November General Election. The Vice Mayor serves a 2-year term, and may serve multiple terms without limitation. In the event of a vacancy, the board shall elect a new Vice Mayor to serve the remainder of the unexpired term. The Vice Mayor may be removed by a majority vote of the Board members.

- Performs the duties of Mayor if the Mayor is absent or otherwise unable to perform his/her duties.
- If presiding at a Board meeting, the Vice Mayor retains his/her right to vote on matters before the Board.
- Represents the City at ceremonial functions at the request of the Mayor.

3.3 **Board Members' Responsibilities**

All members of the Board of Directors have equal votes. No Board member has more power than any other Board member, and all should be treated with equal respect. Board members should:

- Fully participate in City Board meetings and other public forums while demonstrating respect, kindness, consideration, and courtesy to others.
- Prepare in advance of Board meetings and be familiar with topics on the agenda.
- Represent the City at ceremonial functions at the request of the Mayor.
- Be respectful of other people's time. Stay focused and act efficiently during public meetings.
- Serve as a model of leadership and civility to the community.
- Inspire public confidence in Fort Smith government.
- Keep the community informed on municipal affairs.
- Encourage communications between citizens and the Board.
- Ensure the diverse interests of the community are represented.
- Be mindful of limited resources and avoid requests for unnecessary information in recognition of the limitations of staff time and resources.

Section 4: CODE OF ETHICS

Board members should be mindful of the need for neutrality and impartiality, rendering equal service to all and to extend the same treatment each would want to receive himself/herself. They should abstain from deliberations and voting when and only when a conflict of interest exists in accordance with the [City's business ethics policy, section II](#). Board members should make decisions based on the merits of the issue with attention to due process and citizen participation. They should be knowledgeable and develop an understanding of local, state and national governmental guidance, directives, regulations and ordinances pertaining to a Board member's office. Members of the board should maintain the utmost standards of personal integrity, truthfulness, honesty and fairness in carrying out public duties; avoid improprieties in roles as public servants including the appearance of impropriety; and never use city position or powers for improper personal gain. Board members should maintain and respect the confidentiality of private and confidential information. Avoid personal gain by the misuse of confidential information. Members of the board shouldn't condone any unethical or illegal activity.

Section 5: CODE OF CONDUCT

Practice civility and decorum in discussions and debate. Difficult questions, tough challenges to a particular point of view, and criticism of ideas and information are legitimate elements of a free democracy in action. However, participants shouldn't make belligerent, personal, derogatory, impertinent, slanderous, threatening, abusive or disparaging comments. Shouting or physical actions that could be construed as threatening won't be tolerated.

Section 6: BOARD DECISION-MAKING PROCESS

6.1 Board Meetings Will Be Efficient and Businesslike

The information exchange, review, deliberation and vetting of issues during prior study sessions enables Board business meetings to be expeditious for the benefit of those who have business pending before the Board. The presiding officer's role, especially at the regular meetings, is to keep the Board business focused and expeditious. Board members, staff, and citizens should discuss only the topic before the Board so as not to become distracted by irrelevant discussion.

6.2 Maintain a Policy Focus

The Board's major policy focus will be on the intended long-term impacts outside the operating organization, not on the administrative or programmatic means of attaining those effects. Ends policies should define what is to be accomplished in terms of benefits, recipients, and their relative priorities. The Board should emphasize strategic rather than short-term issues, policy rather than single events, and group rather than individual decisions. Members should make decisions and recommendations based upon research and facts involving staff and stakeholders which considers the goals, impacts and the best interest of the greatest number of those affected.

6.3 Staff Reports

The City Administrator and staff shall provide the Mayor and Board with briefing reports which clearly and concisely state the issue(s), identify options and provide analysis of the advantages, disadvantages, and likely outcomes of each option, and make recommendations.

6.4 Effective Decision Making Requires Finality

Effective decision making results in finality and “moving on”. While it’s important to deliberate in many voices, the Board must govern with one voice.

6.5 Make No Promises on Behalf of the Board

Board members shall never overtly or implicitly promise a Board action, or to promise City staff will do something specific (issue a permit, fix a pothole, adjust a water bill, etc.). Only decisions of the Board acting as a body are binding.

Section 7: LEGAL COUNSEL AND LITIGATION

The City Attorney provides legal advice to the Board, City Administrator, and staff to the extent their interests coincide with the City’s. The City Attorney should not be requested to provide research, advice, or counsel on matters unrelated to the City’s direct legal interests. The Mayor and members of the Board are encouraged to make requests for legal advice through the City Administrator. This document doesn’t prohibit the Mayor and Board members from having direct access to the City Attorney. Once an individual or organization has filed a legal proceeding against the City or threatened to do so, no Board member shall engage in discussions or other communications with such individual (or the officers or directors of the organization) or their legal counsel about the subject of the lawsuit without first disclosing the intent to do so to the Board.

Section 8: PUBLIC PARTICIPATION

Citizens are encouraged to participate at regular and special board meetings. Before the Board deliberates and votes on matters, citizens will have an opportunity to comment on the matters. A citizen wishing to comment on a matter which is not on a meeting agenda may do so at the town hall meeting. More specific procedures for public participation are in [Section 2-37](#) of the Fort Smith Municipal Code.

Section 9: OPEN, TRANSPARENT GOVERNMENT

All meetings of the City Board must be open and public in accordance with the [Arkansas Freedom of Information Act](#) (Arkansas Statute 25-19-101 et. seq.). Deliberations and decisions of the board should be made so that the public has opportunity to view the performance of its elected officials. The Board may convene in executive session as provided by law. Members of the Board should avoid unintended meetings about city business which may occur in-person, by telephone, or interactive e-mail discussion.

Section 10: FILLING VACANCIES ON THE BOARD OF DIRECTORS BY APPOINTMENT

Once the Board has determined there is a vacant seat on the Board, the Board shall act in accordance with state law ([Arkansas Statute 14-48-115](#)) and as expeditiously as possible to fill the vacancy. If the Board shall fill the vacancy, the Board shall publicly solicit applications/statements of interest from qualified citizens. Based on the number of applications received, the Board shall establish a process for screening and interviewing applicants. The Board shall not be obligated to interview all applicants, particularly if there is a large number.

Section 11: EXECUTIVE SESSION DISCUSSIONS

Discussions held in executive session are to remain confidential and should never be discussed with anyone except those who were present during the executive session discussion. Any notes taken during executive session discussions should be treated with the same confidentiality. There shall be no audio or video recordings of executive sessions.

Section 12: ENDORSEMENT OF CANDIDATES

Board members shall have the right to endorse candidates for all Board seats and for other elected offices. It is prohibited for anyone to make endorsements of candidates during Board meetings or other official City meetings.

Section 13: BOARD MEETING AGENDA PROCESS

Items may be placed on board meeting agendas in accordance with the processes outlined in [Section 2-31](#) of the Fort Smith Municipal Code. During a study session, two or more directors may place an item on the agenda for a regular Board meeting. After a study session but at least 48 hours before the meeting, four directors may place an item on the agenda for the next regular meeting. An item requiring immediate action may be placed on the meeting agenda only with the concurrence of all seven directors. An item placed on a meeting agenda may be removed by four or more directors by giving notice to the City Clerk prior to the date of the meeting.

Section 14: BOARD MEETING TYPES AND PROCEDURES

The Board of Directors conducts regular meetings, special meetings, study session meetings, executive sessions, town hall meetings, neighborhood ward meetings, retreats, budget review meetings, and brain storming meetings. The procedures for conducting meetings are outlined in [Chapter 2, Article II](#) of the Fort Smith Municipal Code.

Section 15: TRAINING AND PROFESSIONAL DEVELOPMENT FOR BOARD MEMBERS

Board members are encouraged to attend training events that are beneficial to the performance of their elective duties. Such events may be found at conferences of the Arkansas Municipal League, the National League of Cities, and other similar organizations. Attendance at such events is subject to funding availability in the Board’s budget.

Section 16: TRAVEL AUTHORIZATIONS

16.1 Need for Travel

The Mayor and Board members will sometimes find it necessary to travel to conduct city business. Travel paid with public funds shall be for purposes directly related to the conduct of official city business and for which the elected official’s presence is necessary.

16.2 Authorized Expenses

Expenses for official travel shall be for purposes and uses only as permitted by the City’s travel policy which may be found [in Section III of the City’s Human Resources Policies](#). Reimbursement amounts shall be in accordance with established allowances for meals, lodging, mileage, etc. Travel expenses for spouses or others accompanying the elected official shall be the sole responsibility of the elected official.

Section 17: RELATIONSHIP BETWEEN BOARD, CITY ADMINISTRATOR, AND STAFF

17.1 Cooperation

Cooperation and mutual respect are essential from each individual for the good of the community. Staff should not be intimidated or manipulated by a Board member’s individual comments or actions.

17.2 Informal Communications Encouraged

Individual members of the Board are encouraged to interact informally and casually with City staff for the purpose of gathering information, following up on routine constituent service requests, obtaining progress reports on policies and programs, and providing information to staff. Such informal contacts can serve to promote better understanding of specific City functions and services.

17.3 Limit Contact to Specific City Staff

Questions of City staff and requests for additional background information should be directed only to the City Administrator, Deputy City Administrator, City Attorney, Internal Auditor, and department heads. Requests for information which require a substantial work effort should be made to the City Administrator or Deputy City Administrator rather than to the department head. Requests for follow-up, directions, or action to staff should be made only through the City Administrator or Deputy City Administrator. Requests of the Internal Auditor may be made directly to that official without the need to coordinate with the City Administrator. When in doubt about what staff contact is appropriate, Board members should ask the City Administrator or Deputy City Administrator for assistance.

17.4 Avoid Administrative Functions

Board members shall not attempt to influence City staff on employment decisions, awarding contracts, purchasing decisions, selecting consultants, or issuing City licenses and permits.

17.5 Solicitation of Political Support from City Employees

Board members shouldn’t solicit any type of political support (financial contributions, display of posters or yard signs, name on list of supporters, etc.) from City employees. City employees may, as private citizens with constitutional rights, support political candidates. All political activities must occur away from City workplaces, without the use of any City resources, and never during an employee’s work time.

Section 18: ORIENTATION OF NEW BOARD MEMBERS

The City Administrator shall provide each newly elected Board member with appropriate orientation services, preferably before the member takes office. Such orientation should include, but not necessarily be limited to, the following:

- | | |
|-----------------------------------|----------------------------|
| The Board Best Practices Document | Board Meeting Procedures |
| Agenda Preparation | Freedom of Information Act |
| Contacts/Making Requests of Staff | Code of Business Conduct |
| Tours of City Facilities | |

Section 19: COMMUNICATION WITH BOARDS, COMMISSIONS, AND COMMITTEES

Any comments by a City Board member at a board, commission, or committee meeting should be clearly made as individual opinion and not as a representation of the feelings of the entire City Board. It is inappropriate for a City Board member to contact a member of a board, commission, or committee to lobby on behalf of an individual, business, or developer. It is acceptable for City Board members to contact members of boards, commissions, or committees in order to seek clarification of a position taken by the board, commission, or committee.



MEMORANDUM

August 28, 2014

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Board Best Practices

Attached is the revised *Board Best Practices* document which reflects the changes discussed at the August 26th study session. The specific changes are:

- ▶ *Board Governance Policy* has been changed to *Board Best Practices*. References to the document being a “policy” have been deleted or changed to “document”.
- ▶ Section 12, censure of board members, has been deleted. Subsequent sections were renumbered.
- ▶ Former section 18.1 (now section 17.1), has been amended by deleting the third sentence which read:

Individual Board members shouldn't direct their differences of opinion to staff in a manner which creates dissension or polarization in the organization.

Attached is a resolution which adopts the *Board Best Practices* document, and provides for at least an annual review of the document to ensure it stays current and useful. The staff recommends adoption, which will complete one of the goals from last year's board retreat.

Attachments

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

RESOLUTION NO. _____

A RESOLUTION APPROVING AND AUTHORIZING EXECUTION
OF COOPERATION AND REIMBURSEMENT AGREEMENT

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

SECTION 1: There is hereby approved a Cooperation and Reimbursement Agreement with Whirlpool Corporation providing cooperation procedures in identified areas with reference to Whirlpool’s environmental remediation of identified TCE contamination and reimbursement procedures in the event the City incurs expenses related to activities in defined areas. The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, the approved Cooperation and Reimbursement Agreement in a form substantially as submitted at the meeting of approval.

SECTION 2: Pursuant to paragraph 3 of the approved Cooperation and Reimbursement Agreement, the City Administrator is hereby authorized and directed to administer requests from Whirlpool for temporary access to City-owned property or roadway right-of-way. The City Administrator is authorized to take any and all other necessary actions to effectuate the City’s responsibilities and obligations as set forth in the Cooperation and Reimbursement Agreement.

THIS RESOLUTION ADOPTED THIS ____ DAY OF September, 2014

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:



City Attorney
No Publication Required

RESOLUTION NO. _____

A RESOLUTION ACCEPTING DONATION OF RIGHT-OF-WAY
FOR JENNY LIND ROAD & INGERSOLL AVENUE WIDENING PROJECT NO. 07-01-A

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

The donation by Whirlpool Corporation of right-of-way required for the City’s Jenny Lind Road & Ingersoll Avenue widening project is hereby accepted. The City Administrator is hereby authorized to record the Special Warranty Deed and Temporary Construction Easement executed and delivered by Whirlpool and to take any and all necessary actions to comply with the approved insurance and other obligations during the City’s contracting for the project.

THIS RESOLUTION ADOPTED THIS ____ DAY OF September, 2014

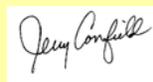
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to form:



City Attorney
No Publication Required

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

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

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

JAMES E. WEST
PHILLIP E. NORVELL †

OF COUNSEL

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

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

† Also Licensed in Oklahoma
• Also Licensed in Wyoming & North Dakota

August 28, 2014

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

Re: A Resolution Accepting Donation of Right-of-Way for Jenny Lind Road & Ingersoll Avenue Widening Project No. 07-01-A

A Resolution Approving and Authorizing Execution of Cooperation and Reimbursement Agreement

Dear Mr. Gosack:

For a considerable period of time, the City has been discussing with Whirlpool Corporation a Cooperation and Reimbursement Agreement related to the activities of Whirlpool Corporation to remediate the TCE contamination on properties on and near the Whirlpool Corporation manufacturing facility located along Jenny Lind Road and Ingersoll Avenue. The discussions have involved our offices as well as Mr. Snodgrass of the City's Engineering Department and Mr. Parke of the City's Utilities Department. During the same period of time, as you know, the City has been working on plans and property acquisition for the Jenny Lind Road and Ingersoll Avenue widening project, which project involves work in areas where below surface TCE contamination has occurred. Although somewhat independently of each other, the discussion of the Cooperation and Reimbursement Agreement has proceeded at the same time as a request by the City that Whirlpool Corporation donate the needed right-of-way for the project.

The discussions regarding the Cooperation and Reimbursement Agreement have been completed and have resulted in the attached Cooperation and Reimbursement Agreement (lengthy exhibits are not attached). Among other matters, the Agreement requires the City to keep Whirlpool informed regarding its construction projects (not only the Jenny Lind Street Project but also other utility and other construction activities), provides access to Whirlpool to test results in the event of dewatering, excavation and other construction activities, permits potential temporary use of City property or right-of-way for contamination remediation efforts and provides for reimbursement of extra expenses incurred by the City caused by adherence to Whirlpool advice

regarding dewatering, excavation and other activities.

Because of the Jenny Lind Road and Ingersoll Avenue project is partially funded by federal and state funds, controlling law requires the City to appraise all property acquisitions and offer the appraised value to the property owner. The appraisal for the property interests required from the Whirlpool ownership indicated a value of \$53,900.00. Whirlpool has been advised of the appraisal and the requirement that the City is required to offer the appraised value for the property interests. Irrespective of that information, the Whirlpool Corporation has indicated that it is willing to donate the property interests to the City. Whirlpool Corporation had previously donated sanitary sewer line easement rights requested by the City as a part of Project No. 11-07-C1 which replaced an existing sanitary sewer force main beginning at City sewer pump station 11 and extending through the Whirlpool Corporation property to a point on Jenny Lind Road.

As both of these discussions have been concluded, we have prepared the enclosed two resolutions for consideration by the Board of Directors. One resolution would approve the execution of the Cooperation and Reimbursement Agreement and authorize your office to proceed with execution of the terms of the Agreement. The other resolution would accept the donation of the right-of-way for the Jenny Lind Road and Ingersoll Avenue project.

We would be pleased to respond to requests for information regarding these matters.

Thank you for your attention to this matter.

Very truly yours,



Jerry L. Canfield
JLC/cmm

Enclosures

cc: Mr. Stan Snodgrass
Mr. Steve Parke

COOPERATION AND REIMBURSEMENT AGREEMENT

This cooperation and reimbursement agreement (hereinafter "Agreement") is made and entered into this ___ day of _____, 2014, by and between the City of Fort Smith, Arkansas (hereinafter the "City") and Whirlpool Corporation (hereinafter "Whirlpool") (collectively the "Parties").

WHEREAS, the existence of trichloroethylene (TCE) has been detected in groundwater and soils deep below the surface of certain real properties located in Fort Smith, Sebastian County, Arkansas. The Arkansas Department of Environmental Quality (ADEQ) and Whirlpool have studied extensively the nature and extent of the TCE contamination, and have determined its present location to a reasonable degree of certainty (hereinafter the "Known Area of Impact"). The Known Area of Impact is depicted in Figures 5 and 6 of the December 2013 Remedial Action Decision Document (hereinafter "RADD"), attached in its entirety as Exhibit A.

WHEREAS, Whirlpool has accepted responsibility for the TCE located within the Known Area of Impact that has emanated from Whirlpool's manufacturing facility. Whirlpool, thus, has agreed to conduct an environmental remediation with respect to the TCE contamination, the specifics of which have been determined by ADEQ and set forth in the RADD. Whirlpool's responsibilities with respect to the RADD have been set forth in a Consent Decree that has been entered into by Whirlpool and ADEQ (hereinafter the "Consent Decree").

WHEREAS, the City plans to undertake a street widening and construction project, which project may involve the disturbance and/or excavation of soils located within and/or adjacent to the Known Area of Impact (hereinafter "City Project"). The City Project is described in detail in blueprints and proposed contract documents attached hereto as Exhibit B.

WHEREAS, City utility (planned or emergency) or other work might involve disturbance

and/or excavation of soils located within and/or adjacent to the Known Area of Impact;

WHEREAS, the City is aware of information regarding the TCE contamination within the Known Area of Impact. Information regarding the TCE located within the Known Area of Impact, including the routes of exposure thereto, is set forth in the Revised Risk Management Plan submitted on behalf of Whirlpool to ADEQ on April 24, 2013, which is attached in its entirety as Exhibit C.

WHEREAS, due to the depth of the TCE present within the Known Area of Impact, the Parties do not anticipate that the City Project will expose or otherwise impact groundwater or soils contaminated with TCE within the Known Area of Impact. Attached as Exhibit D_ is a March 13, 2014, technical memorandum in which the City's environmental consultant, FTN Associates, Ltd., concludes the City's proposed work should not be adversely impacted by the conditions described in the RADD.

WHEREAS, although the Known Area of Impact was delineated following extensive investigation by ADEQ and Whirlpool, the Parties agree that, in order to further ensure the protection of human health and safety, for the purposes of this Agreement only, the area subject to the terms set forth herein should be expanded to include a two hundred foot buffer zone extending to either side beyond the Known Area of Impact. This expanded area, which encompasses both the Known Area of Impact and the buffer zone (hereinafter the "Defined Area"), is depicted in Exhibit E, which provides two views – an expanded view and an insert, which provides a closer view of the Defined Area.

NOW, THEREFORE, in consideration of the mutual benefits received by the Parties, which Whirlpool and the City each acknowledge to be good, valuable and sufficient consideration to support its respective undertakings in this Agreement, it is agreed as follows.

1. Coordination Between the Parties

A. Review and Approval. Within 45 days of execution of this Agreement, and prior to the City's issuance of a Notice to Proceed to its contractor, Whirlpool may advise the City in writing of any work activity Whirlpool deems necessary and appropriate to meet the purposes of this Agreement, including but not limited to maintaining strict compliance with all environmental, health and safety laws and regulations and adherence to the best management and operation practices in light of the TCE contamination. The City will respond to any issued Whirlpool advice in writing 15 days before issuing its Notice to Proceed with the City Project work.

B. Notification of Planned City Project Work. In the interest of safeguarding the environment, human health and safety, and in order to ensure that Whirlpool is able to fulfill its remedial obligations, the City agrees to provide to Whirlpool a copy of the City's Notice to Proceed on the date that the City issues the Notice to the contractor chosen for the City project.

C. Notification of Planned Excavation. The City shall notify Whirlpool prior to the commencement of any other planned excavation to be performed by it or its contractors in the Defined Area at least three (3) business days prior to the commencement of excavation. The City shall notify Whirlpool as early as practicable of any emergency, unplanned excavation performed by the City or its contractors in the Defined Area.

D. Conformance with Approved or Amended Workplan. All work undertaken by the City on the City Project within the Defined Area must be undertaken in conformance with the terms of the contract documents, Whirlpool advice agreed upon by the City, and all applicable federal, state and local laws and regulations. In the event that contamination attributable to

Whirlpool operations is detected in locations other than the Defined Area and at levels warranting compliance with the procedures set forth herein, the Parties will amend this Agreement, as appropriate, to apply the provisions herein to the newly identified locations.

E. Notice to Employees and Contractors. The City agrees to provide a copy of attached Exhibits A and E to its contractor constructing the City Project within the Defined Area.

F. Access to the City Project. During the performance of any work on the City Project within the Defined Area, Whirlpool shall be permitted at all times to have one or two representatives present, and shall be permitted to undertake any sampling it deems appropriate as long as such sampling does not substantially interfere with the City's work. Whirlpool shall also be furnished with split samples of any samples taken in the Defined Area by the City, its workers or contractors, upon Whirlpool's written request.

G. Notice to ADEQ. As it deems appropriate, Whirlpool may notify ADEQ of any work conducted in the Defined Area and may choose to share with and seek ADEQ comments on any workplan or amendments thereto.

2. Reimbursement of Costs.

A. Scope of Reimbursement. Given Whirlpool's acceptance of responsibility for the presence of TCE in soils and groundwater within the Known Area of Impact, to the extent that during the design or performance of any work, including the City Project, noticed to Whirlpool under Paragraph (1) the City reasonably incurs incremental expenses that the City would not have incurred but for the potential presence of TCE (hereinafter "Incremental Costs"), Whirlpool agrees to reimburse the City for such Incremental Costs.

B. Procedures for Reimbursement. Any request for reimbursement of Incremental Costs by the City shall be made in writing to Whirlpool and shall include appropriate

documentation regarding the costs incurred. Following receipt of such a reimbursement request, Whirlpool shall notify the City in writing within fifteen (15) days whether Whirlpool intends to dispute any or all of the requested reimbursement of Incremental Costs. Whirlpool shall cause undisputed requests to be paid within thirty (30) days of receipt of the request, and Whirlpool shall cause disputed requests to be paid within ten (10) days of final resolution in favor of the City, together with interest at six percent (6%) per annum and reasonable attorney's fees incurred in addressing and resolving any disputed requests.

3. Cooperation with Respect to Remedial Activities. In order to ensure Whirlpool's timely completion of any remedial or other work required by the RADD or the Consent Order, the City agrees to cooperate with Whirlpool, including but not limited to: providing Whirlpool reasonable, temporary access to City-owned property or the roadway right-of-way as necessary to perform its responsibilities under the RADD or Consent Order, including but not limited to the proper abandonment, installation, or replacement of any monitoring or injection wells within or near the area affected by the City Project. As authorized by the resolution of the City's Board approving this Agreement, the City Administrator shall have the authority (1) to receive Whirlpool's written requests for temporary use of City property or roadway right-of-way and (2) to approve the location of Whirlpool access for the purposes of this paragraph. Whirlpool shall hold the City harmless from and indemnify the City for all expenses, causes of action and judgments, including legal expense, arising from access granted to City owned property or roadway right-of-way.

4. No Assumption of Liability. Whirlpool does not assume liability for claims made alleging negligence of the City or its employees, contractors, or agents or for claims made regarding the performance of the City or its employees, contractors, or agents in carrying out their

duties or services under this Agreement. Whirlpool does not assume liability for claims made by the City's employees, contractors or agents for injuries incurred while performing services under this Agreement.

5. Notice. Any non-emergency notice required to be given by this Agreement as between Whirlpool and the City must be delivered both electronically by email and in hard copy to each of the addresses set forth for each party below. Notice shall be considered effective only upon confirmation by the other party of receipt, which confirmation can be obtained either verbally or in writing (including email).

If to the City:

Fort Smith City Administrator
625 Garrison Avenue
Fort Smith, AR 72901
Gosack@FortSmithAR.com
(479)784-2430

Jerry Canfield
Attorney for City of Fort Smith
Daily & Woods
PO Box 1446
Fort Smith, AR 72902
jcanfield@dailywoods.com
(479)782-0361

If to Whirlpool:

Robert Karwowski
Director of Environment, Health & Safety
Whirlpool North American Region
600 W. Main St
Benton Harbor, MI 49022
Robert_J_Karwowski@whirlpool.com
(269) 923-3614

Lawrence Prange
Senior Counsel
Whirlpool North America Region

600 W. Main St
Benton Harbor, MI 49022
laurence_w_prange@whirlpool.com
(269) 923-6641

Robert L. Jones, III
Conner & Winters, LLP
4375 N. Vantage Dr., Suite 405
Fayetteville, Arkansas 72703
bjones@cwlaw.com
(479) 582-5711

6. Term. The requirements set forth in Paragraphs 1 and 2 shall expire upon the completion of the City Project (except to the extent these paragraphs are applicable to City actions other than the City Project, in which case the following sentence shall apply). All other terms set forth herein shall expire twenty (20) years following the execution of this Agreement.

7. Dispute Resolution. In the event Whirlpool disputes its obligation to reimburse any Incremental Costs requested pursuant to Section 2, Whirlpool shall give notice of its dispute within fifteen (15) days of receipt of the request. Upon receipt of the dispute notification by Whirlpool, the City Administrator shall arrange a telephone or in person conference to discuss the matter with Whirlpool within thirty (30) days of the dispute notification. If the conference has not been held within thirty (30) days or, if held, the conference does not resolve the dispute, either party may commence litigation in state or federal court.

8. Governing Law. This Agreement shall be governed, performed and interpreted under the laws of the State of Arkansas.

9. Severability. If any portion of this Agreement is ultimately determined not to be enforceable, that portion will be severed from the Agreement and the severability shall not affect the enforceability of the remaining terms of the Agreement.

10. Parties Bound. This Agreement applies to and is binding, jointly and severally, upon each party and its receivers, trustees, successors, and assigns. No change in the ownership or corporate or business status of the Whirlpool Fort Smith manufacturing facility shall alter the responsibilities of Whirlpool, its receivers, trustees, successors and assigns, under this Agreement.

11. Representative Authority. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the parties to this Agreement.

12. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

Agreed and Executed as of the date set forth above.

City of Fort Smith

Approved: _____
Mayor

Attest: _____
City Clerk

Whirlpool Corporation

By: _____

Its: _____

"I certify under penalty of false swearing that at least the legally correct amount of documentary stamps have been placed on this instrument."

Grantee or Grantee's Agent

Grantee's Address*

SPECIAL WARRANTY DEED

That Whirlpool Corporation, GRANTOR, for and in consideration of ten dollars (\$10.00) and other good and valuable consideration exchanged, does hereby grant, bargain, sell and convey unto the City of Fort Smith, Arkansas, a municipal corporation, GRANTEE, and unto its successors and assigns forever, the following described real estate lying in the County of Sebastian, State of Arkansas, to-wit:

Part of Lot 1 and Lot 2 of the Fractional Northwest Quarter, part of the Northeast Quarter of the Southwest Quarter, all in Section 4, Township 7 North, Range 32 West, Sebastian County, Arkansas, more particularly described as follows:

Part 1

Commencing at a 1/2" rebar with cap being used as the Quarter Section Corner of Sections 4 and 5, Township 7 North, Range 32 West; thence South 86°56'06" East a distance of 2628.83 feet to the Center Quarter Corner of said Section 4; thence North 02°47'07" East a distance of 1573.00 feet along the East line of the Northwest Quarter of said Section 4 to a point; thence North 86°23'09" West a distance of 272.34 feet to a point on the West right of way line Jenny Lind Road, for the point of beginning; thence South 03°30'04" West a distance of 4.56 feet along said right of way line to the North right of way line of Ingersoll Ave. as established by AHTD Job C-65-1; thence North 86°23'52" West a distance of 31.06 feet along said North right of way line to a point on the West right of way line of Jenny Lind Place as established by AHTD Job 040471; thence North 03°38'08" East a distance of 4.56 feet along said West right of way line to a point; thence, leaving said right of way line, South 86°23'08" East a distance of 31.05 feet to the point of beginning and containing 142 square feet, more or less, as shown on plans referenced as AHTD Job 040471.

And also: Part 2

Commencing at a 1/2" rebar with cap being used as the Quarter Section Corner of Sections 4 and 5, Township 7 North, Range 32 West; thence South 86°56'06" East a distance of 2628.83 feet to the Center Quarter Corner of said Section 4; thence North 02°47'07" East a distance of 1573.00 feet along the East line of the Northwest Quarter of said Section 4 to a point; thence North 86°23'09" West a distance of 210.98 feet to a point on the East right of way line of Jenny Lind Place as established by AHTD Job 040471 for the point of beginning; thence South 26°04'44" East a distance of 5.23 feet along said right of way line to the North right of way line of Ingersoll Ave. as established by AHTD Job C-65-1; thence North 86°23'52" West a distance of 13.94 feet along said North right of way line to the East right of way line of Jenny Lind Road; thence North 03°30'04" East a distance of 4.55 feet along said Jenny Lind Road right of way line to a point; thence, leaving said right of way line, South 86°23'09" East a distance of 11.36 feet to the point of beginning and containing or 57 square feet, more or less, as shown on plans referenced as AHTD Job 040471.

And also: Part 3

Commencing at a 1/2" rebar with cap being used as the Quarter Section Corner of Sections 4 and 5, Township 7 North, Range 32 West; thence South 86°56'06" East a distance of 2628.83 feet to the Center Quarter Corner of said Section 4; thence North 02°47'07" East a distance of 1507.81 feet along the East line of the Northwest Quarter of said Section 4 to a point on a curve on the Northeasterly right of way line of Ingersoll Ave. as established by AHTD Job C-65-1 for the point of beginning; thence along said right of way line and an arc 148.41 feet to the left, having a radius of 170.28 feet, the chord of which is North 61°25'47" West for a distance of 143.76 feet to a point on the North right of way line of Ingersoll Ave. as established by AHTD Job 040471; thence South 86°23'51" East a distance of 16.64 feet along said North right of way line to a point; thence along said North right of way line and an arc 24.38 feet to the left, having a radius of 65.00 feet, the chord of which is North 82°51'24" East for a distance of 24.24 feet; thence, leaving said right of way line South 86°23'09" East a distance of 90.37 feet to a point on the Easterly right of way line of Jenny Lind Road as established by a plat of Evans Club Addition, filed October 17, 2003, in Sebastian County, Arkansas as document 1715A; thence South 03°46'48" West a distance of 65.54 feet along said Jenny Lind Road right of way line to a point on the Northeasterly right of way line said Ingersoll Ave.; thence along said Ingersoll Ave. right of way and an arc 0.46 feet to the left, having a radius of 170.28 feet, the chord of which is North 36°23'19" West for a distance of 0.46 feet to the point of beginning and containing 0.07 acres, more or

less, or 2,881 square feet, more or less, as shown on plans referenced as AHTD Job 040471.

And also: Part 4

Commencing at a 1/2" rebar with cap being used as the Quarter Section Corner of Sections 4 and 5, Township 7 North, Range 32 West; thence South 86°56'06" East a distance of 2547.70 feet along the South line of the Northwest Quarter of said Section 4 to a point on the West right of way line of Jenny Lind Road as established by AHTD Job 040471 for the point of beginning; thence North 03°38'08" East a distance of 1379.04 feet along said right of way line to a point; thence along said right of way line and an arc 172.85 feet to the left, having a radius of 110c.00 feet, the chord of which is North 41°22'52" West for a distance of 155.61 feet to a point on the South right of way line of Ingersoll Ave. as established by AHTD Job C-65-1; thence South 86°23'52" East a distance of 38.51 feet along said South right of way line to a point; thence along said Ingersoll Ave. right of way line and an arc 142.09 feet to the right, having a radius of 90.28 feet, the chord of which is South 41°18'32" East for a distance of 127.87 feet to a point on the West right of way line Jenny Lind Road as established by AHTD Job C-65-1; thence South 03°46'49" West a distance of 1752.21 feet along said West right of way line to a point on the West right of way line of Jenny Lind Road as established by AHTD Job 040471; thence along said Job 040471 West right of way line and an arc 94.00 feet to the right, having a radius of 1014.93 feet, the chord of which is North 00°58'55" East for a distance of 93.97 feet; thence North 03°38'08" East a distance of 56.29 feet along said right of way line to a point; thence North 86°21'52" West a distance of 10.00 feet along said right of way line to a point; thence North 03°38'08" East a distance of 203.49 feet along said right of way line to the point of beginning and containing 0.69 acres, more or less, or 29,935 square feet, more or less, as shown on plans referenced as AHTD Job 040471.

And also: Part 5

Commencing at a 1/2" rebar with cap being used as the Quarter Section Corner of Sections 4 and 5, Township 7 North, Range 32 West; thence South 86°56'06" East a distance of 2628.83 feet to the Center Quarter Corner of said Section 4; thence South 02°47'07" West a distance of 671.08 feet along the East line of the Southwest Quarter of said Section 4 to a point on the Southwesterly right of way line of Jenny Lind Road as established by AHTD Job C-65-1 for the point of beginning; thence South 11 °17'09" East a distance of 612.51 feet along said right of way line to a point on the North right of way line of the Arkansas and Missouri Railroad Company as established by Sebastian County, Arkansas deed record 7187999; thence North 86°57'57" West a distance of 8.85 feet along said Railroad right of way line to a point on the Southwesterly right of way line of Jenny Lind Road as established by AHTD Job 040471; thence along an

said Job 040471 right of way line and arc 55.21 feet to the left, having a radius of 894.93 feet, the chord of which is North 09°31 '13" West for a distance of 55.20 feet; thence North 11 °17'15" West a distance of 711.23 feet along said Job 040471 right of way line to a point; thence along along said Job 040471 right of way line and an arc 118.40 feet to the right, having a radius of 1014.93 feet, the chord of which is North r56'44" West for a distance of 118.33 feet to a point on the Southwesterly right of way line of Jenny Lind Road as established by AHTD Job C-65-1; thence South 11°17'09" East a distance of 274.21 feet along said Job C-65-1 right of way line to the point of beginning and containing 0.13 acres, more or less, or 5,860 square feet, more or less, as shown on plans referenced as AHTD Job 040471.

In total containing 0.89 acres, more or less, or 38,875 square feet, more or less.

SUBJECT, however, to any and all recorded easements, servitudes, reservations, restrictions, licenses, and agreements and rights of others, zoning ordinances, and laws and those matters which would be disclosed by an accurate surveyor inspection of the property.

TO HAVE AND TO HOLD, the same unto the Grantee, and unto its successors and assigns forever, subject to the reservations, restrictions, and conditions provided herein, together with all and singular the tenements, appurtenances and hereditaments thereunto belonging or in any wise appertaining.

AND, the Grantor, hereby covenants with Grantee that it will warrant and defend the title to the lands against all claims and encumbrances done or suffered by or through it, but against none other, and subject to the reservations, restrictions, and conditions provided herein.

IN WITNESS WHEREOF, the Grantor, Whirlpool Corporation has caused these presents to be executed by its _____, and _____,

being duly authorized on this ____ day of _____
20____.

GRANTOR:

WHIRLPOOL CORPORATION

By: _____

ACKNOWLEDGMENT

STATE OF _____)

)SS.

COUNTY OF _____)

On this ___ day of _____, 20____, before me, a Notary Public, duly
commissioned, qualified and acting within and for said County and State, appeared in
person the within-named _____, to me personally well known, stated
that he had so signed, executed and delivered said foregoing instrument for the
consideration, uses, and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have set my hand and official seal this _____ day
of _____, 20____.

Notary Public

My Commission Expires:

Document prepared by:
Jerry Canfield
Daily & Woods, P.L.L.C.
P.O. Box 1446
Fort Smith, AR 72902-1446

TEMPORARY CONSTRUCTION EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That Whirlpool Corporation, GRANTOR, for and in consideration of the sum of \$1.00 and other good and valuable consideration paid by the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, hereinafter called GRANTEE, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to said GRANTEE, its contractors and assigns, temporary easements for the construction of street, public and/or franchised utilities and/or storm drainage improvements with the right to excavate, fill, grade and level the surface area and to remove trees, bushes, undergrowth or other obstructions interfering with the construction of said project, within the following described lands lying in the City of Fort Smith, Sebastian County, Arkansas, to wit:

Tract 1 (3E-1)

Part of the Northwest Quarter (NW 1/4) of the Southeast Quarter (SE 1/4) and the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4), Section 4, Township 7 North, Range 32 West, of the Fifth Principal Meridian, Sebastian County, Fort Smith, Arkansas, and being more particularly described as follows:

Commencing at the Southeast corner of said Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4), Thence North 02°47'07" East a distance of 62.38 feet along the West line of said Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) to a point on the North Right-of-Way line of The St. Louis- San Francisco Railroad, Thence leaving said West line, South 86°57'57" East a distance of 114.21 feet along said North line, Thence leaving said North line, North 09°13'29" West a distance of 48.81 feet, Thence North 78°42'45" East a distance of 20.00 feet, Thence North 11 °17' 15" West a distance of 878.26 feet, Thence South 88°00'46" West a distance of 21.41 feet, Thence North 00°02' 14" West a distance of 71.79 feet, Thence South 88°05'14" East a distance of 40.00 feet to a point on the West Right-of-Way line of Jenny Lind Avenue, Thence along said West line, 63.49 feet along the arc of a curve to the left, said curve having a radius of 1014.93 feet and being subtended by a chord having a bearing of South 00°07' 15" West and a length of 63.48 feet, Thence continuing along said West line, South 03°46'49" West a distance of 28.32 feet, Thence South 11°17'09" East a distance of 24.07 feet, Thence 118.40 feet along the arc of a curve to the left, said curve having a radius of 1014.93 feet and being subtended by a chord having a bearing of South 07°56'44" East and a length of 118.33, Thence South 11 °17' 15" East a distance of 711.23 feet, Thence 55.21 feet along the arc of a curve to the right, said curve having a radius of 894.93 feet and being subtended by a chord

having a bearing of South 09°31' 13" East and a length of 55.20 feet, Thence leaving said West line, North 86°57'57" West a distance of 25.86 feet along said North line to the Point of Beginning, containing 9,165 square feet or 0.210 acres, more or less.

With right of ingress and egress to and from the same.

Tract 2 (3E-2)

Part of the Southeast Quarter (SE 1/4) of the Northwest Quarter (NW 1/4) and the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4), Section 4, Township 7 North, Range 32 West, of the Fifth Principal Meridian, Sebastian County, Fort Smith, Arkansas and being more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Thence South 86°58'55" East a distance of 36.47 feet along the South line of said Northwest Quarter of the Northwest Quarter to a point on the East Right-of-Way line of Pierce Drive and US Highway 271, Thence leaving said South line, North 03°35'15" East a distance of 42.99 feet along said East line, Thence continuing along said East line, North 09°17'54" East a distance of 35.95 feet, Thence North 09°17'53" East a distance of 100.14 feet to the South Right-of-Way line of Ingersoll Avenue, Thence leaving said East line, South 86°22'46" East a distance of 248.14 feet along said South line, Thence continuing along said South line, North 03°50'39" East a distance of 14.68 feet, Thence South 86°23'52" East a distance of 2153.69 feet, Thence along said South line, 172.85 feet along the arc of a curve to the right, said curve having a radius of 110.00 feet and being subtended by a chord having a bearing of South 41°22'52" East and a length of 155.61 feet to a point on the West Right-of-Way line of Jenny Lind Avenue, Thence leaving said South line, South 03°38'08" West a distance of 692.53 feet along said West line to the Point of Beginning, Thence South 03°38'08" West a distance of 890.00 feet, Thence leaving said West line, North 86°21'52" West a distance of 20.00 feet, Thence North 03°38'08" East a distance of 100.00 feet, Thence South 86°21'52" East a distance of 5.00 feet, Thence North 03°38'08" East a distance of 790.00 feet, Thence South 86°21'52" East a distance of 15.00 feet to a point on said West line and being the Point of Beginning, containing 13,850 square feet or 0.318 acres, more or less.

With right of ingress and egress to and from the same.

Tract 3 (3E-3)

Part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4), Section 4, Township 7 North, Range 32 West, of the Fifth Principal Meridian, Fort Smith, Arkansas and being more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Thence South 86°58'55" East a distance of 36.47 feet along the South line of said Northwest Quarter of the Northwest Quarter to a point on the East Right-of-Way line of Pierce Drive and US Highway 271, Thence leaving said South line, North 03°35'15" East a distance of 42.99 feet along said

East line, Thence continuing along said East line, North 09°17'54" East a distance of 35.95 feet, Thence North 09° 17' 53" East a distance of 100.14 feet to the South Right-of-Way line of Ingersoll Avenue, Thence leaving said East line, South 86°22' 46" East a distance of 248.14 feet along said South line, Thence continuing along said South line, North 03°50'39" East a distance of 14.68 feet, Thence South 86°23' 52" East a distance of 2153.69 feet, Thence along said South line, 172.85 feet along the arc of a curve to the right, said curve having a radius of 110.00 feet and being subtended by a chord having a bearing of South 41°22' 52" East and a length of 155.61 feet to a point on the West Right-of-Way line of Jenny Lind Avenue, Thence leaving said South line, South 03°38'08" West a distance of 372.53 feet along said West line to the Point of Beginning, Thence South 03°38'08" West a distance of 70.00 feet, Thence leaving said West line, North 86°21'52" West a distance of 15.00 feet, Thence North 03°38'08" East a distance of 70.00 feet, Thence South 86°21'52" East a distance of 15.00 feet to a point on said West line and being the Point of Beginning, containing 1,050 square feet or 0.024 acres, more or less.

With right of ingress and egress to and from the same.

Tract 4 (3E-4)

Part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4), Section 4, Township 7 North, Range 32 West, of the Fifth Principal Meridian, Sebastian County, Fort Smith, Arkansas and being more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Thence South 86°58' 55" East a distance of 36.47 feet along the South line of said Northwest Quarter of the Northwest Quarter to a point on the East Right-of-Way line of Pierce Drive and US Highway 271, Thence leaving said South line, North 03°35'15" East a distance of 42.99 feet along said East line, Thence continuing along said East line, North 09°17'54" East a distance of 35.95 feet, Thence North 09°17'53" East a distance of 100.14 feet to the South Right-of-Way line of Ingersoll Avenue, Thence leaving said East line, South 86°22' 46" East a distance of 248.14 feet along said South line, Thence continuing along said South line, North 03°50'39" East a distance of 14.68 feet, Thence South 86°23'52" East a distance of 2153.69 feet, Thence along said South line, 172.85 feet along the arc of a curve to the right, said curve having a radius of 110.00 feet and being subtended by a chord having a bearing of South 41°22'52" East and a length of 155.61 feet to a point on the West Right-of-Way line of Jenny Lind Avenue, Thence leaving said South line, South 03°38'08" West a distance of 127.53 feet along said West line to the Point of Beginning, Thence South 03°38'08" West a distance of 75.00 feet, Thence leaving said West line, North 56°37'11" West a distance of 40.31 feet, Thence North 03°38'08" East a distance of 55.00 feet, Thence South 86°21'52" East a distance of 35.00 feet to a point on said West line and being the Point of Beginning, containing 2,275 square feet or 0.052 acres, more or less.

With right of ingress and egress to and from the same.

Tract 5 (3E-5)

Part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4) and of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4), Section 4, Township 7 North, Range 32 West, of

the Fifth Principal Meridian, Sebastian County, Fort Smith, Arkansas and being more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Thence South 86°58'55" East a distance of 36.47 feet along the South line of said Northwest Quarter of the Northwest Quarter to a point on the East Right-of-Way line of Pierce Drive and US Highway 271, Thence leaving said South line, North 03°35'15" East a distance of 42.99 feet along said East line, Thence continuing along said East line, North 09°17'54" East a distance of 35.95 feet, Thence North 09°17'53" East a distance of 100.14 feet to the South Right-of-Way line of Ingersoll Avenue, Thence leaving said East line, South 86°22' 46" East a distance of 248.14 feet along said South line, Thence continuing along said South line, North 03°50'39" East a distance of 14.68 feet, Thence South 86°23'52" East a distance of 718.13 feet to the Point of Beginning, Thence South 86°23'52" East a distance of 1435.57 feet, Thence along said South line, 76.48 feet along the arc of a curve to the right, said curve having a radius of 110.00 feet and being subtended by a chord having a bearing of South 66°28' 46" East and a length of 74.95 feet, Thence leaving said South line, Thence North 86°21 '52" West a distance of 1506.05 feet, Thence North 03°38'48" East a distance 24.66 feet to a point on said South line and being the Point of Beginning, containing 37,230 square feet or 0.855 acres, more or less.

With right of ingress and egress to and from the same.

Tract 6 (3E-6)

Part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Section 4, Township 7 North, Range 32 West, of the Fifth Principal Meridian, Sebastian County, Fort Smith, Arkansas and being more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Thence South 86°58'55" East a distance of 36.47 feet along the South line of said Northwest Quarter of the Northwest Quarter to a point on the East Right-of-Way line of Pierce Drive and US Highway 271, Thence leaving said South line, North 03°35'15" East a distance of 42.99 feet along said East line, Thence continuing along said East line, North 09°17'54" East a distance of 35.95 feet, Thence North 09°17'53" East a distance of 100.14 feet to the South Right-of-Way line of Ingersoll Avenue, Thence leaving said East line, South 86°22'46" East a distance of 248.14 feet along said South line, Thence continuing along said South line, North 03°50'39" East a distance of 14.68 feet, Thence South 86°23'52" East a distance of 153.16 feet to the Point of Beginning, Thence South 86°23'52" East a distance of 75.00 feet, Thence leaving said South line, South 03°38'08" West a distance of 29.38 feet, Thence North 86°21'52" West a distance of 75.00 feet, Thence North 03°38'08" East a distance 29.33 feet to a point on said South line and being the Point of Beginning, containing 2,202 square feet or 0.051 acres, more or less.

With right of ingress and egress to and from the same.

Tract 7 (3E-7)

Part of the Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Section 4, Township 7 North, Range 32 West, of the Fifth Principal Meridian, Sebastian County, Fort Smith, Arkansas and being more particularly described as follows:

Commencing at the Southwest corner of said Northwest Quarter (NW 1/4) of the Northwest Quarter (NW 1/4), Thence South 86°58'55" East a distance of 36.47 feet along the South line of said Northwest Quarter of the Northwest Quarter to a point on the East Right-of-Way line of Pierce Drive and US Highway 271, Thence leaving said South line, North 03°35'15" East a distance of 42.99 feet along said East line, Thence continuing along said East line, North 09°17'54" East a distance of 35.95 feet, Thence North 09°17'53" East a distance of 100.14 feet to the South Right-of-Way line of Ingersoll Avenue, Thence leaving said East line, South 86°22'46" East a distance of 248.14 feet along said South line, Thence continuing along said South line, North 03°50'39" East a distance of 14.68 feet, Thence South 86°23'52" East a distance of 428.16 feet to the Point of Beginning, Thence South 86°23'52" East a distance of 69.95 feet, Thence leaving said South line, South 03°38'48" West a distance of 24.53 feet, Thence North 86°21'52" West a distance of 69.94 feet, Thence North 03°38'08" East a distance 24.49 feet to a point on said South line and being the Point of Beginning, containing 1,715 square feet or 0.039 acres, more or less.

With right of ingress and egress to and from the same.

It is agreed that the GRANTEE will, after completion of construction, promptly restore the land in the temporary easements to a mutually acceptable condition, subject to both parties' acting in a reasonable manner.

These temporary easements as conditioned above shall terminate on the earlier of (a) when the construction project has been completed and accepted by the GRANTEE, or (b) two (2) years.

The consideration paid by the GRANTEE is received and accepted by the GRANTOR in full satisfaction of every right hereby conveyed.

Grantee shall be obligated to pay for all services and materials provided in connection with its construction activities and shall immediately cause to be removed of record any lien or claim for lien filed against any property of Grantor in connection with its construction activities, or the use of Grantor's property hereunder, this obligation to survive expiration or earlier termination of this agreement.

Grantee shall be responsible for obtaining, maintaining and complying with all applicable laws, regulations, ordinances, orders, permits and other legal requirements in performing its construction activities. Grantee assumes all risk of loss or of damage to its property and equipment, or of personal injury, in the use of Grantor's property or on account of its construction activities.

Without limiting the foregoing, Grantee covenants to require the contractors, throughout the term of this easement agreement, to maintain comprehensive general public liability insurance coverage in an amount of not less than \$2,000,000.00, with Grantor named as an additional insured under the policy providing such coverage and the contractors shall indemnify Grantor.

Grantor reserves all its right, title, and interest in and to the easement areas incident to the fee simple estate thereof and for any and all purposes not inconsistent with Grantee's use of the easement areas as expressly permitted herein.

Grantee shall cause its contractor to indemnify, holds harmless, and agree to defend Grantor from and against any and all claims, demands, costs, damages, and other liabilities for personal injury, including death, or physical damage to property (collectively, the "Claims") arising from the exercise by Grantee or its contractors, agents, or employees of the rights granted to Grantee herein or the failure of Grantee, its contractors, agents, or employees to perform Grantee's obligations hereunder, except to the extent caused by the gross negligence or willful misconduct of Grantor, its agents, employees, or contractors. The indemnification set forth herein shall survive the termination of this agreement.

IN WITNESS WHEREOF, the GRANTOR herein has hereunto caused these presents to be executed on this _____ day of _____, 2014.

GRANTOR:
WHIRLPOOL CORPORATION

By: _____

RESOLUTION AUTHORIZING ACQUISITION OF REAL PROPERTY INTERESTS
IN CONNECTION WITH THE REPLACEMENT OF SEWER LIFT STATION NUMBER 17

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

Section 1: The City Administrator and the City Attorney are hereby authorized to acquire by the exercise of the City’s power of eminent domain, if necessary, a 944 square foot easement for a sewer lift station site located at 10800 Old Harbor Road, Fort Smith, Arkansas, designated as 12-15-P in connection with the Replacement of Lift Station Number 17, Project Number 12-15-ED1.

<u>Tract No.</u>	<u>Owner</u>	<u>Appraised Value</u>
Site A	SRG Partners 1994 #1 Limited Partnership	\$2,500.00

Until acquisition by the City, authorization set forth in Property Acquisition Policy Resolution R-40-05 of May 17, 2005 is continued in effect in the event the property owner desires to agree to acquisition at the appraised value set forth in the Resolution.

This Resolution adopted this _____ day of September 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO ACCEPT AN OFFER
MADE BY A PROPERTY OWNER FOR THE ACQUISITION OF REAL PROPERTY
INTERESTS FOR THE REPLACEMENT OF SEWER LIFT STATION NUMBER 17

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 acquisition of real
property made by the following property owner:

<u>Tract Number</u>	<u>Property Owner</u>	<u>Amount</u>
Site B	Michelle L. Hall Hood & James Hood	\$146,000.00

and to make payment for same in connection with the acquisition of real property designated as
Project 12-15-P for the Replacement of Sewer Lift Station Number 17, Project Number 12-15-ED1,
said property located at 10906 Edgewater Road, Fort Smith, Arkansas.

This Resolution adopted this _____ day of September 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: August 22, 2014

FROM: Steve Parke, Director of Utilities

SUBJECT: Sewer Pump Station No. 17 Replacement
Project Number 12-15

The city has a funded project to address needed improvements for four existing sewer pump stations in the Village Harbor and Harbor Landing subdivisions. These stations were originally constructed during the 1970s and early 1980s as part of the subdivision developments. Three of the four stations are of the underground steel shell, can-type and have suffered significant corrosion. Their design also classifies them as a confined space by current safety standards. The fourth is of the wet-well, submersible pump design, and due to its age requires major upgrading. All four sites are extremely small and do not provide ample room for their reconstruction to take place within the existing site footprint or for the installation of the required standby electric power generating equipment. The project will build three new submersible styled pump stations (combining two into one) allowing one station to be abandoned and provide on-site standby power generators for all.

One of the stations to be replaced, station number 17 (Edgewater), is located in a small easement area at the corner of Old Harbor Road and Edgewater Road. The existing site is not large enough to construct a new pump station and keep the existing pump station in service during the construction necessitating the acquisition of additional property. Reconstruction of the pump station in close proximity to the existing station would threaten the foundations of the adjacent multi-family apartment building due to the depth of excavation required. Staff has identified two nearby sites which are suitable for the construction of the new pump station. Exhibits showing the location of the existing site and the two new site options are attached.

Site "A"

This site is approximately 270 feet south of the existing pump station and on the same side of Edgewater Road. It is situated such that the largest portion of the site remains on the current apartment complex property ownership, Masada Properties LLC. A smaller portion of the site crosses over onto the property of the adjacent apartment complex owned by SRG Partners. Masada Properties have agreed and granted the needed site easement located on their property at its appraised value of \$9,400. The adjacent property owners, SRG Partners (SRG), has declined the city's offer for the proposed easement needed on their property. The appraised value of that easement is \$2,500.00. Staff has made several attempts to negotiate the needed easement with SRG without any success. A report detailing the contacts with SRG is attached. It appears that it will be necessary to acquire the easement from SRG through eminent domain.

Site "B"

This site is located at 10906 Edgewater Road directly across from the existing pump station. It is a full residential lot with a single-family house situated on the lot. The current owners of the property have moved and have the property on the market for sale. The property has been offered to the city for \$146,000.00, subject to a formal appraisal which would be prepared to confirm that value if the offer is accepted. If this property is to be used for the pump relocation

the residential structure would be removed. This site is available for consideration should the Board chose not to file an eminent domain action to complete the acquisition of Site "A".

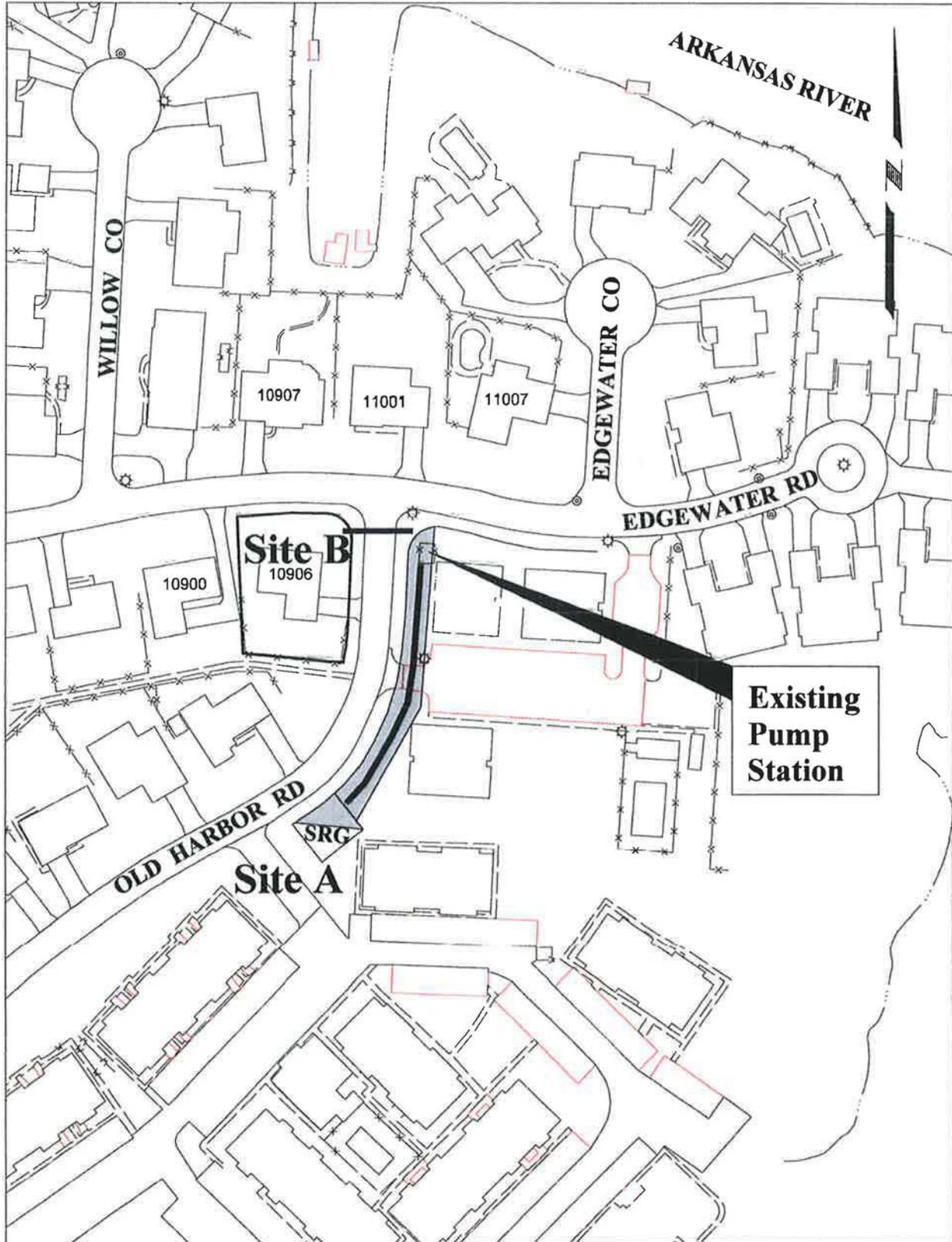
A cost estimate has been prepared for the comparison of the two possible site acquisitions. The construction of the pump station on site "A", including easement cost at the appraised valuation, is estimated at \$108,624. The construction of the pump station on Site "B", including demolition cost, is estimated at \$202,535.00. A table providing the detail for the \$93,911.00 project cost difference between Site "A" and Site "B" is attached. Please note that the estimate for Site "A" does not include the legal cost associated with preparing the eminent domain action.

Staff is seeking direction from the Board as to which site they prefer in order for the project to proceed. If Site "A" is selected, staff recommends adoption of the Resolution authorizing the city administrator and city attorney to proceed with eminent domain action to acquire the needed easement from SRG Partners. As always, representatives of the city will continue discussions with the property owner in an effort to reach a mutually agreeable settlement. If Site B is chosen, staff recommends the adoption of the Resolution authorizing the city administrator to accept the offer from the property owner of 10906 Edgewater Road subject to a formal appraised amount of \$146,000.00, or lower cost established by the appraisal if agreed by the property owner.

Two Resolutions are attached for the Board's consideration. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman



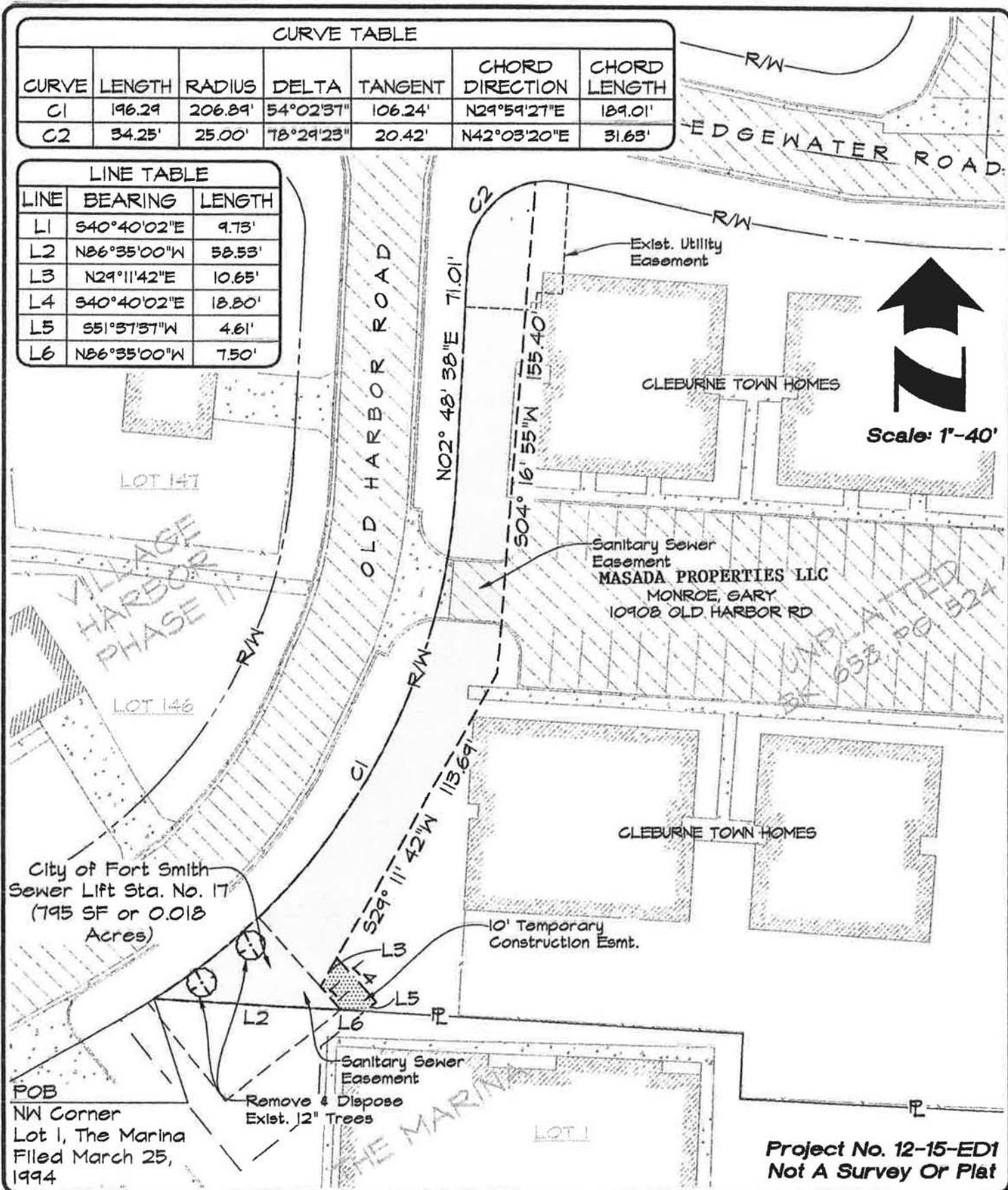
**Replacement of Sewer Lift Station No. 17
Project No. 12-15
Existing Lift Station and Sites A & B
August 21, 2014**

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD DIRECTION	CHORD LENGTH
C1	196.29	206.89'	54°02'37"	106.24'	N29°59'27"E	189.01'
C2	34.25'	25.00'	78°29'23"	20.42'	N42°03'20"E	31.65'

LINE TABLE

LINE	BEARING	LENGTH
L1	S40°40'02"E	9.73'
L2	N86°35'00"W	58.53'
L3	N29°11'42"E	10.65'
L4	S40°40'02"E	18.80'
L5	S51°37'37"W	4.61'
L6	N86°35'00"W	7.50'



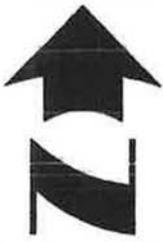
MORRISON SHIPLEY

ENGINEERS ■ SURVEYORS

5704 Euper Lane, Suite 200 • Fort Smith, AR 72909 • 479.482.1933 • morrisonshiple.com

EXHIBIT 'A'
Sewer Lift Station No. 17
Sanitary Sewer Esmt. and TCE
Book 653, Page 524
City of Fort Smith, Arkansas

Drawn By	DRC
Date	4.14.14
Project No.	FSU-15
Drawing Name	ESMT



Scale: 1"-20'

VILLAGE HARBOR PHASE

LOT 146

OLD HARBOR ROAD

UNPLATTED

POB
NW Corner
Lot 1, The Marina
Filed March 25,
1994

Sanitary Sewer
Easement

586° 35' 00"E 58.53'

City of Fort Smith
Sewer Lift Sta. No. 17
(944 SF or 0.022
Acres)

5' Temporary
Construction Esmt.

10' Temporary
Construction Esmt.

20' Temporary
Construction Esmt.

SRG PARTNERS 1994 #1,
LIMITED PARTNERSHIP
10800 OLD HARBOR RD
17959-0001-00000-00

THE MARINA

LINE TABLE		
LINE	BEARING	LENGTH
L1	S86°35'00"E	7.50'
L2	S51°37'37"W	17.54'
L3	S02°34'46"W	19.84'
L4	N60°28'38"E	0.53'

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD DIRECTION	CHORD LENGTH
C1	2.38'	206.89'	0°39'36"	1.19'	N57°30'03"E	2.38'
C2	9.56'	206.89'	2°38'48"	4.78'	N59°09'14"E	9.56'

Project No. 12-15-ED1
Not A Survey Or Plat

MORRISON SHIPLEY

ENGINEERS • SURVEYORS

5704 Euper Lane, Suite 200 • Fort Smith, AR 72903 • 479-452-1935 • morrisonshipley.com

EXHIBIT "A"
Sewer Lift Station No. 17
Sanitary Sewer Esmt. and TCE
Lot 1, The Marina
City of Fort Smith, Arkansas

Drawn By	DRC
Date	4.14.14
Project No	FSU-15
Drawing Name	ESMT

REPORT OF CONTACT

Agents Name: See Below	Contact: Jim Meadows with SRG Partners	
Project No: 12-15-ED1	By Phone: X	In Person: X
Project Name: Replacement of Sewer Lift Station 17	Date: See Below	
Tract No: Site A	Subject: Acquire easement	
Owner/Tenant: SRG Partners 1994 # 1 Limited Partnership	Date of Contact: See Below	
Address: 10800 Old harbor Road	Phone:	
Person Contacted: Jim Meadows		
Discussion:		
<p>6-17-14-Property Representative met with Mr. Meadows and discussed project at length. Mr. Meadows was concerned about the close proximity of the station with the apartment building at the Marina Apartments. He declined the city's offer and refused to accept the easement documents and appraisal.</p>		
<p>6-24-14-Property Representative emailed Mr. Meadows photos of the proposed site and the proximity of the end apartment building. Mr. Meadows did not respond to this contact.</p>		
<p>7-24-14-Property Manager mailed a formal letter and offer to Mr. Meadows re-affirming the city's interest in the site as well as the easement documents and appraisal of the site. Mr. Meadows was asked to contact the city if he had any questions or if he wanted to meet on site with the engineer. No response has been received from this contact.</p>		
<p>8-21-14-Director of Utilities mailed letter to Mr. Meadows stating that the city was going to proceed with a resolution for the board to consider acquiring the easement by eminent domain. Asked Mr. Meadows to contact Staff if had any questions about the process or wanted to reconsider the city's offer.</p>		

**Replacement of Sewer Lift Station No. 17
Comparative Cost for Proposed Sites A and B**

Project No. 12-15-ED1

August 20, 2014

DESCRIPTION	UNIT	UNIT COST	Site A: 10800 Old Harbor Road		Site B: 10906 Edgewater Road	
			QTY	TOTAL COST	QTY	TOTAL COST
Filter Fabric Barrier (Silt Fence)	LF	\$ 3.00	400	\$ 1,200	150	\$ 450
Temporary Construction Entrance	EA	\$ 1,500.00	1	\$ 1,500	1	\$ 1,500
Concrete Washout Area	EA	\$ 500.00	1	\$ 500	1	\$ 500
Removal & Disposal of Asphalt Pavement	SY	\$ 10.00	83	\$ 830	75	\$ 750
Removal & Disposal of Conc. Curb and Gutter	SY	\$ 14.00	60	\$ 840	40	\$ 560
Removal & Disposal of Trees	EA	\$ 1,000.00	3	\$ 3,000	0	\$ -
Trench or Excavation Safety Systems	LS	\$ 12,000	1	\$ 12,000	1	\$ 12,000
Traffic Control	LS	\$ 5,000	1	\$ 5,000	1	\$ 5,000
Undercut w/ Select Backfill (Trenches)	CY	\$ 50.00	100	\$ 5,000	30	\$ 1,500
Granular Backfill in Trenches (Above Pipe Zone Only)	CY	\$ 25.00	53	\$ 1,325	15	\$ 375
Sanitary Sewer Trenching & Backfilling (12' to 14')	LF	\$ 40.00	150	\$ 6,000	100	\$ 4,000
Sanitary Sewer Trenching & Backfilling (14' to 16')	LF	\$ 45.00	90	\$ 4,050	0	\$ -
Sanitary Sewer Trenching & Backfilling (16' to 18')	LF	\$ 50.00	62	\$ 3,100	0	\$ -
Sanitary Sewer Trenching & Backfilling (18' to 20')	LF	\$ 60.00	42	\$ 2,520	0	\$ -
Flowable Fill	CY	\$ 85.00	19	\$ 1,615	10	\$ 850
Solid Sodding w/ 4" Topsoil	SY	\$ 7.00	1,644	\$ 11,508	1,000	\$ 7,000
Aggregate Base Course for Driveways (6" Thickness)	SY	\$ 15.00	44	\$ 660	0	\$ -
ACHM Surface Course (Type 3)	TN	\$ 300.00	6	\$ 1,800	3	\$ 900
Concrete Curb and Gutter	LF	\$ 25.00	60	\$ 1,500	40	\$ 1,000
Concrete Driveway (5" Thickness)	SY	\$ 42.00	33	\$ 1,386	0	\$ -
10" PVC Sewer Line (SDR-35, Open Cut)	LF	\$ 35.00	324	\$ 11,340	80	\$ 2,800
10" Ductile Iron Sewer Line (Class 350, Open Cut)	LF	\$ 60.00	20	\$ 1,200	20	\$ 1,200
Connect Existing Sewer Main to Manhole	EA	\$ 750.00	3	\$ 2,250	1	\$ 750
Standard Manhole (Up to 6' Depth) w/ Frame and Cover	EA	\$ 3,000.00	3	\$ 9,000	1	\$ 3,000
Additional Manhole Depth	VF	\$ 200.00	23	\$ 4,600	7	\$ 1,400
4" PVC Force Main	LF	\$ 20.00	150	\$ 3,000	50	\$ 1,000
Easement Acquisition Cost	LS	\$ 11,900.00	1	\$ 11,900	0	\$ -
Land Purchase Cost	LS	\$ 146,000.00	0	\$ -	1	\$ 146,000
Demolition Cost	LS	\$ 10,000.00	0	\$ -	1	\$ 10,000
Legal Fees	LS		1	\$ -	0	\$ -
			TOTAL:	\$ 108,624		\$ 202,535

**RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
AND AUTHORIZATION ONE FOR ENGINEERING SERVICES WITH
BURNS & MCDONNELL FOR THE DESIGN OF FLUORIDATION FEED SYSTEMS
AT THE LEE CREEK AND LAKE FORT SMITH WATER TREATMENT PLANTS**

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

SECTION 1: An Agreement and Authorization One with Burns & McDonnell Engineering
Company for providing engineering services associated with the design of fluoridation feed systems at
the Lee Creek and Lake Fort Smith water treatment plants is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute an Agreement and Authorization One
for professional engineering services in the amount of \$180,000.00.

This Resolution adopted this _____ day of September 2014.

APPROVED:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: August 28, 2014

FROM: Steve Parke, Director of Utilities

SUBJECT: Engineering Design Services Agreement for
Fluoridation System Additions to the Lee Creek
and Lake Fort Smith Water Treatment Plants

The Board approved the acceptance of the fluoride grant agreement from Delta Dental of Arkansas Foundation as part of their meeting on August 19, 2014. A copy of the memo prepared for that consideration is attached. With the acceptance of the grant, the next step is to award the engineering services agreement for the design of the fluoridation systems to be constructed at each of the water treatment plants. Staff worked with Burns & McDonnell to develop the design services scope to have the project ready for a construction contract award to meet the aggressive 18-month grant condition to have the fluoridation improvements completed and in service.

The attached Resolution authorizes the Mayor to execute the design services Agreement and Authorization One with Burns & McDonnell for an amount of \$180,000.00. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: August 13, 2014

FROM: Steve Parke,  Director of Utilities

SUBJECT: Delta Dental of Arkansas Foundation
Fluoridation Grant Agreement

In 2011 the Arkansas Legislature passed Act 197 requiring water systems serving populations of more than 5,000 to add fluoride to its water system at levels established by the Arkansas Department of Health. Water systems were not required to comply with the Act until funds sufficient to pay capital start-up costs for fluoridation equipment became available from any source other than tax revenue or service revenue regularly collected. Following the passage of the Act, Fort Smith submitted a grant application to Delta Dental of Arkansas Foundation (Delta Dental) for the capital start-up and equipment needed for fluoridation systems at its Lake Fort Smith and Lee Creek water treatment plants.

On July 31, 2014, Fort Smith received notice from Delta Dental that the fluoridation review committee had approved a grant for our system needs in the amount of \$1,804,000. The grant agreement is structured to reimburse Fort Smith's approved expense for engineering and construction costs. Engineering fees are to be reimbursed at 50-percent after construction begins and the remaining balance paid on completion of the project. Reimbursement of construction costs will be distributed monthly based upon construction progress. The city will need to establish the funding needed to cash flow the engineering and construction payments until reimbursement is received. Copies of the grant approval letter and grant agreement are attached.

The grant requires that the project be completed no later than 18 months from the date of the signed agreement. This will be an aggressive schedule for the city to meet as Burns & McDonnell has only prepared a concept design review report for the needed improvements to support the grant application. Staff has discussed the 18-month schedule requirement with Burns & McDonnell and it can be met provided that the Arkansas Department of Health's engineering staff provides timely review and approval of the construction plans. Also, as time is a significant challenge, the grant application should not be dated until just before its required September 19, 2014, submission date. The engineering services agreement with Burns & McDonnell for the design of the fluoridation improvements will be submitted to the Board for approval at their September 2nd meeting.

A Resolution authorizing the Mayor to execute the fluoride grant agreement is attached for the Board's consideration. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EXCEPTIONAL SITUATION AND WAIVING THE REQUIREMENTS FOR COMPETITIVE BIDDING FOR THE LEASE PURCHASE OF RADIO COMMUNICATION EQUIPMENT AND AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE ALL NECESSARY LEASE DOCUMENTS REGARDING SAID AGREEMENT

WHEREAS, the City of Fort Smith, Arkansas (“Municipality”) is a political subdivision of the State of Arkansas (the “state”) and is duly organized and existing pursuant to the Constitution and laws of the State;

WHEREAS, pursuant to applicable law described in Section 4 below, the governing body of the Municipality (“Governing Body”) is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property and leases necessary to the functions or operations of the Municipality;

WHEREAS, the Governing Body hereby finds and determines that the execution of the Lease-Purchase Agreement (“Lease”) in a principal amount not exceeding the amount of \$255,558.70 for the purpose of acquiring the property (“Equipment”) to be described in the Lease is appropriate and necessary to the functions and operations of the Municipality: and,

WHEREAS, Motorola Solutions, Inc. (“Lessor”) shall act as Lessor under said Lease.

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

Section 1. The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the Lease Purchase Agreement documents with Lessor providing for the lease and purchase by Municipality of radio equipment for the Transit Department in the form, or substantially in the form, of the Lease Purchase Agreement documents presented to the Governing Body at the time of adoption of the Ordinance. The City Administrator is hereby authorized to negotiate such additional documents as are necessary to complete the Lease Purchase Agreement and the Mayor is hereby authorized to execute , his signature being attested by the City Clerk, any such necessary documents. All other related contracts, agreements and documents necessary and incidental to the Lease-Purchase Agreement are hereby authorized.

Section 2. The principal amount of the Lease shall not exceed the sum of \$255,558.70 to the General Fund and shall bear interest as set forth in the Lease and the Lease shall contain such options to purchase by the Municipality as are set forth therein.

Section 3. As provided in Amendment No. 78, the rental payments under the Lease in each fiscal year shall be charged proportionately against and paid from the General Fund of the Municipality for each fiscal year. For the purpose of making the rental payments there is hereby,

and shall be, appropriated to pay the rental payments, an amount of the General Fund revenues of the City sufficient for such purposes. The City Treasurer is hereby authorized and directed to withdraw from the General Fund and/or from such other sources as may be hereafter directed by the Governing Body, the amounts and at the times directed by the Governing Body, the amounts and at the times necessary to make the rental payments under the Lease. The obligations of the Municipality under the Lease shall be secured by a security interest in the Equipment in favor of the Lessor.

Section 4. This Ordinance is adopted pursuant to the authorizations and according to the procedures provided by Arkansas Constitution, Amendment 78 and the Local Government Short-term Financing Obligations Act of 2001, Act No. 1808 of the 2001 Acts of Arkansas, codified as Chapter 78 of Title 14 of the Arkansas Code Annotated.

Section 5. The City desires to purchase radio communications equipment consistent with the existing radio system equipment utilized by other City departments. Therefore it is hereby found and determined by the Board that the required competitive bidding procedures are waived as not being feasible under this situation. With reference to the financing services provided by Motorola Solutions, Inc. regarding the lease-purchase agreement, based on the City's past review of lease purchase proposals by other providers of services and compatibility with the City's legal concerns of the financing documents approved for use by Motorola Solutions, Inc., the Board finds and determines that an exceptional situation exists so that compliance with the contract for services provisions of the Fort Smith Code and state statutes, if any, is waived.

Section 6. The Lease funding source reimbursement is contingent upon required federal clauses from the Federal Transit Administration. The Lessor agrees to comply with the attached federal contract clauses.

Passed and approved this _____ day of September, 2014

APPROVED:

Mayor

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



npr



M E M O R A N D U M
August 26, 2014

TO: Ray Gosack, City Administrator
FROM: Ken Savage, Transit Director 
SUBJECT: Radio Replacement and Console Purchase

Attached is an ordinance that would provide for the purchase of two new radio console units for the transit dispatch center and twenty portable radios to serve as replacements. Radios are vital to every mode of transit operations. Staff uses radios to communicate special needs with regard to paratransit operations. Dispatchers routinely advise fixed route drivers when and where to look for new passengers who haven't quite learned how to navigate the system. Radios are also used to communicate optimum boarding locations along the fixed routes for passengers using mobility devices. The transit dispatchers currently use portable radios for communicating with the drivers. Using portable radios in close proximity to other radios creates feedback. The radios and consoles included in this agreement would address the issues experienced by the dispatchers and would enhance safety for daily use and during emergency response situations.

The new radio equipment is compatible with the Arkansas Wireless Information Network (AWIN) system and is compliant with the revised narrow-banding regulations the FCC is planning on implementing as of January 1, 2017. The AWIN system allows essential service departments the ability to have cross-channel communication with each other during extreme weather and emergency situations. The system also provides the ability to communicate with external emergency response agencies.

Although this same type of equipment has typically been acquired in the past using the Western States Contracting Alliance Cooperative Agreement. The Federal Transit Administration does not support cooperative agreements and is agreeable to this project as a sole source acquisition. I have attached a sole source justification document that outlines the necessity to acquire this specific equipment from Motorola Solutions, Inc., which satisfies FTA requirements for this purchase.

The purchase of the radio equipment is to be made under a three-year lease-purchase agreement with Motorola Solutions. If approved, the first payment will be due in 2015 with the actual placement of the equipment in 2014. The principle amount of the lease-purchase agreement is \$255,558.70 and provides for three annual payments of \$91,244.75 which includes interest. A notation can be found in the 2014 city budget detail which references the three year lease-purchase process. FTA will provide 80% grant reimbursement for this purchase. Staff recommends approval of the lease-purchase agreement. A copy of the lease-purchase agreement with Motorola Solutions is attached for your review.

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

attachment

Transit Communications Equipment Sole Source Justification

The sole source justification for the MCC 7500 Dispatch Consoles that Fort Smith Transit is seeking to acquire is necessary because of the way it interconnects with the Arkansas Wireless Information Network (AWIN). The MCC 7500 from Motorola is a proprietary system designed infrastructure and is the only product capable of interfacing directly to the AWIN Master Site. This system provides full feature access to all talkgroups, unit IDs, emergency notifications with acknowledgement and knocks down. While other vendors have dispatch products and solutions, currently the Motorola MCC 7500 is the only console that can make this type of connection and feature availability on AWIN.

Because AWIN is a Project 25 network there are other vendors capable of providing P25 radios. The City of Ft. Smith currently utilizes Motorola XTS and APX series subscribers. The Radio System Manager for the City of Fort Smith has chosen to use Motorola subscriber radios in order to keep a single source of contact for issues that arise with the system. It is Fort Smith Transit's intent to acquire the same radios to maintain a consistent fleet. Multiple brands of radio equipment require an increased inventory of replacement parts, additional programming software applications and training of subscribers. When using more than one brand the potential also exists for one vendor to shift responsibility to the other vendor's equipment as the source of the problem causing delays in getting problems addressed and in a Public Safety Environment delays can create downtime that reduces response time and ultimately may result in loss of life.

Fort Smith Transit shares in the goal to provide Public Safety Responders with a uniform type of equipment for which they are familiar and have confidence it will work properly when needed.

LESSEE FACT SHEET

Please help Motorola Solutions Inc. provide excellent billing service by providing the following information:

1.

Complete Billing Address

CITY OF FORT SMITH, AR

Attention: _____

Phone: _____

2.

Lessee County Location: _____

3.

Federal Tax I.D. Number _____

4.

Purchase Order Number to be referenced on invoice (if necessary) or other "descriptions" that may assist in determining the applicable cost center or department: _____

5.

Equipment description that you would like to appear on your invoicing: _____

Appropriate Contact for Documentation / System Acceptance Follow-up:

6.

Appropriate Contact & Mailing Address

Phone: _____

Fax: _____

7. Payment remit to address:

Motorola Solutions Credit Company LLC
P.O. Box 71132
Chicago IL 60694-1132

Thank you

EQUIPMENT LEASE-PURCHASE AGREEMENT

Lease Number: 23572

LESSEE:

CITY OF FORT SMITH, AR
623 Garrison Ave
Fort Smith, AR 72901

LESSOR:

Motorola Solutions Inc.
1301 E. Algonquin Rd.
Schaumburg, IL 60196

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the Equipment described in any Schedule A now or hereafter attached hereto ("Equipment") in accordance with the following terms and conditions of this Equipment Lease-Purchase Agreement ("Lease").

1. TERM. This Lease will become effective upon the execution hereof by Lessor. The Term of this Lease will commence on date specified in Schedule A and unless terminated according to terms hereof or the purchase option, provided in Section 18, is exercised this Lease will continue until the Expiration Date set forth in Schedule B attached hereto ("Lease Term").

2. RENT. Lessee agrees to pay to Lessor or its assignee the Lease Payments (herein so called), including the interest portion, in the amounts specified in Schedule B. The Lease Payments will be payable without notice or demand at the office of the Lessor (or such other place as Lessor or its assignee may from time to time designate in writing), and will commence on the first Lease Payment Date as set forth in Schedule B and thereafter on each of the Lease Payment Dates set forth in Schedule B. Any payments received later than ten (10) days from the due date will bear interest at the highest lawful rate from the due date. Except as specifically provided in Section 5 hereof, the Lease Payments will be absolute and unconditional in all events and will not be subject to any set-off, defense, counterclaim, or recoupment for any reason whatsoever. Lessee reasonably believes that funds can be obtained sufficient to make all Lease Payments during the Lease Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and pursue funds from which the Lease Payments may be made. It is Lessee's intent to make Lease Payments for the full Lease Term if funds are legally available therefor and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

3. DELIVERY AND ACCEPTANCE. Lessor will cause the Equipment to be delivered to Lessee at the location specified in Schedule A ("Equipment Location"). Lessee will accept the Equipment as soon as it has been delivered and is operational. Lessee will evidence its acceptance of the Equipment by executing and delivering to Lessor a Delivery and Acceptance Certificate in the form provided by Lessor.

4. REPRESENTATIONS AND WARRANTIES. Lessor acknowledges that the Equipment leased hereunder is being manufactured and installed by Motorola Solutions Inc. pursuant to contract (the "Contract") covering the Equipment. Lessee acknowledges that on or prior to the date of acceptance of the Equipment, Lessor intends to sell and assign Lessor's right, title and interest in and to this Agreement and the Equipment to an assignee ("Assignee"). LESSEE FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THE CONTRACT, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY NATURE OR KIND WHATSOEVER, AND AS BETWEEN LESSEE AND THE ASSIGNEE, THE PROPERTY SHALL BE ACCEPTED BY LESSEE "AS IS" AND "WITH ALL FAULTS". LESSEE AGREES TO SETTLE ALL CLAIMS DIRECTLY WITH LESSOR AND WILL NOT ASSERT OR SEEK TO ENFORCE ANY SUCH CLAIMS AGAINST THE ASSIGNEE. NEITHER LESSOR NOR THE ASSIGNEE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER AS A RESULT OF THE LEASE OF THE EQUIPMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, PROPERTY DAMAGE OR LOST PRODUCTION WHETHER SUFFERED BY LESSEE OR ANY THIRD PARTY.

Lessor is not responsible for, and shall not be liable to Lessee for damages relating to loss of value of the Equipment for any cause or situation (including, without limitation, governmental actions or regulations or actions of other third parties).

5. NON-APPROPRIATION OF FUNDS. Notwithstanding anything contained in this Lease to the contrary, in the event the funds appropriated by Lessee's governing body or otherwise available by any means whatsoever in any fiscal period of Lessee for Lease Payments or other amounts due under this Lease are insufficient therefor, this Lease shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments or other amounts herein agreed upon for which funds shall have been appropriated and budgeted or are otherwise available. The Lessee will immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee agrees to peaceably surrender possession of the Equipment to Lessor or its Assignee on the date of such termination, packed for shipment in accordance with manufacturer specifications and freight prepaid and insured to any location in the continental United States designated by Lessor. Lessor will have all legal and equitable rights and remedies to take possession of the Equipment.

6. LESSEE CERTIFICATION. Lessee represents, covenants and warrants that: (i) Lessee is a state or a duly constituted political subdivision or agency of the state of the Equipment Location; (ii) the interest portion of the Lease Payments shall be excludable from Lessor's gross income pursuant to Section 103 of the Internal Revenue Code of 1986, as it may be amended from time to time (the "Code"); (iii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; (iv) this Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms; (v) Lessee will comply with the information reporting requirements of Section 149(e) of the Code, and such compliance shall include but not be limited to the execution of information statements requested by Lessor; (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code; (vii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code; (viii) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Lease Payments to be or become includible in gross income for Federal income taxation purposes under the Code; and (ix) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.

Lessee represents, covenants and warrants that (i) it will do or cause to be done all things necessary to preserve and keep the Lease in full force and effect, (ii) it has complied with all public bidding requirements where necessary and by due notification presented this Lease for approval and adoption as a valid obligation on its part, and (iii) it has sufficient appropriations or other funds available to pay all amounts due hereunder for the current fiscal period.

If Lessee breaches the covenant contained in this Section, the interest component of Lease Payments may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, notwithstanding anything to the contrary contained in Section 11 of this Agreement, Lessee agrees to pay promptly after any such determination of taxability and on each Lease Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludibility (including, without limitation, compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Section 6 shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that this Agreement not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment for federal income tax purposes.

7. TITLE TO EQUIPMENT; SECURITY INTEREST. Upon shipment of the Equipment to Lessee hereunder, title to the Equipment will vest in Lessee; provided, however, that (i) in the event of termination of this Lease by Lessee pursuant to Section 5 hereof; (ii) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (iii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Lease may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

8. USE; REPAIRS. Lessee will use the Equipment in a careful manner for the use contemplated by the manufacturer of the Equipment and shall comply with all laws, ordinances, insurance policies and regulations relating to, and will pay all costs, claims, damages, fees and charges arising out of the possession, use or maintenance of the Equipment. Lessee, at its expense will keep the Equipment in good repair and furnish all parts, mechanisms and devices required therefor.

9. ALTERATIONS. Lessee will not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent unless such alterations, additions or improvements may be readily removed without damage to the Equipment.

10. LOCATION; INSPECTION. The Equipment will not be removed from, [or if the Equipment consists of rolling stock, its permanent base will not be changed from] the Equipment Location without Lessor's prior written consent which will not be unreasonably withheld. Lessor will be entitled to enter upon the Equipment Location or elsewhere during reasonable business hours to inspect the Equipment or observe its use and operation.

11. LIENS AND TAXES. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances except those created under this Lease. Lessee shall pay, when due, all charges and taxes (local, state and federal) which may now or hereafter be imposed upon the ownership, leasing, rental, sale, purchase, possession or use of the Equipment, excluding however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes, Lessee shall reimburse Lessor therefor within ten days of written demand.

12. RISK OF LOSS: DAMAGE; DESTRUCTION. Lessee assumes all risk of loss or damage to the Equipment from any cause whatsoever, and no such loss of or damage to the Equipment nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Lease Payments or to perform any other obligation under this Lease. In the event of damage to any item of Equipment, Lessee will immediately place the same in good repair with the proceeds of any insurance recovery applied to the cost of such repair. If Lessor determines that any item of Equipment is lost, stolen, destroyed or damaged beyond repair, Lessee at the option of Lessor will: either (a) replace the same with like equipment in good repair; or (b) on the next Lease Payment date, pay Lessor the sum of : (i) all amounts then owed by Lessee to Lessor under this Lease, including the Lease payment due on such date; and (ii) an amount equal to all remaining Lease Payments to be paid during the Lease Term as set forth in Schedule B.

In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Balance Payment (as set forth in Schedule B) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

13. INSURANCE. Lessee will, at its expense, maintain at all times during the Lease Term, fire and extended coverage, public liability and property damage insurance with respect to the Equipment in such amounts, covering such risks, and with such insurers as shall be satisfactory to Lessor, or, with Lessor's prior written consent, Lessee may self-insure against any or all such risks. All insurance covering loss of or damage to the Equipment shall be carried in an amount no less than the amount of the then applicable Balance Payment with respect to such Equipment. The initial amount of insurance required is set forth in Schedule B. Each insurance policy will name

Lessee as an insured and Lessor or it's Assigns as an additional insured, and will contain a clause requiring the insurer to give Lessor at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies will be payable to Lessee and Lessor or it's Assigns as their interests may appear. Upon acceptance of the Equipment and upon each insurance renewal date, Lessee will deliver to Lessor a certificate evidencing such insurance. In the event that Lessee has been permitted to self-insure, Lessee will furnish Lessor with a letter or certificate to such effect. In the event of any loss, damage, injury or accident involving the Equipment, Lessee will promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation relating thereto.

14. INDEMNIFICATION. Lessee shall, to the extent permitted by law, indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, proceedings, expenses, damages or liabilities, including attorneys' fees and court costs, arising in connection with the Equipment, including, but not limited to, its selection, purchase, delivery, possession, use, operation, rejection, or return and the recovery of claims under insurance policies thereon. The provisions of this paragraph are intended solely to benefit the parties to this agreement and their successors and assigns. The parties do not intend to confer any status, benefit or right of enforcement of or from the provisions of this paragraph on any other person or entity. Lessee reserves all governmental and sovereign immunities.

15. ASSIGNMENT. Without Lessor's prior written consent, Lessee will not either (i) assign, transfer, pledge, hypothecate, grant any security interest in or otherwise dispose of this Lease or the Equipment or any interest in this Lease or the Equipment or; (ii) sublet or lend the Equipment or permit it to be used by anyone other than Lessee or Lessee's employees. Lessor may assign its rights, title and interest in and to this Lease, the Equipment and any documents executed with respect to this Lease and/or grant or assign a security interest in this Lease and the Equipment, in whole or in part. Any such assignees shall have all of the rights of Lessor under this Lease. Subject to the foregoing, this Lease inures to the benefit of and is binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

Lessee covenants and agrees not to assert against the Assignee any claims or defenses by way of abatement, setoff, counterclaim, recoupment or the like which Lessee may have against Lessor. No assignment or reassignment of any Lessor's right, title or interest in this Lease or the Equipment shall be effective unless and until Lessee shall have received a notice of assignment, disclosing the name and address of each such assignee; provided, however, that if such assignment is made to a bank or trust company as paying or escrow agent for holders of certificates of participation in the Lease, it shall thereafter be sufficient that a copy of the agency agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency agreement is no longer in effect. During the Lease Term Lessee shall keep a complete and accurate record of all such assignments in form necessary to comply with Section 149(a) of the Code, and the regulations, proposed or existing, from time to time promulgated thereunder. No further action will be required by Lessor or by Lessee to evidence the assignment, but Lessee will acknowledge such assignments in writing if so requested.

After notice of such assignment, Lessee shall name the Assignee as additional insured and loss payee in any insurance policies obtained or in force. Any Assignee of Lessor may reassign this Lease and its interest in the Equipment and the Lease Payments to any other person who, thereupon, shall be deemed to be Lessor's Assignee hereunder.

16. EVENT OF DEFAULT. The term "Event of Default", as used herein, means the occurrence of any one or more of the following events: (i) Lessee fails to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of the Lease, and any such failure continues for ten (10) days after the due date thereof; (ii) Lessee fails to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure is not cured within twenty (20) days after written notice thereof by Lessor; (iii) the discovery by Lessor that any statement, representation, or warranty made by Lessee in this Lease or in writing ever delivered by Lessee pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; (iv) proceedings under any bankruptcy, insolvency, reorganization or similar legislation shall be instituted against or by Lessee, or a receiver or similar officer shall be appointed for Lessee or any of its property, and such proceedings or appointments shall not be vacated, or fully stayed, within twenty (20) days after the institution or occurrence thereof; or (v) an attachment, levy or execution is threatened or levied upon or against the Equipment.

17. REMEDIES. Upon the occurrence of an Event of Default, and as long as such Event of Default is continuing, Lessor may, at its option, exercise any one or more of the following remedies: (i) by written notice to Lessee, declare all amounts then due under the Lease, and all remaining Lease Payments due during the Fiscal Year in effect when the default occurs to be immediately due and payable, whereupon the same shall become immediately due and payable; (ii) by written notice to Lessee, request Lessee to (and Lessee agrees that it will), at

Lessee's expense, promptly return the Equipment to Lessor in the manner set forth in Section 5 hereof, or Lessor, at its option, may enter upon the premises where the Equipment is located and take immediate possession of and remove the same; (iii) sell or lease the Equipment or sublease it for the account of Lessee, holding Lessee liable for all Lease Payments and other amounts due prior to the effective date of such selling, leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, Lessee or sublessee pursuant to such sale, lease or sublease and the amounts payable by Lessee hereunder; and (iv) exercise any other right, remedy or privilege which may be available to it under applicable laws of the state of the Equipment Location or any other applicable law or proceed by appropriate court action to enforce the terms of the Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Equipment. In addition, Lessee will remain liable for all covenants and indemnities under this Lease and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor.

18. PURCHASE OPTION. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided that no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to purchase the Equipment on the Lease Payment dates set forth in Schedule B by paying to Lessor, on such date, the Lease Payment then due together with the Balance Payment amount set forth opposite such date. Upon satisfaction by Lessee of such purchase conditions, Lessor will transfer any and all of its right, title and interest in the Equipment to Lessee as is, without warranty, express or implied, except that the Equipment is free and clear of any liens created by Lessor.

18.1 PARTIAL PAYMENT/PURCHASE OPTION – GRANT FUNDING. Upon thirty (30) days prior written notice from Lessee to Lessor, and provided no Event of Default has occurred and is continuing, or no event, which with notice or lapse of time, or both could become an Event of Default, then exists, Lessee will have the right to make a partial payment against the Lease one time per calendar year at an amount no less than \$15,000.00 SO LONG AS SUCH PAYMENT IS BEING MADE FROM A FEDERAL GRANT FUNDING AWARD and upon Lessor's request, Lessee will provide Lessor certification of such. Application of said payment shall first be applied to accrued interest with the remainder going against the principal. Should Lessee make such payment, all remaining Lease Payments will be adjusted accordingly over the remainder of the Lease Term and Lessor shall provide to Lessee a revised Schedule B. Any reduction in outstanding principal can be viewed as the Lessee obtaining a greater equity position in the Lease subject to Lessor's rights pursuant to the other terms of this Lease.

19. NOTICES. All notices to be given under this Lease shall be made in writing and mailed by certified mail, return receipt requested, to the other party at its address set forth herein or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five days subsequent to such mailing.

20. SECTION HEADINGS. All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

21. GOVERNING LAW. This Lease shall be construed in accordance with, and governed by the laws of, the state of the Equipment Location.

22. DELIVERY OF RELATED DOCUMENTS. Lessee will execute or provide, as requested by Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease.

23. ENTIRE AGREEMENT; WAIVER. This Lease, together with the Delivery and Acceptance Certificate and other attachments hereto, and other documents or instruments executed by Lessee and Lessor in connection herewith, constitutes the entire agreement between the parties with respect to the Lease of the Equipment, and this Lease shall not be modified, amended, altered, or changed except with the written consent of Lessee and Lessor. Any provision of the Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Lease.

The waiver by Lessor of any breach by Lessee of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach thereof.

24. EXECUTION IN COUNTERPARTS. This Lease may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 26th day of September, 2014.

LESSEE:

LESSOR:

CITY OF FORT SMITH, AR

MOTOROLA SOLUTIONS INC.

By: _____
Title: _____

By: _____
Title: _____

OPINION OF COUNSEL

With respect to that certain Equipment Lease-Purchase Agreement # 23572 dated 9/26/14 by and between Motorola Solutions Inc. and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a state or a fully constituted political subdivision or agency of the State of the Equipment Location described in Schedule A hereto; (ii) the execution, delivery and performance by the Lessee of the Lease have been duly authorized by all necessary action on the part of the Lessee, and (iii) the Lease constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.

Attorney for **CITY OF FORT SMITH, AR**

**SCHEDULE A
EQUIPMENT LEASE-PURCHASE AGREEMENT**

Schedule A 23572
Lease Number:

This Equipment Schedule dated as of 9/26/14 is being executed by MOTOROLA SOLUTIONS INC. ("Lessor") and CITY OF FORT SMITH, AR (Lessee), as a supplement to, and is hereby attached to and made a part of that certain Equipment Lease-Purchase Agreement Number 23572 dated as of 9/26/14 ("Lease"), between Lessor and Lessee.

Lessor hereby leases to Lessee under and pursuant to the Lease, and Lessee hereby accepts and leases from Lessor under and pursuant to the Lease, subject to and upon the terms and conditions set forth in the Lease and upon the terms set forth below, the following items of Equipment

QUANTITY	DESCRIPTION (Manufacturer, Model, and Serial Nos.)
	Refer to attached Equipment List.
Equipment Location: AR	

Initial Term: ~ 36 Months Commencement Date: 9/26/2014
First Payment Due Date: 9/15/2015

Three (3) consecutive annual payments as outlined in the attached Schedule B, plus Sales/Use Tax of \$0.00, payable on the Lease Payment Dates set forth in Schedule B.

EXECUTED as of the date first herein set forth.

LESSEE:

CITY OF FORT SMITH, AR

LESSOR:

Motorola Solutions Inc.

By: _____

Title: _____

By: _____

Title: _____

SECTION 3

EQUIPMENT LIST

QTY	NOMENCLATURE	DESCRIPTION
1	B1905	MCC 7500 ASTRO 25 SOFTWARE
2	B1933	MOTOROLA VOICE PROCESSOR MODULE
2	CA01642AA	ADD: MCC 7500 BASIC CONSOLE FUNCTIONALITY SOFTWARE LICENSE
2	CA01643AA	ADD: MCC 7500 / MCC 7100 TRUNKING OPERATION
2	CA00140AA	ADD: AC LINE CORD, NORTH AMERICAN
2	TT2567	Z400 MID TIER WORKSTATION VISTA
4	B1912	MCC SERIES DESKTOP SPEAKER
4	B1913	MCC SERIES HEADSET JACK
2	B1914	MCC SERIES DESKTOP GOOSENECK MICROPHONE
2	RLN6098	HDST MODULE BASE W/PTT, 15' CBL
6	RMN5078B	SUPRAPLUS NC SINGLE MUFF HEADSET
2	DSTWIN6328A	PROVIDES ONE DUAL PEDAL FOOTSWITCH FOR USE WITH MOTOROLA MCC 7500 DISP
2	T7449	WINDOWS SUPPLEMENTAL TRANS CONFIG
2	DDN9607	SYMANTEC ANTI VIRUS 10.2.1 CORP ED
2	DSTSJ100BT	SPD, RJ-48 CONNECTED FOR T1/E1, 10/100BT PROTECTS/PASSES ON ALL 8 PIN
2	DSRMP615A	SPD, TYPE 3, 120V RACK MOUNT, 15A PLUG-IN W/ (6) 15A NEMA 5-15 OUTLETS
1	DSOP820B	PDU, 120V HARDWIRE (8) 20A OUTLET PDU WITH TYPE 3 SAD PROTECTION
1	DS1101378	RACK MT ADAPTER PLATE, 19 IN FOR DSOP820B, DSOP820B2 & DSNSOP820B
1	DSCPX1101985	SPD, RJ-45 CONNECTED (16) LINE GIGE ETHERNET, 11VPL ON ALL PINS
1	CLN1865A	2610-24 ETHERNET SWITCH (7.5 - 7.8)
2	DSJ4860C2	HP PROCURVE GIGABITY LH-LC MINI-GBIC
1	DSHC110T108F	HC110T1-08F, 764-869 MHZ8 CH HYBRID CNTRL STATION COMBINER
2	M25URS9PW1 N	APX6500 7/800 MHZ MID POWER MOBILE
2	QA02756	ENH: 9600 OR 3600 SINGLE SYSTEM DIG
2	QA01749	SW KEY SUPPLEMENTAL DATA
2	GA00580	ADD: TDMA OPERATION
2	GA00804	ADD: APX O2 CONTROL HEAD
2	G444	ADD: APX CONTROL HEAD SOFTWARE
2	G66	ADD: DASH MOUNT
2	W484	ALT: ANT 3DB GAIN 762-870MHZ
2	W382	ADD: CONTROL STATION DESK GCAI MIC
2	G142	ADD: NO SPEAKER NEEDED
2	W665	ADD: BASE STATION APEXWWM
2	G91	ADD: CONTROL STATION POWER SUPPLY
2	DSSMD783U	SIDE MOUNTED EXPOSED DIPOLE
15	L1705	LDF4-50A-CABLE: ½" LDF HELIAX POLY JKT PER FOOT
1	DDN1088	L4TNM-PSA TYPE N MALE PS FOR ½ IN CABLE
1	DDN1090	L4TDM-PSA 7-16 DIN MALE PS FOR ½ IN CABLE



QTY	NOMENCLATURE	DESCRIPTION
2	TDN9289	221213 CABLE WRAP WEATHERPROOFING
150	L1705	LDF4-50A-CABLE ½" LDF HELIAX POLY JKT PER FOOT
2	DDN1091	L4TDF-PSA 7-16 DIIN FEMAL PS FOR ½ IN CABLE
4	DSSG1206B2A	SG12-06B2A 1/2IN SURE GROUND GROUNDING KIT
1	DSTSXFMBF	GROUND STRAP KIT – DIN
2	DDN9769	F1PNM-HC ¼" TYPE N MALE CONNECTOR FOR FSJ1-50A CABLE
50	L1700	FSJ1-50A CABLE: ¼" SUPERFLEX POLY JKT PER FOOT
2	DSF1MU	F1MU ¼" MINI UHF MALE S FLEX CONNECTOR
20	H98UCF9PW6 N	APX6000 700/800 MODEL 2.5 PORTABLE
20	QA02756	ADD: 9600 TRUNKING OR 3600 DIGITAL TRUNKING
20	QA00580	ADD: TDMA OPERATION
20	QA00583	ADD: ENABLE BLUETOOTH SOFTWARE
20	QA01749	SW KEY SUPPLEMENTAL DATA
20	G996	ADD: PROGRAMMING OVER P25 (OTAP)
20	Q947	ADD: RADIO PACKET DATA
20	PMMN4046A	IMPRES SPEAKER MIC W/VOL, IP57
4	WPLN4219B	ACCESSORY, CHARGER, IMPRES MUC W/ DISPLAY



Schedule B (#23572) / CITY OF FORT SMITH, AR

Compound Period: Annual
 Nominal Annual Rate: 3.570%

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	9/26/2014	255,558.70	1		
2 Payment	9/15/2015	91,244.75	3	Annual	9/15/2017

AMORTIZATION SCHEDULE - Normal Amortization

	Date	Payment	Interest	Principal	Balance
Loan	9/26/2014				255,558.70
2014 Totals		0.00	0.00	0.00	
1	9/15/2015	91,244.75	8,848.49	82,396.26	173,162.44
2	9/15/2016	91,244.75	6,181.90	85,062.85	88,099.59
3	9/15/2017	91,244.75	3,145.16	88,099.59	0.00
Grand Totals		273,734.25	18,175.55	255,558.70	

INITIAL INSURANCE REQUIREMENT: \$255,558.70

Except as specifically provided in Section five of the Lease hereof, Lessee agrees to pay to Lessor or its assignee the Lease Payments, including the interest portion, in the amounts and dates specified in the above payment schedule.

LESSEE:

CITY OF FORT SMITH, AR

LESSOR:

Motorola Solutions Inc.

By: _____
 Title: _____
 Date: _____

By: _____
 Title: _____
 Date: _____

CERTIFICATE OF INCUMBENCY

I, _____ do hereby certify that I am the duly elected or

(Signature of Secretary/Clerk)

appointed and acting Secretary or Clerk of the **CITY OF FORT SMITH, AR**, an entity duly organized and existing under the laws of the **State of Arkansas** that I have custody of the records of such entity, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of such entity holding offices set forth opposite of their respective names. I further certify that (i) the signatures set opposite their respective names and titles are their true and authentic signatures and (ii) such officers have the authority on behalf of such entity to enter into that certain Equipment Lease Purchase Agreement number 23572 dated 9/26/14, and Schedule A number 23572 dated 9/26/14, between **CITY OF FORT SMITH, AR** and Motorola Solutions Inc.

Name

Title

Signature

(Individual who signed Lease documents should be listed here and sign where applicable)

IN WITNESS WHEREOF, I have executed this certificate and affixed the seal of **CITY OF FORT SMITH, AR**, hereto this _____ day of _____, 2014.

By: _____

(Signature of Secretary/Clerk)

SEAL

STATEMENT OF ESSENTIAL USE/SOURCE OF FUNDS (# 23572)

To further understand the essential governmental use intended for the equipment together with an understanding of the sources from which payments will be made, please address the following questions by completing this form or by sending a separate letter:

1. What is the specific use of the equipment?

2. Why is the equipment essential to the operation of CITY OF FORT SMITH, AR?

3. Does the equipment replace existing equipment?

If so, why is the replacement being made?

4. Is there a specific cost justification for the new equipment?

If yes, please attach outline of justification.

5. What is the expected source of funds for the payments due under the Lease for the current fiscal year and future fiscal years?

General Fund

- Have dollars already been appropriated for the Lease Payment? Yes -or- No

- If yes, for what fiscal year(s) have appropriations been made? _____

Combination of Federal Grant funding supplemented by General Revenues

- What fiscal year(s) is expected to be funded via federal grants: _____

- What fiscal year(s) is expected to be funded via general revenues: _____

- Have these general revenues already been appropriated for the Lease Payment(s)? Yes -or- No

Other (please describe): _____

Lessee: CITY OF FORT SMITH, AR

By: _____

Title: _____

Date: _____

Information Return for Tax-Exempt Governmental Obligations

Under Internal Revenue Code Section 149 (e)
See separate instructions

OMB No. 1545-0720

Department of the Treasury
Internal Revenue Service

Caution: Use Form 8038-GC if the issue price is under \$100,000

Part I Reporting Authority If Amended Return, Check here

1 Issuer's name ABCDE		2 Issuer's employer identification	
3 Number and street (or P. O. box if mail is not delivered to Street address)		Room/suite	4 Report number 2010 - 12345
5 City, town, or post office, state, and ZIP code		6 Date of issue	
7 Name of issue Equipment Lease Purchase Agreement # 12345		8 CUSIP number N/A	
9 Name and title of officer or legal representative whom the IRS may		10 Telephone number of officer or legal representative	

Part II Type of Issue (check applicable box(es) and enter the issue price) See Instructions and attach schedule

11	<input type="checkbox"/>	Education		11
12	<input type="checkbox"/>	Health and hospital		12
13	<input type="checkbox"/>	Transportation		13
14	<input type="checkbox"/>	Public safety		14
15	<input type="checkbox"/>	Environment (including sewage bonds)		15
16	<input type="checkbox"/>	Housing		16
17	<input type="checkbox"/>	Utilities		17
18	<input type="checkbox"/>	Other. Describe (see instructions)		18
19		If obligations are TANs or RANs, check box <input type="checkbox"/>	If obligations are BANs, check box <input type="checkbox"/>	
20		If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>		

Part III Description of Obligations (Complete for the entire issue for which this form is being filed)

	(a) Final Maturity date	(b) Issue Price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21			N/A	years	%

Part IV Uses of Proceeds of Bonds Issue (including underwriters' discount) N/A

22	Proceeds used for accrued interest		22	0.00
23	Issue Price of entire issue (Enter amount from line 21, column (b))		23	
24	Proceeds used for bond issuance costs (including underwriters' discount)	24		
25	Proceeds used for credit enhancement	25		
26	Proceeds allocated to reasonably require reserve or replacement fund	26		
27	Proceeds used to currently refund prior issues	27		
28	Proceeds used to advance refund prior issues	28		
29	Total (add lines 24 through 28)		29	
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)		30	

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.) N/A

31	Enter the remaining weighted average maturity of the bonds to be currently refunded		years
32	Enter the remaining weighted average maturity of the bonds to be advanced refunded		years
33	Enter the last date on which the refunded bonds will be called		
34	Enter the date(s) the refunded bonds were issued		

Part VI Miscellaneous N/A

35	Enter the amount of the state volume cap allocated to the issue under section 141 (b)(5)		35
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)		36a
b Enter the final maturity date of the guaranteed investment contract			
37	Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units		37a
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer _____ and the date of the issue _____			
38	If the issuer has designated the issue under section 265 (b)(3)(B)(i)(III) (smaller issuer exception), check box <input type="checkbox"/>		
39	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>		
40	If the issuer has identified a hedge, check box <input type="checkbox"/>		

Please Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct and complete.

Signature of Issuer's authorized representative _____ Date _____ Type or print name and title _____

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35	
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	36a	
	b Enter the final maturity date of the GIC ▶ _____		
	c Enter the name of the GIC provider ▶ _____		
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37	
38a	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:		
	b Enter the date of the master pool obligation ▶ _____		
	c Enter the EIN of the issuer of the master pool obligation ▶ _____		
	d Enter the name of the issuer of the master pool obligation ▶ _____		
39	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ <input type="checkbox"/>		
40	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ <input type="checkbox"/>		
41a	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:		
	b Name of hedge provider ▶ _____		
	c Type of hedge ▶ _____		
	d Term of hedge ▶ _____		
42	If the issuer has superintegrated the hedge, check box ▶ <input type="checkbox"/>		
43	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶ <input type="checkbox"/>		
44	If the issuer has established written procedures to monitor the requirements of section 148, check box ▶ <input type="checkbox"/>		
45a	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement ▶ _____		
	b Enter the date the official intent was adopted ▶ _____		

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	Signature of issuer's authorized representative _____		Date _____	Type or print name and title _____
Paid Preparer Use Only	Print/Type preparer's name _____	Preparer's signature _____	Date _____	Check <input type="checkbox"/> if self-employed PTIN _____
	Firm's name ▶ _____	Firm's EIN ▶ _____		
	Firm's address ▶ _____	Phone no. _____		

EQUIPMENT LEASE PURCHASE AGREEMENT DELIVERY AND ACCEPTANCE CERTIFICATE

The undersigned Lessee hereby acknowledges receipt of the Equipment described below ("Equipment") and Lessee hereby accepts the Equipment after full inspection thereof as satisfactory for all purposes of lease Schedule A to the Equipment Lease Purchase Agreement executed by Lessee and Lessor.

Equipment Lease Purchase Agreement Date: 9/26/14

Lease Schedule A Date: 9/26/14

Equipment Lease Purchase Agreement No.: 23572

Lease Schedule A No. : 23572

EQUIPMENT INFORMATION

QUANTITY	MODEL NUMBER	EQUIPMENT DESCRIPTION
		Equipment referenced in lease Schedule A# 23572 dated <u>9/26/14</u> . See Schedule A for a detailed Equipment List.

LESSEE

CITY OF

By: _____

Title: _____

Date: _____

Completed
after
delivery

**PURCHASE OF PUBLIC SAFETY COMMUNICATION EQUIPMENT
AND SUPPORT SERVICES BY THE
CITY OF FORT SMITH/FORT SMITH TRANSIT**

Due to the Federal Transit Administration (FTA) funding of the purchase of public safety communication equipment and support services, the following federal requirements shall apply as required by FTA Circular 4220.1E.

No Federal Government Obligation to Third Parties: Contractor acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Program Fraud and False or Fraudulent Statements and Related Acts: (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Access to Records and Reports: The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and

construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Federal Changes: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract

Davis-Bacon Act: The City of Fort Smith has determined that the requirements of the Davis-Bacon Act are inapplicable to this contract.

Buy America: The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United State and have a 60% domestic content.

Civil Rights: The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable

Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Termination Provisions: Termination for Convenience - The City of Fort Smith may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City of Fort Smith to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of Fort Smith, the Contractor will account for the same, and dispose of it in the manner the City of Fort Smith directs.

Disadvantaged Business Enterprises (DBE): The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as City of Fort Smith deems appropriate.

Incorporation of Federal Transit Administration Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether

or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all applicable FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any reasonable act, or refuse to comply with any City of Fort Smith requests which would cause the City of Fort Smith to be in violation of the FTA terms and conditions.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the agency. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Energy Conservation: The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Recycled Products: The City of Fort Smith has determined that the requirements of the Recycled Products, Section 6002 of the Resource Conservation and Recovery Action (RCRA), as amended (47 U.S.C. 6962), are inapplicable to this contract.

I hereby certify that I understand and will comply with the above FTA and City of Fort Smith/Fort Smith Transit requirements as it relates to the purchase of communication equipment and support services.



VENDOR/CONTRACTOR

8/25/14
DATE

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AUTHORIZATION NUMBER TWO TO THE AGREEMENT WITH CDM SMITH, INC., FOR PROVIDING ENGINEERING SERVICES WITH THE MASSARD WASTEWATER TREATMENT PLANT ODOR CONTROL IMPROVEMENTS

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

SECTION 1: Authorization Number Two with CDM Smith, Inc., for providing engineering services associated with the Massard Wastewater Treatment Plant Odor Control Improvements, Project Number 13-02-ED2, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute Authorization Number Two in the amount of \$68,550.00, for performance of said services.

This Resolution adopted this _____ day of September 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: August 25, 2014

FROM: Steve Parke, Director of Utilities

SUBJECT: Massard Wastewater Treatment Plant Odor Control Improvements
Project Number 13-02

On December 18, 2012, the Board approved an engineering Agreement and Authorization Number One with CDM Smith, Inc., to investigate odor sources at the Massard wastewater treatment plant and to identify any operational changes or additional treatment options available for control of odor sources. The initial results of that work identified the need to expand upon the original study to provide additional sampling points and incorporating additional process units. In June of this year CDM Smith issued the preliminary engineering report with recommended options for improvements to mitigate the sources of odors at the plant. The recommendations are summarized as follows:

- Raw Water Pump Station - Biotrickling Filter
- Grit Removal Facility and Distribution Structure - Biotrickling Filter
- Primary Clarifiers - Launder Covers & Connection to Biotrickling Filter or Chemical Injection and Feed System
- Solids Handling Facility Building - Modular Biofilter and Dispersion Fans
- Belt Filter Presses - Chemical Injection and Feed System

As indicated above, the recommended option for controlling odors off of the belt filter presses located within the solids handling building is a chemical injection system. The most cost effective option for controlling odors from the primary clarifiers is also a chemical injection system. In order to confirm equipment needs, chemical feed rates, treatment effectiveness and to provide information on which to base a design, it is recommended that a pilot study be performed.

With the recommendation of a modular biofilter and dispersion fan for controlling odors from the solids handling building comes a concern for fan noise. CDM Smith's proposal also includes a sound level study to insure that these fans and overall plant operations do not cause problems for nearby residences.

CDM Smith has provided a proposal in the amount of \$68,550.00 for conducting the needed studies. It is anticipated that the study will be completed within 60 days at which time a final decision will be made by the city as to the scope of design services to recommend to the Board.

I have attached a Resolution authorizing the Mayor to execute Authorization Number Two to the Agreement for an amount of \$68,550.00. Funds for these services are available from the 2012 sales and use tax bonds issued for continuation of wet weather sewer projects..

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

attachment

pc: Jeff Dingman

RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND
AUTHORIZING FINAL PAYMENT TO FORSGREN, INC., FOR THE
BEN GEREN AQUATICS CENTER WATER AND SEWER EXTENSIONS

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

SECTION 1: The construction of Ben Geren Aquatics Center Water and Sewer
Extensions, Project Number 14-02-C1, is accepted as complete.

SECTION 2: Final payment to Forsgren, Inc., in the amount of \$51,344.27, is hereby
approved.

This Resolution adopted this _____ day of September 2014.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: August 25, 2014

FROM: Steve Parke,  Director of Utilities

SUBJECT: Ben Geren Aquatics Center Water and Sewer Extensions
Project Number 14-02-C1

This project installed approximately 1,430 feet of 8-inch water line and 585 feet of sanitary sewer to serve the new aquatics center at Ben Geren Park. The project was completed within the contract time period with a small contract underrun.

A Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc., in the amount of \$51,344.27 is attached. It is my recommendation that the project be accepted as complete.

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

attachment

pc: Jeff Dingman

Project Summary

Project status: Complete	Project name: Ben Geren Aquatics Center Water and Sewer Extensions
Today's date: August 25, 2014	Project number: 14-02-C1
Staff contact name: Steve Parke	Project engineer: In-house
Staff contact phone: 784-2231	Project contractor: Forsgren, Inc.
Notice to proceed issued: May 26, 2014	
Completion date: August 6, 2014	

	Dollar Amount	Contract Time (Days)
Original contract	\$142,915.00	80
Change orders: Number One	\$0.00	0
Total change orders	\$0.00	<u>0</u>
Adjusted contract	<u>\$142,915.00</u>	<u>80</u>
Payments to date (as negative):	\$-89,457.13	62.6%
Amount of this payment (as negative)	\$-51,344.27	35.9%
Retainage held	\$0.00	
Contract balance remaining (underrun)	\$2,113.60	1.5%
Amount Over (under) as a percentage	-1.5%	

Final comments:

RESOLUTION NO. _____

RESOLUTION ACCEPTING BID FOR THE PURCHASE OF SELF-CONTAINED
BREATHING APPARATUS (SCBA)

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

The bid as indicated by enclosure for the purchase of self-contained breathing apparatus from Emergency Vehicle Specialist of Conway, Arkansas, for \$696,945.00, is accepted.

This Resolution adopted this _____ day of September, 2014.

APPROVED:

MAYOR

ATTEST:

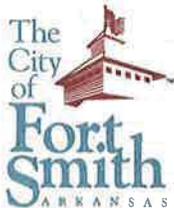
CITY CLERK

Approved as to form:



City Attorney

No Publication Required



FORT SMITH FIRE DEPARTMENT

200 NORTH FIFTH STREET
FORT SMITH, ARKANSAS 72901
479-783-4052 • FAX: 479-783-5338



Mike Richards
Fire Chief

Memo

To: Ray Gosack, City Administrator

From: Mike Richards, Fire Chief *MR*

Date: August 25, 2014

Re: Resolution to accept bid for purchase of self-contained breathing apparatus (SCBA)

The Fort Smith Fire Department has received an Assistance to Firefighter's Grant (AFG) from the Federal Emergency Management Agency (FEMA) in the amount of \$689,572.00 for the purchase of SCBA. The grant is a 90/10 grant which means the City is responsible for a 10% match of the total cost of the SCBA. The new SCBA will replace our current fleet of worn and obsolete units that have been in use as far back as 1999. SCBA is a necessary and critical part of personal protective equipment (PPE) used by all fire department personnel when engaged with a variety of emergency operations.

FEMA has very strict guidelines to follow when applying for an AFG. One of their guidelines for the acquisition of SCBA is that *"New SCBA must have automatic-on or integrated Personal Alert Safety System (PASS) devices, and be Chemical Biological Radiological Nuclear and Explosive Equipment (CBRNE) compliant to the current edition of the NFPA 1981 standard."* Our bid specification was written based on FEMA's requirements for the AFG.

The City's Invitation to Bid for the SCBA's was advertised in the Times Record, posted on the City's web site, and mailed to at least three vendors that supplied SCBA's. We received a total of three (3) bids for the SCBAs.

Only one (1) of the vendors was able to fully meet the requirements of the bid specifications as outlined by FEMA. Emergency Vehicle Specialist (EVS) of Conway, Arkansas proposed a bid of \$696,945.00 and was 100% compliant with the requirements of FEMA and the bid specifications. After careful evaluation of all three bid proposals, staff recommends the approval of bid submitted by Emergency Vehicle Specialist for the purchase of the SCBA. The City's match will be approximately \$69,694.50 and will come from Program 4803 Capital expenditures. Please let me know if you have any questions.

Memo

To: Mike Richards, Chief
From: Terry Bigler, Assistant Chief
Date: August 18, 2014
Re: SCBA Bid Recommendation

Chief Richards,

Bids were opened on August 15, 2014, for our Self Contained Breathing Apparatus (SCBA). Invitations to bid were sent to NAFCO, CASCO, & EVS, along with advertising in the local newspaper. We received three sealed bids one each from the earlier mentioned companies. Each company bid different manufacturers of SCBA.

Specifications were written based on receiving NFPA 1981, 2013 compliant SCBA within 90 days. Our current SCBA fleet is at the end of its usable life and we are currently 17 cylinders short of our required amount to satisfy ISO apparatus equipment standards. Funding for this purchase would be made possible from the \$766,141.86, Assistance to Firefighter Grant in which we received earlier this year. Specific language within the grant stated we would purchase 2013 compliant SCBA.

CASCO industries bid the new MSA G1 SCBA with a total cost being \$619,345.00. However, they were non-compliant on 24 of 105 specifications as outlined with 3 of those being critical. They currently do not have a NFPA 1981, 2013 compliant SCBA. They are excepting their certification but at this time can only estimate delivery by June 30, 2015.

NAFCO industries bid the Drager PS700 with a total cost being \$651,609.00. However they were non-compliant on 21 of 105 specifications as outlined with 2 of those being critical. They currently do not have a NFPA 1981, 2013 compliant SCBA. They did not offer a date in which they were expecting to receive their certification and only guaranteed delivery 90 days after receiving certification.

EVS bid the new Scott X3 SCBA with a total cost being \$696,945.00. The Scott X3 SCBA is currently NFPA 1981, 2013 compliant and would be delivered within 90 days of issuing the purchase order. The Scott SCBA was compliant on all 105 line item specifications.

With the above statements being made it is my recommendation that we purchase the Scott X3 SCBA from EVS. This SCBA is currently certified and meets the requirements of the specific wording outlined within the Assistance to Firefighter Grant. Failure to meet these requirements could result in the City of Fort Smith being non-compliant with the grant, therefore losing the anticipated \$766,141.86.

I have attached a bid tabulation sheet which indicates which items within the specification were met and which did not comply. I will be glad to answer any other questions you may have.

Tabulation of Bids- City of Fort Smith Fire Department Open Circuit Self-Contained Breathing Apparatus (SCBA) Bid Tab #4803-SF-BA				
Vendor	Cost Per Unit	Freight	Total Cost	Delivery Date
Casco Industries Oklahoma City, OK	\$6,385.00	0	\$619,345.00*	June 30, 2015 If Approved
NAFECO Decatur, AL	\$6,717.62	0	\$651,609.00**	Pending Approval No Date Given
G&W Diesel (EVS) Memphis, TN	\$7,185.00	0	\$696,945.00 ✓	90 Days from PO

✓ Recommended bid award

*Vendor does not meet the following significant specifications

- Has not been approved to NIOSH 42 CFR, Part 84 for chemical, biological, radiological, and nuclear protection (CBRN)
 - The SCBA's have to be approved for CBRN use for firefighting personnel to work in these types of emergencies
- Has not been approved by the National Fire Protection Association (NFPA) to meet the NFPA 1981, 2013 Standard
 - Meeting the NFPA 1981, 2013 standard was a no-exception requirement from FEMA for grant approval
- Did not meet the NFPA 1982, 2013 standard on Personal Alert Safety Systems (PASS)
 - PASS devices are audible and visual alarms integrated into the SCBA's to alert other firefighting personnel when a firefighter becomes disabled or unconscious
- Does not meet the requirement for a user to hear an audible sound when the regulator is attached correctly to the facepiece.
 - It is critical that the firefighter knows the regulator is correctly attached to keep deadly gases from entering the facepiece
- Does not have a specified drag rescue loop
 - Drag rescue loops are necessary to assist removing a downed firefighter to a place of safety
- Does not meet the requirement for the low air alarm indicator to not rely solely on electronics
 - It is critical the low air alarm have reliable methods to alert the firefighter that he/she is low on air and has time to exit to a non-hazardous area
- Does not meet the requirement to have a facepiece mounted voice amplification device
 - It is critical that a firefighter be able to communicate effectively while wearing SCBA
- Was non-compliant on 24 of 105 line specifications

**Vendor does not meet the following significant specifications

- Has not been approved by the National Fire Protection Association (NFPA) to meet the NFPA 1981, 2013 Standard
 - Meeting the NFPA 1981, 2013 standard was a no-exception requirement from FEMA for grant approval
- Did not meet the NFPA 1982, 2013 standard on Personal Alert Safety Systems (PASS)

- PASS devices are audible and visual alarms integrated into the SCBA's to alert other firefighting personnel when a firefighter becomes disabled or unconscious
- Does not meet the requirement to operate at 5500 psig
 - Using other SCBA designs will add weight to the unit the firefighter is wearing thereby making their task much harder to accomplish
- Does not meet any of the five requirements for the Personal Alert Safety System (PASS)
 - PASS devices are audible and visual alarms integrated into the SCBA's to alert other firefighting personnel when a firefighter becomes disabled or unconscious
- Does not meet the requirement to be warranted for no less than five (5) years for the electronic components
 - Only provided a three (3) year warranty
- Was non-compliant on 21 of 105 line specifications

RESOLUTION NO. _____

RESOLUTION ACCEPTING BIDS FOR THE PURCHASE OF
WATER AND WASTEWATER CHEMICALS FOR 2014-2015

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

The Bids, as indicated by enclosure on the attached **Bid Tabulation
08-27-14BA** for the purchase of water and wastewater chemicals for 2014-2015, are
accepted.

This Resolution adopted this _____ day of September, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



No Publication Required

Interoffice Memorandum

TO: Ray Gosack, City Administrator

COPY TO: Steve Parke, Director of Utilities

FROM: Alie Bahsoon, Purchasing Manager

SUBJECT: 2014-2015 Water Chemical Bid Tabulation

DATE: August 28, 2014

BID TAB: 08-27-14BA



Attached you will find the bid tabulation for **Treatment Chemicals** for the 2014-2015 year. These chemicals will be used by the Fort Smith Water and Wastewater Departments.

In an effort to significantly reduce cost and realize efficiencies in our procurement process, we once again solicited bids by partnering with eBridge, an online service that assists buyers like the City in achieving true-market value through its competitive sourcing and online procurement system. Our traditional sealed bid process allows a vendor to submit one bid. By virtue of conducting the chemical bid through eBridge, this allows the vendor the opportunity to “fine tune” their bid price during the online bid process and the City therefore benefit significantly in realizing cost reductions and procurement efficiencies through this process.

A total of 20 suppliers participated in this process and 801 bids were placed with 142 first-place turnovers. As an example, three vendors were competitively bidding on Calcium Nitrate. Because of the online bid process, 99 bids were submitted (as opposed to three bids, the traditional way). While bidding, each vendor does not know their competitor’s price. The vendor simply sees their current ranking and is afforded the opportunity to adjust their price; this resulted in a total of 99 bids submitted with the 1st place turnover rate of 16 total times. Additionally, the vendor that was awarded the bid at \$480, their starting bid price was \$594 per liquid ton and placed a total of 9 bids. The second lowest bidder submitted a total of 89 bids with a starting bid price of \$700 and an ending bid price of \$497.50 per liquid ton. The end result is significant cost savings for the City!

Although the specifications are not attached, they are available in my office should you or any members of the board wish to view them.

I am recommending that the bids noted by enclosure on the attached tabulations be accepted. Please let me know if you or any of the board members should have any questions.

CITY OF FORT SMITH, ARKANSAS
Tabulation of Bids: 2014-2015 Water & Waste Water Treatment Chemicals Tab 08-27-14BA
 Subject to Board of Directors Approval on September 2, 2014

Vendor	Hydrated Lime	Liquid Chlorine	Liq. Ferric Sulfate	Potassium Perm.	SW-102 Polymer	CF-150 Polymer	Sodium Hypochlorite	Sodium Hydroxide	Sodium Bisulfite	Pow. Act. Carbon	Calcium Nitrate	Sodium Carbonate
2013-2014 Pricing	\$204.00	\$748.00	\$134.89	\$3.347	\$0.490	\$0.232	\$1.60	\$2.15	\$1.12	\$0.58	\$550.00	\$420.50
AR Lime Co.	\$ 219.10											
Brenntag Southwest	\$ 240.00	\$ 794.00	\$ 289.99	\$ 4.00	\$ 0.5220	\$ 0.2690	\$ 1.157	\$ 2.370	\$ 1.610	\$ 0.629	\$ 600.00	\$ 400.75
M.L. Ball												
Cabot Norit Americas										\$ 0.830		
Calabrian Corporation									\$ 1.650			
Carus Corporation				\$ 3.50								
Chemrite Inc.	\$ 320.00										\$ 480.00	\$ 455.00
Chemtrade Chemicals			\$ 143.00			\$ 0.2080						
J.B. Crawford									\$ 1.090			
F2-Industries										\$ 0.660		
Gulbrandsen Technologies						\$ 0.2090						
Harcros Chemical							\$ 1.170	\$ 2.372				\$ 400.00
Jacobi Carbons, Inc.										\$ 0.979		
Kemira Water Solutions			\$ 143.30									
Lhoist North America	\$ 263.88											
Penco, Inc.			\$ 176.00									
PVS Chemical Solutions									\$ 1.746			
Southern Ionics Inc.									\$ 1.098			
Thatcher Co.										\$ 0.920	\$ 497.50	\$ 476.00
Water Tech, Inc.					\$ 0.5210	\$ 0.2500						

Price Increase/Decrease \$ (15.10) \$ (46.00) \$ (8.11) \$ (0.15) \$ (0.03) \$ 0.02 \$ 0.44 \$ (0.22) \$ 0.03 \$ (0.05) \$ 70.00 \$ 20.50

Recommended bid award



Final Bid Submission Report

2014 - 2015 Chemicals

Started: 8/27/2014 10:00 AM

Ended: 8/27/2014 11:54 AM

2014-2015 Water and Wastewater Treatment Chemicals

Hydrated Lime per Specifications, Delivered - Price per TON

Rank	Company	Value	Date/Time
1	Arkansas Lime Company	\$210.19	8/26/2014 11:09:16 AM
2	Brenntag Southwest Inc.	\$240.00	8/26/2014 8:26:26 AM
3	Lhoist North America of Missouri, Inc.	\$263.88	8/26/2014 11:34:50 AM
4	Chemrite	\$320.00	8/26/2014 2:44:40 PM

Liquid Chlorine per Specifications, Delivered - Price per TON

Rank	Company	Value	Date/Time
1	Brenntag Southwest Inc.	\$794.00	8/27/2014 10:30:59 AM

Liquid Ferric Sulfate per Specifications, Delivered - Price per WET TON

Rank	Company	Value	Date/Time
1	Chemtrade Chemicals US LLC	\$143.00	8/27/2014 10:18:19 AM
2	Kemira Water Solutions	\$143.30	8/27/2014 10:18:36 AM
3	Penco, Inc.	\$176.00	8/27/2014 10:10:18 AM
4	Brenntag Southwest Inc.	\$289.99	8/26/2014 8:26:26 AM

Potassium Permanganate per Specifications, Delivered to Mountainburg WTP - Price per CAIROX CYCLE BIN

Rank	Company	Value	Date/Time
1	Carus Corporation	\$11,576.25	8/27/2014 8:20:19 AM
2	Brenntag Southwest Inc.	\$13,228.80	8/26/2014 8:26:26 AM

Potassium Permanganate per Specifications, Delivered to Lee Creek - Price per CAIROX CYCLE BIN

Rank	Company	Value	Date/Time
1	Carus Corporation	\$11,576.25	8/27/2014 8:20:19 AM
2	Brenntag Southwest Inc.	\$13,228.80	8/26/2014 8:26:26 AM

Polymer Coagulant Aid SW-102 per Specifications, Delivered - Price per POUND

Rank	Company	Value	Date/Time
1	Water Tech, Inc.	\$0.5210	8/27/2014 11:17:14 AM
2	Brenntag Southwest Inc.	\$0.5220	8/27/2014 11:15:53 AM

Liquid Cationic Coagulant Aluminum Chlorhydrate CF-150 per Specifications, Delivered - Price per POUND

Rank	Company	Value	Date/Time
1	Chemtrade Chemicals US LLC	\$0.2080	8/27/2014 11:17:32 AM
2	Gulbrandsen Technologies, Inc.	\$0.2090	8/27/2014 11:15:17 AM
3	Water Tech, Inc.	\$0.2500	8/27/2014 10:12:36 AM
4	Brenntag Southwest Inc.	\$0.2690	8/27/2014 10:26:09 AM

Sodium Hypochlorite 10 Percent per Specifications, Delivered - Price per GALLON

Rank	Company	Value	Date/Time
1	Brenntag Southwest Inc.	\$1.1570	8/27/2014 10:58:24 AM
2	Harcros Chemical	\$1.1700	8/27/2014 10:55:51 AM

Sodium Hydroxide 20 Percent per Specifications, Delivered - Price per GALLON

Rank	Company	Value	Date/Time
1	Brenntag Southwest Inc.	\$2.3700	8/27/2014 11:15:53 AM
2	Harcros Chemical	\$2.3720	8/27/2014 10:47:57 AM

Sodium Bisulfite, Aqueous Solution per Specifications, Delivered - Price per GALLON

Rank	Company	Value	Date/Time
1	J. B. Crawford Chemical Company	\$1.0900	8/27/2014 10:14:35 AM
2	Southern Ionics Incorporated	\$1.0980	8/27/2014 10:13:49 AM
3	Brenntag Southwest Inc.	\$1.6100	8/27/2014 10:26:09 AM
4	Calabrian Corporation	\$1.6500	8/26/2014 10:44:00 AM
5	PVS Chemical Solutions	\$1.7400	8/27/2014 10:04:57 AM

Powdered Activated Carbon per Specifications, Delivered in BAGS to Lee Creek - Price per POUND

Rank	Company	Value	Date/Time
1	Brenntag Southwest Inc.	\$0.5990	8/27/2014 10:19:47 AM
2	F2 Industries, LLC	\$0.6400	8/27/2014 10:21:03 AM
3	Thatcher Company	\$0.6700	8/27/2014 10:37:54 AM
4	M.L. Ball Company, Inc.	\$0.7000	8/27/2014 10:09:01 AM
5	Cabot Purification	\$0.8400	8/27/2014 10:02:20 AM
6	Jacobi Carbons, Inc	\$0.9100	8/27/2014 10:08:32 AM

Powdered Activated Carbon per Specifications, Delivered in BULK to Lake Fort Smith - Price per POUND

Rank	Company	Value	Date/Time
1	Brenntag Southwest Inc.	\$0.6290	8/27/2014 10:29:35 AM
2	F2 Industries, LLC	\$0.6600	8/27/2014 10:32:46 AM
3	Cabot Purification	\$0.8300	8/27/2014 10:02:35 AM
4	Thatcher Company	\$0.9200	8/27/2014 10:59:53 AM
5	Jacobi Carbons, Inc	\$0.9790	8/27/2014 10:08:00 AM

Calcium Nitrate per Specifications, Delivered - Price per LIQUID TON

Rank	Company	Value	Date/Time
1	Chemrite	\$480.00	8/27/2014 11:51:50 AM
2	Thatcher Company	\$497.50	8/27/2014 11:51:21 AM
3	Brenntag Southwest Inc.	\$600.00	8/26/2014 8:26:26 AM

Soda Ash Dense, Sodium Carbonate per Specifications, Delivered - Price per TON

Rank	Company	Value	Date/Time
1	Harcros Chemical	\$400.00	8/27/2014 11:33:39 AM
2	Brenntag Southwest Inc.	\$400.75	8/27/2014 11:29:50 AM
3	Chemrite	\$455.00	8/27/2014 11:30:53 AM
4	Thatcher Company	\$476.00	8/27/2014 11:27:36 AM

RESOLUTION NO. _____

RESOLUTION ALLOWING THE SALE OF SURPLUS VEHICLES
AND EQUIPMENT AT PUBLIC AUCTION

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

The vehicles and equipment shown on the attached list are surplus and no
longer needed by the City of Fort Smith.

The same shall be sold at the public auction on October 16, 2014.

This Resolution adopted this _____ day of September, 2014.

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: 2014 City Auction

DATE: August 28, 2014



The 2014 City of Fort Smith Auction is scheduled for **Thursday, October 16, 2014** at the Fort Smith Transit Facility, located at 6821 Jenny Lind Road. The auction will begin at 10:00 a.m. and will be conducted by Looper Auction & Realty, Inc.

You will find attached a list consisting of surplus vehicles and equipment that are scheduled to be sold at the auction. For your convenience, I have included the names of the departments that are disposing of the items, the mileage, what the vehicle/equipment was used for, and the current condition.

In an effort to promote the auction to the citizens of Fort Smith, a complete list of items being sold will be made available on the City's website at www.fortsmithar.gov.

Should you have any questions or should require any additional information, please do not hesitate to let me know.

CITY OF FORT SMITH - 2014 AUCTION
Surplus Vehicles/Trucks

DEPARTMENT	PROGRAM #	VEHICLES DESCRIPTION (Year/Make/Model); Mileage; Used For?	VIN #	CONDITION <i>Good/Fair/Poor/Wrecked or Spare Parts</i>	ASSET #
Utilities	5611	2000, GMC, Top Kick 2 Ton Dump Truck, 5 YD Bed, 92,259 Miles	1GDL7H1C7YJ503199	Fair / Runs	755
Utilities	5613	1999, FORD, F-450, 4x4 1 ½ Ton Truck with Crain, 135,030 Miles	3FDKF36L55MA11179	Fair / Runs	493
Utilities	5613	2001, DODGE, 3500 1 Ton Service Truck with Utility Bed, 202,765 Miles	3B6MC36521M563468	Fair / Runs	572
Utilities	5613	1999, DODGE, 2500 3/4Ton 4 Wheel Drive Truck, 121,749 Miles	3B7KF26Z3XM561955	Fair / Runs	436
Utilities	5613	2001, DODGE, 3500 1 Ton Service Truck, 4wd w/crane, 125,087 Miles	3B6MF36681M563801	Fair / Runs	164
Utilities	5613	2001, DODGE, 3500 1 Ton Service Truck with Utility Bed, 103,371 Miles	3B6MC36541M563469	Fair / Runs	573
Utilities	5611	2003, FORD, F-650, 2 Ton Dump Truck with 5 Yard Bed, 87,312 Miles	3FDNF65653MB01388	Poor / Runs	514
Utilities	5613	2006, FORD, Freestar Van, 95,396 Miles	2FMZA51697BA04010	Poor / Runs	944
Utilities	5501	1996 Ford Aerostar van 67,485 miles	1FMDA11U4TZBO2869	Fair/Runs	424
Utilities	5605	2002 Chevy ¾ ton, 4WD, 118,547 miles Used in Watershed	1GCHK24U427326050	Fair, hail damage, struck by lightning	498

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DEPARTMENT	PROGRAM #	VEHICLES DESCRIPTION (Year/Make/Model); Mileage; Used For?	VIN #	CONDITION Good/Fair/Poor/Wrecked or Spare Parts	ASSET #
Utilities	5605	2005 GMC ½ ton, 4WD, 121,198 miles Used in Watershed	1GTEK14T25Z301723	Fair, needs shocks	543
Transit	6550	1998 Ford Crown Victoria 153,276 miles; mail run	2FAFP71W6WX148879	Fair	834
Engineering	4103	2001 Jeep Cherokee; 42,503 miles; general city business	1J4FF48S01L617530	Poor (hail damage)	118
Engineering	4103	2003 Ford F150; 62,000 miles; general city business	1FTRF17203NA30853	Wrecked	150
Police	4703	2003 Pontiac Grand Prix, 86,000 miles. Used for investigations.	1G2WK52J23F153461	Wrecked	585
Police	4703	2003 Chevrolet Impala, 100,000 miles. Used for investigations.	2G1WF52EG39297597	Fair	552
Police	4703	2005 Ford Taurus, 93,000 miles. Used for investigations.	1FAFP56UX5A294382	Fair	999
Police	4703	2002 Nissan Maxima SE, 114,000 miles. Used for investigations.	JN1DA31002T416930	Fair	906
Police	4705	1999 Jeep Cherokee Sport, 137,000 miles. Radio maintenance transport.	1J4FF68S1XL643946	Fair	476
Fire	4801	2000 Chevrolet Impala, Staff Vehicle Mileage: Gauge broke no display	2G1WF55K2Y9375205	Poor	349
Fire	4801	1995 GMC Suburban, Staff Vehicle Mileage: 192,245	1GKFK16KXSJ744547	Poor	340

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DEPARTMENT	PROGRAM #	VEHICLES DESCRIPTION (Year/Make/Model); Mileage; Used For?	VIN #	CONDITION Good/Fair/Poor/Wrecked or Spare Parts	ASSET #
Customer Service	4304	2005 GMC 1500 134,000 miles, used for water turn on turn offs	1GTEC14X05Z302286	Good	130
Customer Service	4304	2006 Ford F150 135,000 miles, used for water turn on turn offs	1FTRF12296NB57757	Good	951

EQUIPMENT LIST

DEPARTMENT	PROGRAM #	Equipment Description (Year/Make/Model); Hours	Serial #	CONDITION Good/Fair/Poor/Wrecked or Spare Parts	ASSET #
Utilities	5613	1994 Ford Tractor, Model 3415, 2 Wheel Drive, 1,176 Hours	X29784	Fair / Runs	496
Utilities	5611	2000 Case 1825B skid steer, 459.5 Hours	JAF0272331UN825B07	Poor / Runs	2017
Parks	6201	15' Batwing finish mower – Woods 9180 RD	35TC10-125	Fair	n/a
Parks	6201	2004 Jacobsen Turfcut T628 Mower 72" deck	Serial #94671300001611	Fair 1602 hours	1022
Parks	6201	2003 Jacobsen Turfcut T628 Mower 72" deck	Serial #94671300707	Fair 1477 hours	1018
Sanitation	6304	2003 Elgin Pelican Sweeper, 4437 hours, sweeping roads	P4141D	Fair	3017

September 2014

September 2014							October 2014						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6				1	2	3	4
7	8	9	10	11	12	13	5	6	7	8	9	10	11
14	15	16	17	18	19	20	12	13	14	15	16	17	18
21	22	23	24	25	26	27	19	20	21	22	23	24	25
28	29	30					26	27	28	29	30	31	

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Aug 31 - Sep 6	Aug 31	Sep 1 8:00am 5:00pm CITY OFFICES (CLOSED)	2 11:30am Planning Com. S.S. (Creekmore) 12:00pm CBID Special Mtg. (623 Garrison) 6:00pm Board of Directors (FSM Public Schools Serv. Cntr.)	3	4 12:00pm Housing Asst. Bd. (Main Library)	5	6
Sep 7 - 13	7	8 11:00am Property Owners Appeal Bd. (Planning Conf. Rm.)	9 12:00pm Bd. Study Session (Main Library) 5:30pm Planning Com. (Creekmore)	10 12:00pm Parks Com. (Creekmore)	11 12:00pm Oak Cemetery Com. (Creekmore)	12	13
Sep 14 - 20	14	15	16 10:00am CBID (Area Agency) 4:30pm Library Bd. of Trustees (Main Library) 6:00pm Bd. of Directors (FSM Public Schools Serv. Cntr.)	17 12:00pm Transit Adv. Com. (6821 Jenny Ld.)	18	19	20
Sep 21 - 27	21	22	23 12:00pm Bd. Study Session (Main Library) 4:00pm A & P Com. (Miss Laura's) 5:30pm Airport Commission (Airport) 6:00pm Ward 4 Neighbor	24	25 11:30am Housing Authority (Beckman Center) 5:30pm Historic District Study Ses. (220 North 7 Street)	26	27
Sep 28 - Oct 4	28	29	30 NO STUDY SESSION	Oct 1	2	3	4