



# ***AGENDA***

**FORT SMITH BOARD OF DIRECTORS  
REGULAR MEETING**

***SEPTEMBER 7, 2010 ~ 6:00 P.M.***

**FORT SMITH PUBLIC SCHOOLS  
SERVICE CENTER  
3205 JENNY LIND ROAD**

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

**INVOCATION AND 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 3, 2010 REGULAR MEETING**

**ITEMS OF BUSINESS:**

1. Public hearing and ordinance authorizing the issuance of industrial development revenue bonds to finance certain industrial facilities; authorizing the leasing of such facilities to Kraft Foods Global, Inc.; authorizing a trust indenture securing the bonds; authorizing the sale of the bonds; authorizing and prescribing other matters pertaining thereto; and declaring an emergency
2. Resolution supporting amendments to the Constitution of the State of Arkansas: (1) to eliminate constitutional limits on interest rates for government bonds and loan, revise interest rate limits on other loans, and authorize the financing of energy savings projects (Issue #2 at November 2010 General Election); and (2) to modify and improve the financing alternatives available to the state in support of major economic development projects in Arkansas (Issue #3 at November 2010 General Election)
3. Ordinance rezoning identified property and amending the zoning map (*Commercial Light (C-2) to Commercial Heavy (C-5) by extension located at 7601 Rogers Avenue*) ~ Tabled at the August 3, 2010 regular meeting ~

4. Ordinance rezoning identified property and amending the zoning map (*Residential Multi-Family Medium Density (RM-3) to Commercial Neighborhood Compatible (C-1) by classification at 4101 Rogers Avenue*)
5. Ordinance rezoning identified property and amending the zoning map (*Transitional (T) to Commercial Light (C-2) by classification located at 5801 Jenny Lind*)
6. Report from Bennie Westphal regarding Riverfront Development Study (*Cushman-Wakefield*)
7. Consent Agenda
  - A. Resolution to accept the bids and authorize contract for the construction of Sunnymede Tributary Drainage Improvements, Project No. 09-06-A (\$730,538.00)
  - B. Resolution accepting a donation of property for the Sunnymede Tributary Drainage Improvements, Project No. 09-06-A
  - C. Resolution to accept the bids and authorize contract for the construction of Traffic Signal Improvements, Project No. 10-09-A (\$197,212.30)
  - D. Resolution allowing the sale of surplus vehicles and equipment at public auction
  - E. Resolution accepting bids for the reroofing of Fire Station No. 3 (\$67,669.00)
  - F. Resolution authorizing the execution of Memorandum of Understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas regarding the 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) Program
  - G. Resolution accepting the project as complete and authorizing final payment to KAJACS Contractors, Inc. For construction of the Neighborhood Water Systems Improvements (\$64,484.60)
  - H. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Sub-Basin 10-2 West Sanitary Sewer Rehabilitation (\$158,637.32)
  - I. Resolution authorizing Change Order Number One with Utility Service Company for Fianna Hills elevated storage tank painting (\$41,500.00)

- J. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$1,090,461.58)
- K. Resolution authorizing the Mayor to execute an agreement with FSM Redevelopment Partners, LLC for the relocation of sanitary sewer lines

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

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

**CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. *Presentations are limited to 2 minutes for each citizen***  
*(Section 2-44(b) of Ordinance No. 24-10)*

**ADJOURN**

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

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS TO FINANCE CERTAIN INDUSTRIAL FACILITIES; AUTHORIZING THE LEASING OF SUCH FACILITIES TO KRAFT FOODS GLOBAL, INC.; AUTHORIZING A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE SALE OF THE BONDS; AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Fort Smith, Arkansas (the "City"), is authorized and empowered under the provisions of Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), to issue revenue bonds and to expend the proceeds thereof to finance land, buildings or facilities which can be used in securing or developing industry; and

WHEREAS, Kraft Foods Global, Inc., a Delaware corporation (the "Company"), proposes to acquire, construct, and equip certain industrial facilities (the "Project"), generally consisting of new machinery, equipment and other personal property to be located at the Company's Planters facility, 4020 Planters Road, Fort Smith, Arkansas 72908, and an approximately 28,000 square foot plant expansion; and

WHEREAS, it is proposed that the City issue its revenue bonds under the Act for the purpose of financing the cost of the Project and the expenses of issuing such bonds; and

WHEREAS, pursuant to and in accordance with applicable provisions of Arkansas law, a public hearing was held on the date hereof before the Board of Directors on the question of the issuance of such revenue bonds under the Act; and

WHEREAS, after due consideration the City has determined to proceed with financing the Project and to issue and sell its revenue bonds under the provisions of the Act in the aggregate principal amount of not to exceed \$18,000,000 (the "Bonds"), and in connection therewith to enter into a Trust Indenture (the "Indenture"), between the City and Regions Bank, Little Rock, Arkansas, as Trustee (the "Trustee"), to secure the Bonds; and

WHEREAS, the Project will be owned by the City and leased to the Company pursuant to the provisions of a Lease Agreement (the "Lease Agreement") between the City and the Company; and

WHEREAS, the Company will enter into an Agreement for Payments in Lieu of Taxes (the "PILOT Agreement") with the City as hereinafter provided; and

WHEREAS, forms of the Indenture, the Lease Agreement, and the PILOT Agreement have been presented to and are before this meeting;

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

Section 1. The Board of Directors hereby finds that the accomplishment of the Project, and the issuance of the Bonds to finance the same, will assure the continuation of employment and payrolls and will thereby secure and develop industry within and near the City.

Section 2. The issuance of the Bonds in the aggregate principal amount of \$18,000,000, or such lesser amount as shall be requested by the Company, is hereby authorized. The Bonds shall be designated "City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Kraft Foods Global, Inc. Project), Series 2010." The Bonds shall bear interest at the rate of 5% per annum and shall mature in the year 2023, which terms are recommended by the Company. The Bonds shall be in the forms and denominations, shall be numbered, shall be dated, and shall be subject to redemption prior to maturity all upon the terms and conditions recommended by the Company and set forth in the Indenture.

Section 3. The Bonds shall be sold to the Company or its designee for the purchase price of 100% of par, which price is recommended by the Company.

Section 4. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor and City Clerk are hereby authorized and directed to execute and acknowledge the Indenture for and on behalf of the City. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee and others in order to complete the Indenture in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 5. There is hereby authorized the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and others in order to complete the Lease Agreement in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

Section 6. There is hereby authorized the execution and delivery of the PILOT Agreement, and the Mayor is hereby authorized to execute and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and others in order to complete the PILOT Agreement in substantially the form submitted to this meeting with such changes as shall be approved by him, his execution to constitute conclusive evidence of such approval.

**Section 7.** The acquisition and construction of the Project, and the issuance and sale of the Bonds, are exceptional situations in which the City has no responsibility for payment of the costs and expenses thereof, all of which are payable by the Company, and the Company's recommendations with respect thereto are acceptable to the City. Therefore, pursuant to applicable laws of the State of Arkansas, including the Act, competitive bidding is hereby waived.

**Section 8.** The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the documents herein authorized and the performance of all obligations of the City thereunder, the issuance, execution, sale and delivery of the Bonds, and the performance of all acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and City Clerk are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

**Section 9.** The City Clerk is hereby authorized and directed to file in the office of the City Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person copies of the Indenture, the Lease Agreement, and the PILOT Agreement, and such documents shall be on file for inspection by any interested person.

**Section 10.** The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

**Section 11.** All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

**Section 12.** There is hereby found and declared to be an immediate need for the securing and developing of industry in order to assure the continuation of employment and payrolls, thereby alleviating unemployment and otherwise benefitting the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishing of these public benefits and purposes. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED: September 7, 2010.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

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

(SEAL)

**CERTIFICATE**

The undersigned, City Clerk of the City of Fort Smith, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. \_\_\_\_\_, adopted at a regular session of the Board of Directors of the City of Fort Smith, Arkansas, held at the regular meeting place of the City at 6:00 o'clock p.m., on the 7th day of September, 2010, and that the Ordinance is of record in Ordinance Record Book No. \_\_\_\_\_, at page \_\_\_\_\_, now in my possession.

GIVEN under my hand and seal on this \_\_\_\_\_ day of September, 2010.

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City Clerk

(SEAL)



## **MEMORANDUM**

September 1, 2010

**TO:** Dennis Kelly, City Administrator

**FROM:** Ray Gosack, Deputy City Administrator

**SUBJECT:** Planters/Kraft Foods

Planters is planning the addition of a new processing operation to its Fort Smith plant. Planters has requested the use of industrial revenue bonds as an inducement to locate the processing operation in Fort Smith.

The total investment in the manufacturing addition is estimated to be \$18-20 million in building and equipment. Although no new jobs will be added with this expansion, the plant management hopes that the success of this project will bring future investments to the Fort Smith plant which could result in additional employment.

The amount of the industrial revenue bonds will be up to \$18 million. Because the equipment and building purchased with the bond proceeds are technically owned by the city, the building and equipment are exempt from property taxation. However, Planters would make annual payments in lieu of taxes in the amount of 50% of the normal taxes. These payments would be distributed to the school district, the county and the city as tax payments normally are. The term of the reduced payments will be 12 years. The bonds aren't general obligations of the city, and are payable solely with proceeds from Planters/Kraft Foods.

Planters/Kraft Foods is ready to proceed with the bond issuance. Attached are the following documents:

- ▶ An ordinance authorizing the issuance of up to \$18 million in industrial development revenue bonds for Planters/Kraft Foods.
- ▶ A payment in lieu of taxes (PILOT) agreement. This agreement requires Planters to make a payment of 50% of the normal property taxes on the property being

financed by the bonds. The term is 12 years. Thereafter, Planters will make payments equal to 100% of the taxes normally attributable to the land, building and equipment.

- ▶ A lease agreement for the property financed by the bonds. Because the property is financed with bonds issued by the city, the city technically owns the property until the bonds are retired. The lease agreement is necessary so that Planters will control and have responsibility for the property. At the end of the lease term, ownership of the property will be conveyed to Planters. (Note: the lease agreement is 36 pages in length. It has been included in only the board members' packets. If a copy is desired, you may find it with the electronic board packet on the city's website at [www.fortsmithar.gov](http://www.fortsmithar.gov). Click on "mayor and board of directors".)
  
- ▶ A trust indenture to govern the terms of issuance of the bonds and their repayment. (Note: the trust indenture is 62 pages in length. It has been included in only the board members' packets. If a copy is desired, you may find it with the electronic board packet on the city's website at [www.fortsmithar.gov](http://www.fortsmithar.gov). Click on "mayor and board of directors".)

The staff recommends approval of the industrial development revenue bond ordinance for Planters/Kraft Foods. The project supports one of the board's top priorities: economic development.

*Ray*

#### Attachments

cc: Lisa Grenier, Planters  
Tom Leggett, Friday Eldredge & Clark (bond counsel)  
Dr. Benny Gooden, Greenwood School District  
David Hudson, Sebastian County Judge  
Cheryl Garner, Fort Smith Regional Chamber of Commerce



September 01, 2010

Mr. Dennis Kelly  
City Administrator  
City of Fort Smith  
PO Box 1908  
Fort Smith, Arkansas 72902

**RE: Kraft Foods Fort Smith, Arkansas Expansion**

Dear Mr. Kelly:

I appreciated speaking with you and Ray Gosack about Kraft Foods' potential capital expansion projects at the Fort Smith, Arkansas *Planters* facility. Thank you for the information on various tax incentives, in particular the PILOT (payment in lieu of taxation) agreement. As we discussed, Kraft Foods' facilities continually compete internally for projects that may result in capital investment, job retention, and/or job creation dependent upon the project. Our Fort Smith facility is currently being considered for capital investment of approximately \$20 million over the next two years. PILOT funds are requested to improve the financial justification of the expansion project and the likelihood that the project will be approved internally. Following is additional information on Kraft Foods and the proposed expansion project.

**Company Background**

Kraft Foods is a global snacks company with a familiar portfolio of brands people love. With annual revenues of approximately \$48 billion, the company is the world's second largest food company, making delicious products for billions of consumers in approximately 170 countries. The portfolio includes 11 iconic brands with revenues exceeding \$1 billion – *Oreo*, *Nabisco* and *LU* biscuits; *Milka* and *Cadbury* chocolates; *Trident* gum; *Jacobs* and *Maxwell House* coffees; *Philadelphia* cream cheeses; *Kraft* cheeses, dinners and dressings; and *Oscar Mayer* meats. Approximately 70 brands generate annual revenues of more than \$100 million. Kraft Foods is a member of the Dow Jones Industrial Average, Standard & Poor's 500, Dow Jones Sustainability Index and Ethibel Sustainability Index.

**Kraft Foods In Fort Smith, Arkansas**

*Planters* in Fort Smith, Arkansas, is one of two Kraft Foods manufacturing plants in Arkansas. The *Planters* business, originally part of Standards Brands, broke ground on the existing Fort Smith facility in 1974 and first production began in January 1976. In 1983, Nabisco acquired *Planters*. In 2000, Kraft Foods was combined with Nabisco Holdings, which included *Planters* and the Fort Smith, Arkansas facility. In 2003, Kraft Foods expanded its physical presence at the Fort Smith site by adding a 72,000 square foot warehouse. Currently, the Fort Smith facility is 389,000 square feet on 52.5 acres and employs over 350 full-time employees. The Fort Smith facility positively impacts this community and the region through more than \$40 million of annual spending for payroll, raw and package materials, utilities, taxes, goods and services.

The Fort Smith facility has won both internal and external awards including the Kraft Safety Achievement Award, 2002-2007; Kraft recognition for 1 Million hours without a Lost Time Accident, 2007; Kraft Safety Excellence Award, 2008; and Sam's Club "Supplier of the Year" for Customer Service, 2008.

Kraft Foods also has a history of giving back to the community. The Kraft Foods Foundation is committed to fighting hunger and promoting healthy lifestyles around the world by teaming with leading non-profits such as Feeding America, YMCA and Save the Children. In the Fort Smith area, *Planters* has demonstrated a strong community involvement including its work with the United Way, the Reynolds Cancer Support House and the Clearing House backpack program. Kraft Foods and its Foundation also provide humanitarian aid and disaster relief worldwide. And the Kraft Foods Foundation supports programs where Kraft employees work and live through the Matching Gifts and Dollars for Doers programs.

**Proposed Expansion Plan**

The Fort Smith facility is being considered for capital investment that may total approximately \$20 million over a two year period. The expansion project includes investment in new machinery and equipment to modernize the facility and to convert to more sustainable packaging materials. The sustainable packaging materials will reduce landfill contributions by approximately 20 million pounds and material usage by approximately 25 million pounds annually. In addition, the project will include a 28,000 square foot expansion of the existing facility and the reconfiguration of existing space which will create new space that would be available for future projects and investment.

As you know, Kraft Foods is a major employer in the Fort Smith area. Due to consistent production demands we have been able to maintain our employment levels during the recent economic downturn. The proposed projects will enhance the long-term prospects for the facility. In addition, the significant investment at the site would make the Fort Smith location more competitive when Kraft Foods considers internal sites for future expansion that may include job creation and additional capital investment.

**Request for Assistance**

Kraft Foods respectfully requests the City of Fort Smith financial support of the aforementioned projects through the approval of a Payment in Lieu of Tax Agreement.

Your support and approval of this request will help strengthen Kraft Foods' presence in Fort Smith and help make our Fort Smith *Planters* facility more competitive for future expansion projects. Thank you for your consideration and interest in Kraft Foods' *Planters* nuts expansion project.

Please contact me at 479-648-0110 with any questions or comments.

Very truly yours,



Lisa Grenier  
Plant Manager – Fort Smith  
Kraft Foods

cc: Ray Gosack, City of Fort Smith, Arkansas  
Joe Bailey, Arkansas Economic Development Commission  
Tim Schram, Grant Thornton

**DRAFT**  
**Friday, Eldredge & Clark, LLP**

**AGREEMENT FOR PAYMENTS IN LIEU OF TAXES**

City of Fort Smith, Arkansas  
City Offices  
623 Garrison Avenue  
Fort Smith, Arkansas 72901  
Attention: Mayor

Kraft Foods Global, Inc., a Delaware corporation (the "Company"), has requested the City of Fort Smith, Arkansas (the "City") to issue not to exceed \$18,000,000 in principal amount of its Taxable Industrial Development Revenue Bonds (Kraft Foods Global, Inc. Project), Series 2010 (the "Bonds"), under the laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), for the purpose of assisting the Company in financing certain industrial facilities located within the boundaries of the City, generally consisting of new machinery, equipment and other personal property to be located at the Company's Planters facility, 4020 Planters Road, Fort Smith, Arkansas 72908, and an approximately 28,000 square foot plant expansion (the "Project"), and paying the expenses of issuing the Bonds.

The Project will be leased by the City to the Company under a Lease Agreement dated as of October 1, 2010 (the "Lease Agreement"). The Lease Agreement will have a stated term expiring on October 1, 2023, with the ownership of the Project reverting to the Company at the conclusion of the Lease Agreement upon the happening of certain events which will be more fully described in the Lease Agreement. The properties leased under the Lease Agreement, including, without limitation, all replacements and substitutions of the Project which become the property of the Issuer pursuant to the provisions of this Lease Agreement, are herein referred to as the "Leased Premises."

The Lease Agreement provides that the Company is obligated to pay all taxes and assessments levied and assessed on the Leased Premises during the term of the Lease Agreement. The Company and the City understand and agree that, notwithstanding such provision in the Lease Agreement, under Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Arkansas Supreme Court in *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998), the Leased Premises will be exempt from ad valorem taxes because they will be owned by the City and used for a public purpose within the meaning of the applicable Constitutional and statutory provisions affording the exemption. Thus, the Company and the City agree that the Company, as lessee of the Project, will, in fact, have no ad valorem taxes to pay under the provisions of the Lease Agreement.

To induce the City to proceed with the issuance of the Bonds, which will inure to the benefit of the Company, and for other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Company agrees with the City as follows:

1. Payments. The Company will make annual payments in lieu of taxes to the City or, at the option of the City, to the Treasurer of Sebastian County, Arkansas (the "County"), annually at the times regular ad valorem taxes are payable, as follows:

- (a) In the year 2012, an amount equal to one hundred percent (100%) of the ad valorem taxes which would be payable if the property comprising the Leased Premises were subject to ad valorem taxes.
- (b) In the years 2013 to 2024, inclusive, an amount equal to fifty percent (50%) of the ad valorem taxes which would be payable if the property comprising the Leased Premises were subject to ad valorem taxes.
- (c) Thereafter, an amount equal to one hundred percent (100%) of the ad valorem taxes which would be payable if the property comprising the Leased Premises were subject to ad valorem taxes.

2. Assessed Valuation. Representatives of the Company will meet annually with the Assessor of the County and determine the assessed valuation of the properties comprising the Project. The determination shall be made by mutual agreement if possible, and if not shall be made by the Assessor as though the Project were privately owned. The amount to be paid each year shall be determined by applying the millage that would be applicable to the Project for that year if the Project were privately owned. The Company shall be entitled to any refund occasioned by overpayment or a reduction in millage which requires a refund by the taxing authorities.

3. Distribution. Each payment made pursuant to Section 1 hereof shall be distributed to the political subdivisions which would have received ad valorem tax payments on the Leased Premises had the Leased Premises not been exempt from ad valorem taxes in accordance with applicable law.

4. Payments Limited. The payments to be made by the Company under Section 1 hereof are intended to be in lieu of all ad valorem taxes that would have to be paid on the Leased Premises to the State of Arkansas, the City, the County, Fort Smith School District No. 100 of Sebastian County, Arkansas (the "District"), and/or other present and future political subdivisions of the State of Arkansas if the Leased Premises were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas as interpreted by the Supreme Court of the State of Arkansas in *Wayland v. Snapp*, 232 Ark. 57, 334 S.W.2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998). Therefore, such payments shall not as to any year be in an amount greater than would be payable for such year in ad valorem taxes, in the aggregate, if the Leased Premises were not exempt from ad valorem taxes.

5. Change of Law or Application. If by reason of a change in the Constitution, a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, or otherwise ad valorem taxes are no longer imposed on property of the type comprising the Leased Premises, no payments shall be due by the Company hereunder from and after the effective date of such change.

Furthermore, if by reason of a change in the Constitution, a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, or otherwise the Company is required to pay any real or personal property ad valorem tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of taxes and need only pay the difference, if any, to the City. It is understood that such deduction shall include payments made by the Company for sales taxes, use taxes, or any other taxes, excises or imposts of any kind or character which have been imposed by the State of Arkansas, the City, the County, the District, and/or any other taxing authority in lieu of and as a substitute for ad valorem taxes.

6. Parties to Support Agreement. The City and the Company agree to use their best efforts to sustain the validity and enforceability of this Agreement.

7. Termination. This Agreement shall terminate and be of no further force and effect from and after the date that the Lease Agreement shall terminate for any purpose other than an uncured default on the part of the Company. If such termination shall be at a point constituting a portion of a tax year, the Company shall pay for the year in which termination occurred that portion of the specified annual payment that the number of days in such tax year that the Company was Lessee prior to the termination bears to 365 or 366 days, as appropriate.

8. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Company. This Agreement may be assigned by the Company to a corporation, limited liability company, or other entity organized under the laws of the United States of America, the District of Columbia or one of the states of the United States qualified to do business in the State of Arkansas, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless the Company simultaneously assigns the Lease Agreement and under the terms thereof is thereby relieved of further obligations thereunder.

9. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

10. Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Arkansas.

When executed, this instrument shall constitute a valid and binding contract between the Company and the City.

[EXECUTION PAGE FOLLOWS]

DATED: October \_\_\_\_, 2010

KRAFT FOODS GLOBAL, INC.

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

Title: \_\_\_\_\_

ACCEPTED:

CITY OF FORT SMITH, ARKANSAS

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

October \_\_\_\_, 2010

**DRAFT**  
**Friday, Eldredge & Clark, LLP**

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**CITY OF FORT SMITH, ARKANSAS**

**and**

**KRAFT FOODS GLOBAL, INC.**

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**LEASE AGREEMENT**

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**Dated as of October 1, 2010**

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# LEASE AND AGREEMENT

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## LEASE AGREEMENT

This LEASE AGREEMENT, dated as of October 1, 2010, by and between CITY OF FORT SMITH, ARKANSAS, a municipality organized and existing under the laws of the State of Arkansas (the "Issuer"), and KRAFT FOODS GLOBAL, INC., a corporation organized and existing under and by virtue of the laws of the State of Delaware (the "Company").

### WITNESSETH:

WHEREAS, the Issuer is authorized and empowered under the laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), to issue revenue bonds and expend the proceeds thereof to finance the cost of acquiring, constructing and equipping facilities for securing or developing industry; and

WHEREAS, certain industrial facilities (described in Article I hereof and collectively referred to herein as the "Project") have been, and are being acquired, constructed and equipped by or on behalf of the Company located within the boundaries of the Issuer; and

WHEREAS, at the request of the Company and in furtherance of the purposes of the Act, the Issuer proposes to issue its revenue bonds under the Act in the aggregate principal amount of not to exceed \$18,000,000 (identified in Article I hereof and referred to herein as the "Bonds"), for the purpose of financing the cost of acquiring, constructing and equipping the Project, and to lease the Project to the Company upon the terms and conditions set forth herein; and

WHEREAS, the Company is entering into this Lease Agreement for the purpose of achieving ad valorem tax savings with respect to the Project, the accomplishment of which the Issuer has determined will furnish substantial employment and payrolls and will thereby promote the economic welfare of the inhabitants of the Issuer and adjacent areas in furtherance of the public purpose of the Act;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants herein made, and subject to the conditions herein set forth, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. In addition to the words and terms elsewhere defined in this Lease Agreement or in the Indenture, the following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning:

"Act" -- Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated, as enacted and amended from time to time.

"Additional Bonds" -- Bonds which are issued under the provisions of Section 215 of the Indenture.

"Bonds" -- The Series 2010 Bonds and any series of Additional Bonds issued under and secured by this Indenture.

"Bond Fund" -- The fund by that name created and established in Section 501 of the Indenture.

"City Clerk" -- The person holding the office and performing the duties of City Clerk of the Issuer.

"Company" -- Kraft Foods Global, Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns hereunder.

"Company Representative" -- The person or persons at the time designated to act on behalf of the Company as evidenced by a written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Company by its President, any Vice President, or its Treasurer. Such certificate may designate an alternate or alternates.

"Completion Date" -- The date of completion of the acquisition, construction and equipping of the Project, as that date shall be determined by the Company and certified as provided in Section 3.4 hereof.

"Construction Fund" -- The fund by that name created and established in Section 501 of the Indenture.

"Environmental Laws" -- Any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Project, now or hereafter enacted or interpreted, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42

U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Section 6901 et seq.

"Event of Default" -- Any event of default specified in Section 8.1 hereof.

"Excess Bond Fund Moneys" -- As of any payment date under Section 5.3 hereof, moneys in the Bond Fund on such date in excess of the amount required for payment of the principal of the Bonds which have matured on a maturity date or on a redemption date prior to such payment date, and past due interest, in all cases where Bonds have not been presented for payment.

"Hazardous Substances" -- Any one or more of the following substances, materials and wastes:

(a) Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in CERCLA, RCRA and the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq. and in the regulations promulgated pursuant to said laws;

(b) Those substances defined as "hazardous wastes" or "PCB" in the applicable statutes of the State of Arkansas, as amended from time to time, and in the regulations promulgated thereunder;

(c) Those substances listed in the United States Department of Transportation Table (49 CFT 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(d) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, which are classified as hazardous, corrosive, ignitable, or toxic under federal, state or local laws or regulations; and

(e) Any material, waste or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sections 1251 et seq. (33 U.S.C. 1321) or listed pursuant to Section 3078 of the Clean Water Act (33 U.S.C. 1317); (v) flammable explosives; or (vi) radioactive materials.

"Indenture" -- The Trust Indenture dated as of October 1, 2010, by and between Issuer and Trustee, securing the Bonds, and any amendments and supplements thereto.

"Issuer" -- City of Fort Smith, Arkansas, a political subdivision of the State of Arkansas, and its successors and assigns.

"Lease Agreement" -- This Lease Agreement and any amendments and supplements hereto.

"Lease Payments" -- All amounts required to be paid by the Company to the Issuer (and the Trustee as the assignee of the Issuer) pursuant to Section 5.3 of this Lease Agreement.

"Mayor" -- The person holding the office and performing the duties of the Mayor of the Issuer.

"Outstanding" -- When used with reference to the Bonds, as of any particular date, the aggregate of all Bonds authenticated and delivered under the Indenture, except:

(a) Bonds canceled at or prior to such date or delivered to or acquired by the Trustee prior to such date for cancellation;

(b) Bonds deemed to be paid in accordance with Article IX of the Indenture; and

(c) Bonds in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to the Indenture.

"Permitted Encumbrances" -- (i) This Lease Agreement and the Indenture; (ii) liens for taxes, assessments, and other governmental charges not then delinquent or being contested in good faith and by appropriate proceedings; (iii) any mechanic's, laborer's, materialmen's, worker's, repairmen's, employee's, supplier's, or vendor's lien (or other like lien) arising in the ordinary course of business or in connection with the construction of the Project and which are not yet due and payable or which are being contested in good faith and by appropriate proceedings; (iv) utility, access and other easements and rights of way, restrictions, reversions and exceptions that will not interfere with or impair the operations being conducted on the Premises or that are granted pursuant to the terms hereof; (v) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the Project and as do not materially impair the value or utility of the Project; (vi) any leasehold mortgage; (vii) any other encumbrance shown on a title policy commitment obtained by the Company as of the date of issuance of the Bonds; and (viii) any other defect, irregularity, encumbrance, easement, right of way or cloud on title which is waived or permitted in writing by the Company.

"Premises" -- The land, buildings, improvements, machinery, equipment and facilities leased by this Lease Agreement and described in Section 5.1 hereof.

"Project" -- The land, the buildings, structures and other improvements, and those items of machinery, equipment and other tangible personal property acquired, constructed and equipped, in whole or in part, with the proceeds of the Bonds (including any changes in, additions to, substitutions for or deletions of facilities or portions thereof made under Section 3.3 hereof). As presently

contemplated by the existing plans and specifications prepared by or on behalf of the Company, the Project is generally described in Exhibit A hereto.

"Project Costs" -- All costs and expenses incurred with respect to the development, design, engineering, acquisition, equipping, construction, assembly, inspection, testing, completion and start-up of the Project, including, without limitation:

(a) obligations of the Issuer or the Company incurred for labor and materials (including obligations payable to the Company) in connection with the acquisition, construction or equipping of the Project, including reimbursement to the Company or its affiliates for all advances and payments (including interest) made prior to or after delivery of the Bonds;

(b) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect during the course of construction of the Project;

(c) all costs of engineering and architectural services, including the costs of the Issuer or the Company for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper construction of the Project;

(d) all expenses incurred in connection with the issuance of the Bonds, including, without limitation, compensation and expenses of the Trustee, compensation to any financial consultants or underwriters, legal fees and expenses, costs of printing, and recording and filing fees;

(e) all fees for examination of title or title insurance, and for recording this Lease Agreement and the Indenture or filing any financing statements;

(f) any sums required to reimburse the Issuer or the Company for advances (including interest) made by either of them or any of the Company's affiliates for any of the above items or for any other costs incurred and for work done by either of them or any of the Company's affiliates which are properly chargeable to the Project;

(g) all costs which the Issuer or the Company shall be required to pay, under the terms of any contract or contracts, for the acquisition, construction, installation or equipping of the Project; and

(h) interest on the Bonds prior to the Completion Date.

"Purchaser" -- Kraft Foods Global, Inc., a Delaware corporation, and its successors and assigns. The Purchaser is the original purchaser of the Bonds.

"Series 2010 Bonds" -- City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Kraft Foods Global, Inc. Project), Series 2010, in the aggregate principal amount of not to exceed \$18,000,000, issued under and secured by the Indenture.

"Trustee" -- The bank or trust company designated as Trustee in the Indenture, and its successor or successors as such Trustee under the provisions of the Indenture or by operation of law. The original Trustee is Regions Bank, Little Rock, Arkansas.

Section 1.2. Use of Words and Phrases. "Herein", "hereby", "hereunder", "hereof", "hereinabove", "hereinafter", and other equivalent words and phrases refer to this Lease Agreement and not solely to the particular portion thereof in which any such word is used. The definitions set forth in Section 1.1 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders. The term "including" shall mean "including without limitation."

## ARTICLE II

### REPRESENTATIONS

Section 2.1. Representations and Warranties of the Issuer. The Issuer makes the following representations and warranties as the basis for the undertakings herein contained:

- (a) The Issuer is a municipality duly organized and existing under the laws of the State of Arkansas.
- (b) The Issuer has the power to enter into the transactions contemplated by this Lease Agreement and to carry out its obligations hereunder. By proper action the Issuer has been duly authorized to execute and deliver this Lease Agreement.
- (c) The Issuer has not and will not except as otherwise required by mandatory provisions of law, assign its interest in this Lease Agreement other than to secure the Bonds.
- (d) The acquiring, constructing and equipping of the Project will promote the securing and developing of industry and will thereby further the public purposes of the Act.

Section 2.2. Representations and Warranties of the Company. The Company makes the following representations and warranties as the basis for the undertakings herein contained:

- (a) The Company is a corporation duly organized under the laws of the State of Delaware and is in good standing under the laws of such state, is duly authorized to do business in the State of Arkansas and is in good standing under the laws of such state, has the power under its Articles of Incorporation and Bylaws to enter into this Lease Agreement, and has duly authorized the execution and delivery of this Lease Agreement by proper corporate action.
- (b) The Project is of the type authorized and permitted by the Act, and the Company intends to operate the Project to the expiration or earlier termination of this Lease Agreement for industrial purposes.
- (c) Estimated Project Costs have been determined in accordance with sound engineering and accounting principles, and the Company estimates that all of the proceeds of the Bonds will be expended to pay such Project Costs.
- (d) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the compliance with the terms and conditions of this Lease Agreement conflicts with or results in a breach of the terms, conditions or provisions of any agreement or instrument to which Company is now a party or by which Company is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien,

charge or encumbrance whatsoever (other than Permitted Encumbrances) upon any of the property or assets of Company.

(e) All representations and warranties of the Company contained in any certificate required to be given in connection with the issuance of the Bonds will be true and correct as of the date of such certificate.

## ARTICLE III

### THE PROJECT

Section 3.1. Acquiring, Constructing and Equipping of the Project. The Company shall cause the Project to be acquired, constructed and equipped with all reasonable dispatch in order to effectuate the purposes of the Act. The Company shall have the sole responsibility under this Lease Agreement for the acquiring, constructing and equipping of the Project and may perform the same itself or through its agents, and may make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things as it may in its sole discretion consider requisite or advisable for the acquiring, construction and equipping of the Project and for fulfilling its obligations under this Article III. The Company shall have full authority and the sole right under this Lease Agreement to supervise and control, directly or indirectly, all aspects of the acquiring, constructing and equipping of the Project. Title to the Project shall be placed in the Issuer.

Section 3.2. Company Required to Pay in Event Proceeds of Bonds Insufficient. In the event the proceeds of the issuance and sale of the Bonds available for payment of Project Costs should not be sufficient to pay the Project Costs in full, the Company agrees to complete the Project and to pay that portion of the Project Costs in excess of the moneys available therefor from the proceeds of the Bonds. The Issuer does not make any warranty, either expressed or implied, that the proceeds of the issuance and sale of the Bonds available for payment of Project Costs will be sufficient to pay all of the Project Costs. The Company agrees that if after exhaustion of Bond proceeds the Company should pay any portion of the Project Costs pursuant to the provisions of this Section, the Company shall not be entitled to reimbursement therefor from the Issuer or from the Trustee or from the holders of any of the Bonds, nor shall the Company be entitled to any diminution of the amounts payable under Section 5.3 hereof.

Section 3.3. Revision of Scope, Plans and Specifications. The Company may revise the scope, plans and specifications for the Project at any time and from time to time in any respect, including, without limitation, any changes therein, additions thereto, substitutions therefor and deletions therefrom; provided, however, that no such revision shall materially impair the effective use of the Project contemplated by this Lease Agreement or shall render inaccurate any of the representations contained in Section 2.2 hereof.

Section 3.4. Certification of Completion Date. Promptly after the Completion Date, the Company shall submit to the Issuer and the Trustee a certificate, executed by a Company Representative, which shall specify the Completion Date and shall state that acquisition, construction and equipment of the Project has been completed and the Project Costs have been paid or set aside for payment, except for any Project Costs which have been incurred but are not then due and payable, or the liability for the payment of which is being contested or disputed by the Company. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being.

Section 3.5. Termination of Construction or Operation. Anything in this Lease Agreement to the contrary notwithstanding, the Company shall have the right at any time to terminate the acquisition, construction, equipment or operation of the Project or change the scope of the Project or any part thereof, if the Company shall have determined that the continued acquisition, construction and equipment or operation of the Project is impracticable, uneconomical or undesirable for any reason. Promptly after such termination, the Company shall submit to the Issuer and the Trustee a certificate, executed by a Company Representative, which shall state that the Project Costs, to the extent of the acquisition, construction, equipment and operation of the Project as of the date of such termination, have been paid, except for any Project Costs which have been incurred but are not then due and payable, or the liability for the payment of which is being contested or disputed by the Company. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being. After such termination, title to the Project shall promptly, and in no event later than ten (10) days following such termination, be transferred to the Company in the same manner as provided in Section 10.3 hereof.

## ARTICLE IV

### **ISSUANCE OF THE SERIES 2010 BONDS**

**Section 4.1. Issuance of the Series 2010 Bonds.** The Issuer shall issue the Bonds under and in accordance with the Indenture. The Company hereby approves the issuance of the Bonds and all terms and conditions thereof.

**Section 4.2. Disposition of Bond Proceeds.** The proceeds from the issuance and sale of the Bonds shall be disbursed to the Company from time to time for payment of Project Costs or reimbursement of Project Costs paid or to be paid by the Company or its affiliates incidental to the acquiring, constructing and equipping of the Project, in accordance with and pursuant to requisitions as provided in Section 602 of the Indenture.

## ARTICLE V

### RENTAL PROVISIONS

Section 5.1. Lease of Premises. The Issuer hereby demises and leases to the Company, subject to Permitted Encumbrances, and the Company hereby leases from the Issuer, subject to Permitted Encumbrances, for and during the term of this Lease Agreement, the following (the "Premises"):

- (a) The land described in Exhibit B attached hereto;
- (b) The buildings, structures and other improvements now or at any time hereafter erected and installed on such land;
- (c) All accretions, easements, rights of way and appurtenances belonging or in any way appertaining to such land and/or the improvements described in (a) and (b) above; and
- (d) All machinery, equipment and other tangible personal property acquired by or on behalf of the Issuer and paid for, in whole or in part, with the proceeds of the Bonds and placed on or in the land and/or the improvements described in (a) and (b) above, or elsewhere, including, without limitation, all replacements and substitutions which become the property of the Issuer pursuant to the provisions of this Lease Agreement. All such machinery, equipment and other tangible personal property shall be identified in a ledger which shall be maintained by the Company on the Premises; provided, however, the failure to so identify such property in such ledger shall not prevent any item of machinery, equipment or other tangible personal property from becoming part of the Project and leased under this Lease Agreement if, pursuant to the provisions hereof, it should be part thereof, and shall not affect the rights of the Company to such property hereunder.

TO HAVE AND TO HOLD the Premises unto the Company for the term of this Lease Agreement as hereafter set forth.

Section 5.2. Term. The term of this Lease Agreement shall commence on October 1, 2010, and shall continue until October 1, 2023, and as long thereafter as any of the Bonds remain outstanding under the Indenture, unless sooner terminated or extended as provided herein.

Section 5.3. Lease Payments and Payment of Other Amounts Payable. (a) On or before any date that principal of or interest on the Bonds is due as set forth in the Indenture and the date of final payment of the principal of and interest on the Bonds or any date fixed for the redemption of any or all of the Bonds pursuant to the Indenture, the Company covenants and agrees to pay or to cause to be paid in lawful money of the United States of America to the Trustee, as Lease Payments,

a sum equal to the amount payable on such payment date as principal (whether at maturity, upon redemption or otherwise) of and interest on the Bonds as provided in the Indenture. Except as may be otherwise provided in any home office payment agreement entered into pursuant to the provisions of Section 214 of the Indenture, each payment made pursuant to this Section shall be made in immediately available funds at the principal corporate trust office of the Trustee during normal banking hours.

In the event that the payment of the principal of and accrued interest on the Bonds is accelerated under Section 1002 of the Indenture, the Company covenants and agrees to pay, or cause to be paid, to the Trustee as provided above a sum equal to all the principal of and interest on the Bonds then outstanding.

Each payment pursuant to this Section shall at all times be sufficient to pay the amount of principal (whether at maturity, upon redemption or otherwise) of and interest payable on the Bonds on the date that such payment is due; provided that Excess Bond Fund Moneys held by the Trustee in the Bond Fund on such date shall be credited against the payment due on such date. Subject to the provisions of the next succeeding sentence, if at any time the amount held by Trustee in the Bond Fund should be sufficient (and remain sufficient) to pay at the times required the principal of and interest on the Bonds then remaining unpaid, the Company shall not be obligated to make any further payments under the provisions of this Section. Notwithstanding the provisions of the preceding sentence, if on any date Excess Bond Fund Moneys held by Trustee in the Bond Fund are insufficient to make the then required payments of principal (whether at maturity, upon redemption or otherwise) of and interest on the Bonds on such date, the Company shall forthwith pay such deficiency as a payment hereunder.

(b) The Company agrees to pay the fees, charges and reasonable and necessary expenses, including reasonable attorneys' fees, of the Trustee and any paying agent.

(c) The Company agrees to pay or cause to be paid, promptly upon receipt of an invoice therefor (with reasonable supporting documentation) from the Issuer, as additional rent, the reasonable and necessary expenses incurred by the Issuer with respect to this Lease Agreement, the Indenture, and any transaction or event contemplated by this Lease Agreement or the Indenture, which are not otherwise required to be paid by the Company under the terms of this Lease Agreement.

(d) In the event the Company should fail to make, or cause to be made, any of the payments required in this Section, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid.

**Section 5.4. No Defense or Set-off -- Unconditional Obligation.** The obligations of the Company to make the payments required in Section 5.3 hereof and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional, irrespective of any defense or any right of set-off, recoupment or counterclaim it might otherwise have against the Issuer

or the Trustee, and the Company shall pay absolutely net during the term of this Lease Agreement the payments to be made as prescribed in Section 5.3 and all other payments required hereunder free of any deductions and without abatement, diminution or set-off; and until such time as the principal of and interest on the Bonds shall have been fully paid, or provision for the payment thereof shall have been made in accordance with the Indenture, the Company: (i) will not suspend or discontinue any payments provided for in Section 5.3 hereof; (ii) will perform and observe all of its other agreements contained in this Lease Agreement; and (iii) except as provided in Article VIII hereof or Section 3.5 hereof, will not terminate this Lease Agreement for any cause, including, without limiting the generality of the foregoing, failure to complete the Project, the occurrence of any act or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, any change in the tax laws of the United States of America or the State of Arkansas or any political subdivision of such state, or any failure of the Issuer or the Trustee to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease Agreement or the Indenture. Notwithstanding anything herein to the contrary, any home office payment agreement entered into pursuant to the provisions of Section 214 of the Indenture may provide for set-off any obligation of the Company to the owner of any Bond who is a party to such agreement against the obligations of the Company to make the payments required in Section 5.3 hereof with respect to such Bond.

Section 5.5. Quiet Enjoyment. The Issuer covenants that the Company, upon paying the rentals and performing all covenants, obligations and agreements on the part of Company to be performed under this Lease Agreement, shall and may peaceably and quietly have, hold and enjoy the Premises for the term of this Lease Agreement and shall be entitled to all revenues generated therefrom subject to all of the provisions of this Lease Agreement pertaining thereto.

## ARTICLE VI

### SPECIAL COVENANTS AND AGREEMENTS

**Section 6.1. Maintenance of Corporate Existence.** The Company agrees that it will do all things necessary to preserve and keep in full force and effect and in good standing its existence, material rights and material franchises under the laws of the state of its organization and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it, except the Company may, without violating the foregoing, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or transfer (other than by way of an assignment as security for obligations of the Company) all or substantially all of its assets to another entity (thereafter dissolving or not dissolving as it may elect), if either (a) such consolidation, merger, or transfer is approved in writing by the Purchaser (so long as the Purchaser is owner of not less than 100% in aggregate principal amount of the Bonds), or (b) the entity surviving such merger or resulting from such consolidation, or the entity to which all or substantially all of the assets of the Company are transferred, as the case may be: (i) shall qualify to do business in the State of Arkansas under the laws thereof, and (ii) shall assume in writing all of the obligations of the Company hereunder. Upon and after such consolidation, merger or transfer meeting the foregoing conditions, the Company shall be relieved from liability for its obligations hereunder.

**Section 6.2. Release and Indemnification Covenants.** (a) The Company shall and hereby agrees to indemnify and save the Issuer and the Trustee harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the conduct or management of, or from any work or thing done on, the Premises during the term of this Lease Agreement from (i) any condition of the Premises, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Lease Agreement, (iii) any act or negligence of the Company or any of its agents, contractors, servants, employees or licensees or (iv) any act or negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company. The Company shall indemnify and save the Issuer and the Trustee harmless from any such claim arising as aforesaid from (i), (ii), (iii) or (iv) above, or in connection with any action or proceeding brought thereon, and upon notice from the Issuer or the Trustee, the Company shall defend them or any of them in any such action or proceeding. Notwithstanding the foregoing, neither the Issuer nor the Trustee shall be entitled to indemnification for any claim arising out of its own gross negligence or willful misconduct.

(b) Notwithstanding the fact that it is the intention of the parties that the Issuer shall not incur pecuniary liability by reason of the terms of this Lease Agreement, or the undertakings required of the Issuer hereunder by reason of the issuance of the Bonds, the execution of the Indenture, the performance of any act required of the Issuer by this Lease Agreement, or the performance of any act requested of the Issuer by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing; nevertheless,

if the Issuer should incur any such pecuniary liability, then in such event the Company shall indemnify and hold the Issuer harmless against all claims by or on behalf of any person, firm or corporation or other legal entity arising out of the same, and all reasonable costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon written notice from the Issuer, the Company shall defend the Issuer in any such action or proceeding, except to the extent such claim, cost or expense arises from the gross negligence or willful misconduct of the Issuer.

Section 6.3. Qualification of Company in Arkansas. The Company agrees that throughout the term of this Lease Agreement it will be qualified to do business in the State of Arkansas.

Section 6.4. Permits or Licenses. In the event that it may be necessary for the proper performance of this Lease Agreement on the part of the Company or the Issuer that any application or applications for any permit or license to do or to perform certain things be made to any governmental or other agency by the Company or the Issuer, the Company and the Issuer each shall, upon the request of either, execute such application or applications.

Section 6.5. Access to Premises. The Issuer shall have the right, upon reasonable advance notice to the Company, to have reasonable access to the Premises and the books and records of the Company with respect to the Project during normal business hours for the purpose of ascertaining the Company's compliance with the terms and conditions hereof. In making such inspections, the Issuer will observe the Company's prevailing security and safety arrangements. Nothing contained in this Section 6.5 or in any other provision of this Lease Agreement shall be construed to entitle the Issuer to any information or inspection involving the confidential know-how or other proprietary information of the Company, and prior to any such inspection the Company may require the Issuer to enter into a confidentiality agreement in form and substance satisfactory to the Company and as permitted by the Arkansas Freedom of Information Act with respect to any information involving the confidential know-how or other proprietary information of the Company.

Section 6.6. Maintenance and Insuring of Premises. (a) The Company shall at all times maintain, preserve and keep the Premises, and every material element and unit thereof, in good repair, working order and condition (subject to scheduled and unscheduled outages), and from time to time make all necessary repairs and renewals thereto, all as the Company, in its sole discretion, may deem to be desirable for its uses and purposes. The Company may discontinue the operation of the Project, or any element or unit thereof, if, in the sole discretion of the Company, it is no longer advisable to operate the same, or if the Company intends to sell and dispose of the same. After the Completion Date, the Company may at its own expense remodel the Project or make such substitutions, modifications and improvements to the Project from time to time as it, in its sole discretion, may deem to be desirable for its uses and purposes, which remodeling, substitutions, modifications and improvements shall be included under the terms of this Lease Agreement as part of the Premises.

(b) The Company shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary machinery, equipment or other tangible personal property which is part of the Premises hereunder. In any instance where the Company in its sound discretion determines that any such items of leased machinery, equipment or other tangible personal property have become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Company may remove such items from the Premises and (on behalf of the Issuer) sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the Issuer therefor, provided that the Company may substitute (either by direct payment of the costs thereof or by advancing to the Issuer the funds necessary therefor) and install anywhere on or in the Premises other machinery, equipment or other tangible personal property having equal or greater utility (but not necessarily having the same function) in the operation of the Project as a modern industrial facility (provided such removal and substitution shall not impair the operating unity of the remaining property), all of which substituted property shall be free of all liens and encumbrances (other than Permitted Encumbrances) but shall become a part of the Premises hereunder. The removal from the Premises of any portion of the leased machinery, equipment or other tangible personal property shall not entitle the Company to any abatement or diminution of the rents payable under Section 5.3 hereof.

(c) The Company shall keep the Premises insured against fire and other risks as are customarily insured against by the Company in its other businesses of like size and type, by reputable insurance companies or, at the Company's election, partially or wholly by means of an adequate self-insurance program or in conjunction with other companies through an insurance fund, trust or other agreement. Each policy of insurance shall name the Issuer and the Company as insureds as their respective interests may appear. All proceeds of such insurance shall be for the account of the Company or its designee.

Section 6.7. Recordation and Filing. The Company covenants that it will cause the Indenture and this Lease Agreement, such security agreements, financing statements and all supplements thereto and other instruments as may be required from time to time to be kept, to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the holders and owners of the Bonds and the rights of Trustee under such instruments, and to perfect the security interest created by the Indenture.

Section 6.8. Hazardous Substances; Compliance with Environmental Laws. (a) Except in material compliance with all Environmental Laws, the Company shall not acquire, use, generate, manufacture, produce, store, release, discharge, dispose of, or arrange for the disposal of on, under or about the Premises or transport to or from the Premises any Hazardous Substance or allow any other person or entity to do so.

(b) The Company shall keep and maintain the Premises in material compliance with, and shall not cause or permit the Premises to be in material violation of, any Environmental Law.

(c) The Company shall give prompt written notice to the Issuer of:

(i) Any proceeding by any government authority with respect to the presence, use or disposal of any Hazardous Substance on the Premises or the migration thereof from or to other property;

(ii) All claims made in writing by any third party against the Company or the Premises relating to loss or injury from any Hazardous Substance;

(iii) The Company's discovery of any occurrence or condition on the Premises or adjoining real property or in the vicinity of the Premises that could reasonably be expected to cause the Premises or part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Law or to be subject to response or cleanup costs.

Section 6.9. Taxes and Other Impositions. (a) The Company shall pay, promptly as the same become due and payable, every lawful tax or other governmental imposition of every kind and nature, foreseen or unforeseen, for the payment of which the Company is or shall become liable by reason of its estate or interest in the Project or any portion thereof, by reason of any right or interest of the Company in or under this Lease Agreement, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Project or any portion thereof, including, without limitation, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other tangible personal property installed or brought by the Company therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the receipts, income or profits of the Issuer from the Project and all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project); provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated to pay only such installments as they become due; and provided further, that the Company may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when the Company is in good faith contesting the same, so long as (a) reserves have been established in an amount reasonably sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other reasonably adequate provision for the payment thereof shall have been made, (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest, and (c) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is promptly paid after resolution of such contest.

(b) The parties hereto recite knowledge of the decision of the Supreme Court of the State of Arkansas in Wayland v. Snapp, 232 Ark. 57, 334 S.W. 2d 633 (1960), concerning the exemption of properties owned by municipalities and used for securing and developing industry under and pursuant to the provisions of the Act. The Issuer has represented to the Company and the Issuer and

the Company acknowledge that under their and other interpretations of present law, no part of the Project will be subject to ad valorem taxation by the State of Arkansas or by any political or taxing subdivision thereof, and these factors, among others, materially induced the Company to enter into this Lease Agreement. However, the Company will pay all impositions, if any, in connection with the Project which may be lawfully levied or assessed upon the Project when the same shall become due; provided, however, that the Company may contest any such impositions and need not pay during the pendency of such contest except the Company shall in all events, pay to prevent the Project becoming subject to loss or forfeiture. The Issuer hereby agrees that it will cooperate with the Company in resisting any such impositions if and to whatever extent the Company may request.

Section 6.10. Issuer to Grant Easements. The Issuer agrees that, when requested by the Company, it will take the necessary steps to grant sewer, utility, road and other easements and rights of way over, along, across and under the Premises. Instruments granting such easements and rights of way may be executed by the Mayor and City Clerk of the Issuer, who shall be entitled to rely upon and act in accordance with the written request of the Company signed by its Company Representative.

Section 6.11. Condemnation. (a) If all or any part of the Premises is taken or condemned as the result of the exercise of the power of eminent domain, this Lease Agreement shall not terminate and the rentals hereunder shall not abate. The net amount awarded as damages or paid as a result of such taking (being the gross award less attorney's fees and other expenses and costs incurred in the condemnation proceedings) shall be paid to the Company.

(b) The Company shall have the right, proceeding in the name of the Issuer, to handle defense or prosecution of any condemnation proceeding and to negotiate any settlement or compensation for a taking pertaining to or affecting the Premises. The Issuer agrees that it will cooperate with the Company in such manner as it requests with the end in view of obtaining the maximum possible amount justifiable as damages for the taking, and will not settle any condemnation proceeding without the prior written consent of the Company.

(c) Notwithstanding the fact that all or any part of the Premises shall be taken by right of eminent domain, the Company shall have the right to exercise any option granted to it by the provisions of Article X hereof.

Section 6.12. Damage or Destruction. If all or any part of the Premises is damaged or destroyed by fire or other casualty, this Lease Agreement shall not terminate and the rentals hereunder shall not abate. In repairing any damage to the Premises resulting from any casualty, the Company may make such repairs in such manner and to such extent as it deems appropriate for its purposes, and shall not be liable for the restoration of the Premises to the condition existing prior to such casualty.

## ARTICLE VII

### ASSIGNMENT, LEASING AND SELLING

Section 7.1. Conditions. The Company's interest in this Lease Agreement may be assigned in whole or in part, and the Premises may be subleased as a whole or in part (whether a specific element or unit or an undivided interest), by the Company, subject, however, to the condition that no assignment or sublease shall relieve the Company from liability for its obligations hereunder, other than (a) those obligations relating to the utilization of the Premises which obligations, to the extent of the interest assigned, leased or sold, shall be deemed to be satisfied and discharged, and (b) as described in Section 6.1 hereof.

Section 7.2. Instrument Furnished to Trustee. The Company shall, within fifteen (15) days after the delivery thereof, furnish to the Issuer and the Trustee a true and complete copy of the agreements or other documents effectuating any such assignment, lease or sale.

Section 7.3. Limitation. This Lease Agreement shall not be assigned nor shall the Premises be leased or sold, in whole or in part, except as provided in this Article VII or in Section 5.4 or 6.1 hereof.

Section 7.4. Assignment of Issuer's Rights. As security for the payment of the Bonds, the Issuer will assign to the Trustee the Issuer's rights under this Lease Agreement (except for the Issuer's rights under Sections 5.3(c), 6.2, 6.5 and 8.5 hereof and any rights of the Issuer to receive notices, certificates, or other communications hereunder), including the right to receive payments hereunder and the proceeds thereof, and hereby directs the Company to make said payments, or to cause said payments to be made, directly to the Trustee. The Company herewith consents to such assignment and will make payments, or cause payments to be made, directly to the Trustee without defense or set-off by reason of any dispute between the Company and the Issuer or the Trustee.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default. Each of the following events shall constitute and is referred to in this Lease Agreement as an "Event of Default":

(a) Failure by the Company to pay when due any payment required to be made under Section 5.3(a) hereof.

(b) Failure by the Company to observe and perform any material covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 8.1(a), which failure shall continue for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Trustee, provided that if the Company is proceeding with reasonable diligence to remedy the same, then such sixty-day period shall be extended to such date as may be reasonably necessary to remedy such default. The Company shall not be deemed in breach or default of this Lease Agreement during such initial sixty-day cure period, nor (as long as the Company is proceeding with reasonable diligence as set forth above) during such extended cure period.

(c) The dissolution or liquidation of the Company or the filing by the Company of a voluntary petition in bankruptcy, or failure by the Company promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry out its obligations under this Lease Agreement, or filing of any involuntary bankruptcy proceedings against the Company which is not timely contested by the Company, or a general assignment by the Company for the benefit of its creditors, or the entry by the Company into an agreement of composition with its creditors of such consequence as will impair its ability to carry out its obligations under this Lease Agreement, or the approval by a court of competent jurisdiction of a petition applicable to the Company in any proceeding for its reorganization instituted under the provisions of any bankruptcy act, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Company", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Company resulting either from a merger or consolidation of the Company into or with another entity or a dissolution or liquidation of the Company following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in Section 6.1 hereof.

Section 8.2. Force Majeure. The provisions of Section 8.1 hereof are subject to the following limitation: if by reason of acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or other acts of any kind of the Government of the United States or of the State of Arkansas, or any other sovereign entity or body politic, or any department, agency, political subdivision, court or official of any of them, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes, volcanoes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances;

explosions, breakage or accident to machinery; partial or entire failure of utilities; or any cause or event not reasonably within the control of the Company, the Company is unable in whole or in part to carry out any one or more of its agreements or obligations contained herein, other than its obligations under Sections 5.3(a), 6.1 and 6.2 hereof, the Company shall not be deemed in default by reason of not carrying out said agreement or agreements or performing said obligation or obligations during the continuance of such inability. The Company agrees, however, to use all reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Company, and the Company shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is in the sole discretion of the Company unfavorable to the Company.

Section 8.3. Remedies on Default. Whenever any Event of Default hereunder shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) The Issuer with the prior consent of the Trustee, or the Trustee, may at its option, and shall, if acceleration occurs or is declared pursuant to Section 1002 of the Indenture, declare all unpaid amounts payable under this Lease Agreement, together with interest, then due thereon, to be immediately due and payable, whereupon the same shall become due and payable.

(b) The Issuer with the prior consent of the Trustee, or the Trustee, may take any action at law or in equity to collect the payments then due and thereafter to come due hereunder, or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Lease Agreement.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the Indenture.

In case any proceeding taken by the Issuer or the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Issuer or the Trustee, then and in every case the Issuer, the Company and the Trustee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Issuer, the Company and the Trustee shall continue as though no such proceeding has been taken.

Section 8.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Issuer or the Trustee by this Lease Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to

entitle the Issuer or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required in this Article. Nothing in this Lease Agreement contained shall affect or impair the right of the Purchaser (so long as the Purchaser is owner of not less than 100% in aggregate principal amount of the Bonds) to institute in its own name any suit, action or proceeding in equity or at law for the enforcement of this Lease Agreement for any other remedy hereunder.

Section 8.5. Company to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Lease Agreement and the Issuer or the Trustee should employ attorneys or incur other expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement on the part of the Company contained herein, the Company agrees that it will on demand therefor pay to the Issuer or the Trustee, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred.

Section 8.6. Waiver of Breach. In the event that any agreement contained herein shall be breached by either the Company or the Issuer and such breach shall thereafter be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. In view of the assignment of the Issuer's rights in and under this Lease Agreement to the Trustee under the Indenture, the Issuer shall have no power to waive any default hereunder by the Company without the consent of the Trustee, and the Trustee may exercise any of the rights of the Issuer hereunder (other than the rights retained by the Issuer as set forth in Section 7.4).

## ARTICLE IX

### REDEMPTION OF BONDS

Section 9.1. Optional Redemption of Bonds. The Company shall have and is hereby granted the option to prepay installments payable hereunder for the purpose of redeeming prior to maturity the Bonds, in whole or in part, pursuant to Section 301 of the Indenture.

Section 9.2. Amounts Payable by Company. (a) In the case of a prepayment for the redemption of the Bonds in whole pursuant to Section 9.1 hereof, the amount to be prepaid by the Company hereunder (which shall fully discharge the obligation of the Company to make Lease Payments hereunder) will be a sum sufficient, together with other funds deposited with Trustee and available for such purpose, to pay (1) the principal of all Bonds then outstanding, plus interest accrued and to accrue to the date upon which the Bonds will be redeemed, pursuant to the Indenture, (2) all reasonable and necessary fees and expenses of the Trustee and any paying agent accrued and to accrue through final payment of the Bonds, and (3) all other liabilities of the Company accrued and to accrue under this Lease Agreement.

(b) In case of a prepayment for the redemption of the Bonds in part pursuant to Section 9.1 hereof, the amount to be prepaid by the Company hereunder will be a sum sufficient, together with other funds deposited with Trustee and available for such purpose, to pay (1) the principal of all Bonds then being redeemed, plus interest accrued and to accrue to the date upon which the Bonds will be redeemed, pursuant to the Indenture, (2) all reasonable and necessary fees and expenses of the Trustee and any paying agent accrued and to accrue in connection with said redemption, and (3) all other liabilities of the Company accrued and to accrue under this Lease Agreement in connection with said redemption.

(c) The Company agrees to and shall pay to the Trustee any amount required to be paid by it under this Section 9.2, and the Trustee shall be directed to use the moneys so paid to it to redeem the Bonds pursuant to the provisions of the Indenture. Any amount required to be paid under this Section 9.2, shall not be deemed to be paid until immediately available funds are received by the Trustee.

Section 9.3. Procedure for Exercise of Option. To exercise the option granted in this Article IX, the Company shall give written notice to the Issuer and the Trustee which shall specify therein the date upon which redemption of the Bonds will be made. Such date shall not be less than forty-five (45) days from the date the notice is given. Upon receipt of such notice, the Issuer shall forthwith take all steps (other than the payment of the money required for such redemption) necessary under the applicable provisions of the Indenture to effect redemption of all or part, as the case may be, of the Bonds on the earliest practicable date thereafter on which such redemption may be made under the applicable provisions of the Indenture.

## ARTICLE X

### PURCHASE OF PREMISES

Section 10.1. Purchase of Premises. In the event the Company pays or prepays Lease Payments and other amounts owing to the Issuer and the Trustee under this Lease Agreement and the Indenture in such a manner so as to permit this Lease Agreement to be released from the lien of the Indenture in accordance with the terms thereof, then, irrespective of any default hereunder, the Premises shall be transferred by the Issuer to the Company, such payment or prepayment of the Lease Payments and other amounts owing to the Issuer and the Trustee to constitute the purchase price of the Premises.

Section 10.2. Premises to Vest in Company Upon Expiration. Upon expiration of the term of this Lease Agreement and the satisfaction of all obligations of the Company contained herein, title to the Premises shall automatically and ipso facto vest in the Company. If requested, the Issuer shall execute, acknowledge where appropriate, and deliver such instrument or instruments as the Company may reasonably request to confirm the vesting of title to the Premises in the Company.

Section 10.3. Method of Transfer. Transfer of title to the Premises or any portion thereof shall be by special warranty deeds, bills of sale, and other appropriate conveyance instruments executed and acknowledged by the Issuer transferring good and merchantable title to the Company (or its designee) free and clear of all liens and encumbrances except those to which title was subject when leased hereunder, Permitted Encumbrances under this Lease Agreement, or resulting from any failure of the Company to perform any of its obligations under this Lease Agreement. At either party's option, closing shall occur through an escrow established with a title company mutually acceptable to the parties.

Section 10.4. Release Option. The Company shall have and is hereby granted the option from time to time to have released from this Lease Agreement any portion of the land described in Exhibit B hereto as shall not at such time be improved with a building or buildings or other structure or structures or be necessary for adequate ingress and egress to and from the buildings and structures comprising the Premises, plus such additional land adjacent to such buildings and structures as may be reasonably necessary for the proper and efficient use of such buildings and structures. The consideration to be paid by the Company to the Issuer upon conveyance of the land being released shall be One Dollar (\$1.00) per acre. The foregoing option to release may be exercised by giving written notice to the Issuer, with a copy to the Trustee (so long as any of the Bonds are outstanding), specifying the time and place of closing. The conveyance of land under this Section 10.4 shall not result in the relieving of the Company of its obligations to make the payments required in Section 5.3 hereof and to perform and observe the other agreements on its part contained herein, or result in any diminution thereof.

**ARTICLE XI**

**MISCELLANEOUS**

Section 11.1. Notices. Except as otherwise provided in this Lease Agreement, all notices, certificates or other communications shall be sufficiently given and shall be deemed given when delivered by hand delivery or when the same has been mailed by registered or certified mail, postage prepaid, to the Issuer, the Company, or the Trustee. Copies of each notice, certificate or other communication given hereunder by or to the Company shall be mailed by registered or certified mail, postage prepaid, to the Trustee; provided, however, that the effectiveness of any such notice shall not be affected by the failure to send any such copies. Notices, certificates or other communications shall be sent to the following addresses:

Issuer:           City of Fort Smith, Arkansas  
                    City Offices  
                    623 Garrison Avenue  
                    Fort Smith, Arkansas 72901  
                    Attention: City Administrator

Company:        Kraft Foods Global, Inc.  
                    100 NE Columbia Blvd.  
                    Portland, Oregon 97211  
                    Attention: \_\_\_\_\_

With a copy to:

Kraft Foods Global, Inc.  
Corporate & Legal Affairs Department  
3 Lakes Drive  
Northfield, Illinois 60093  
Attention: Chief Counsel, Corporate & Business Services

Trustee:         Regions Bank  
                    400 West Capitol Avenue  
                    Little Rock, Arkansas 72201  
                    Attention: Corporate Trust Department

Any of the foregoing may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2. Severability. If any provision of this Lease Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any

other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

**Section 11.3. Execution of Counterparts.** This Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.4. Amounts Remaining in Bond Fund.** It is agreed by the parties hereto that after payment in full of (i) the Bonds (or the provision for payment thereof having been made in accordance with the provisions of the Indenture), (ii) the fees, charges and expenses of the Trustee and paying agents (if any) in accordance with the Indenture, and (iii) all other amounts required to be paid under this Lease Agreement and the Indenture, any amounts remaining in the Bond Fund shall belong to and be paid by the Trustee to the Company.

**Section 11.5. Amendments, Changes and Modifications.** Except as otherwise provided in this Lease Agreement or the Indenture, subsequent to the initial issuance of Bonds and prior to payment in full of the Bonds (or the provision for payment thereof having been made in accordance with the provisions of the Indenture), this Lease Agreement may not be effectively amended, changed, modified, altered or terminated nor any provision waived, without the written consent of the Trustee.

**Section 11.6. Governing Law.** This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of Arkansas.

**Section 11.7. Company Representatives.** A Company Representative shall act on behalf of the Company whenever the approval of the Company is required or the Company requests the Issuer to take some action, and the Issuer and the Trustee shall be authorized to act on any such approval or request and neither party hereto shall have any complaint against the other or against the Trustee as a result of any such action taken.

**Section 11.8. No Personal Liability.** No covenant or agreement contained in this Lease Agreement shall be deemed to be the covenant or agreement of any official, officer, agent, or employee of the Issuer in his individual capacity, and no such person shall be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 11.9. Parties in Interest.** This Lease Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns, and no other person, firm or corporation shall have any right, remedy or claim under or by reason of this Lease Agreement; provided, however, that any obligation of the Issuer created by or arising out of this Lease Agreement shall be payable solely out of the revenues derived from this Lease Agreement or the sale of the Bonds or income earned on invested funds as provided in the Indenture and shall not constitute, and no breach of this Lease Agreement by the Issuer shall impose, a pecuniary liability upon the Issuer or a charge upon the Issuer's general credit.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Lease Agreement to be executed in their respective names, and the Issuer has caused its seal to be hereunto affixed and attested by its duly authorized officer, all as of the date first above written.

CITY OF FORT SMITH, ARKANSAS  
As Lessor

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

ATTEST:

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

(SEAL)

KRAFT FOODS GLOBAL, INC.  
As Lessee

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

**ACKNOWLEDGMENT**

STATE OF ARKANSAS    )  
                                  )  
COUNTY OF SEBASTIAN )

On this the \_\_\_\_ day of October, 2010, before me, \_\_\_\_\_ the undersigned officer, personally appeared Ray Baker and Cindy Remler, who acknowledged themselves to be the Mayor and the City Clerk, respectively, of the City of Fort Smith, Arkansas, a municipality, and that they, as such Mayor and City Clerk, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by themselves as Mayor and City Clerk.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2010.

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_

(SEAL)



## **EXHIBIT A**

### **Description of Project**

The Project to be financed with the proceeds of the Bonds generally consists of new machinery, equipment and other personal property to be located at the Company's Planters facility, 4020 Planters Road, Fort Smith, Arkansas 72908, and an approximately 28,000 square foot plant expansion.

**EXHIBIT B**

**Description of Land**

The following described land situated in Sebastian, Arkansas, to-wit:

**DRAFT**  
**Friday, Eldredge & Clark, LLP**

---

**CITY OF FORT SMITH, ARKANSAS**

to

**REGIONS BANK**  
**Little Rock, Arkansas**  
**as Trustee**

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**TRUST INDENTURE**

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Dated as of October 1, 2010

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**\$18,000,000 City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Kraft Foods Global, Inc. Project), Series 2010**

## TRUST INDENTURE

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## TRUST INDENTURE

This TRUST INDENTURE, dated as of October 1, 2010, by and between the CITY OF FORT SMITH, ARKANSAS, a municipality organized and existing under the laws of the State of Arkansas (the "Issuer"), and REGIONS BANK, a banking association organized under and existing by virtue of the laws of the State of Alabama, with a corporate trust office in Little Rock, Arkansas (the "Trustee").

### WITNESSETH:

WHEREAS, the Issuer is authorized and empowered under the laws of the State of Arkansas, including particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), to issue revenue bonds and expend the proceeds thereof to finance the cost of acquiring, constructing and equipping facilities for securing or developing industry; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Issuer proposes to issue its revenue bonds under the Act in the aggregate principal amount of not to exceed \$18,000,000 (identified in Article I hereof and referred to herein as the "Bonds"), for the purpose of financing the cost of acquiring, constructing and equipping certain industrial facilities located within the boundaries of the Issuer (described in Article I hereof and collectively referred to herein as the "Project"), and to lease the Project to Kraft Foods Global, Inc., a Delaware corporation (the "Company"), such lease to be upon the terms and conditions set forth in a Lease Agreement dated as of October 1, 2010 (the "Lease Agreement"), by and between the Issuer and the Company; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Trust Indenture provided, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Trust Indenture a valid assignment and pledge of revenues to the payment of the principal of and interest on the Bonds, in accordance with the provisions hereof, have or will have been done and performed, and the creation, execution and delivery of this Trust Indenture and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized; and

WHEREAS, the Trustee has agreed to accept the trusts herein created upon the terms set forth herein;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THIS TRUST INDENTURE WITNESSETH:

### GRANTING CLAUSES

That the Issuer in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders and owners thereof, and the sum of One Dollar (\$1.00), lawful money of the United States of America, to it duly paid by the Trustee, at or before the execution and delivery of these presents, and for other good and valuable considerations, the receipt of which is hereby acknowledged, and in order to secure the

payment of the principal of and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, subject to all of the provisions hereof, does hereby grant, bargain, sell, convey, mortgage, assign and pledge unto the Trustee, and unto its successor or successors in trust, and to them and their assigns forever, for the securing of the performance of the obligations of the Issuer hereinafter set forth:

1.

All the rights and interest of the Issuer in and to the Lease Agreement (except for the rights of the Issuer under Sections 5.3(c), 6.2, 6.5 and 8.5 thereof and any rights of the Issuer to receive notices, certificates, or other communications thereunder); and all Revenues (as hereinafter defined) and the proceeds of all thereof.

2.

All the rights and interest of the Issuer in and to the Construction Fund and the Bond Fund (as hereinafter defined), and all moneys and investments therein, but subject to the provisions of this Trust Indenture pertaining thereto.

3.

All moneys, securities and obligations from time to time held by the Trustee under the terms of this Trust Indenture (except for moneys, securities or obligations deposited with or paid to the Trustee for redemption or payment of Bonds which are deemed to have been paid in accordance with Article IX hereof and funds held pursuant to Section 505 hereof, which shall be held by the Trustee in accordance with the provisions of said Article IX or Section 505, as the case may be), and any and all real and personal property of every name and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone in its behalf or with its written consent to the Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trusts and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all owners of the said Bonds issued under and secured by this Trust Indenture without privilege, priority or distinction of any of said Bonds over any of the other of said Bonds; provided, however, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Bonds and the interest due thereon, at the times and in the manner provided in the Bonds according to the true intent and meaning thereof, and

shall make the payments into the Bond Fund as required hereunder or shall provide, as permitted hereby, for the payment thereof by depositing or causing to be deposited with the Trustee the amount specified herein, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Trust Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Trust Indenture to be and remain in full force and effect.

THIS TRUST INDENTURE FURTHER WITNESSETH that, and it is expressly declared, all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said revenues and income hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective owners, from time to time of the said Bonds, as follows:

## ARTICLE I

### DEFINITIONS

Section 101. Definitions. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings:

"Act" -- Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated, as enacted and amended from time to time.

"Additional Bonds" -- Bonds which are issued under the provisions of Section 215 of this Indenture.

"Advance" -- The advancement from time to time of the proceeds of the Bonds to the Company pursuant to requisitions submitted in accordance with Section 602 hereof.

"Bonds" -- The Series 2010 Bonds and any series of Additional Bonds issued under and secured by this Indenture.

"Bond Counsel" -- Any firm of nationally recognized municipal bond counsel selected by the Company and acceptable to the Issuer and the Trustee.

"Bond Fund" -- The fund by that name created and established in Section 501 of this Indenture.

"Business Day" -- A day of the year on which banks located in the city in which the principal corporate trust office of the Trustee is located are not required or authorized to remain closed and on which The New York Stock Exchange is not closed.

"City Clerk" -- The person holding the office and performing the duties of City Clerk of the Issuer.

"Code" -- The Internal Revenue Code of 1986, as heretofore or hereafter amended.

"Company" -- Kraft Foods Global, Inc., a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns hereunder.

"Company Representative" -- The person or persons at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Company by its President, any Vice President, or Treasurer. Such certificate may designate an alternate or alternates.

"Completion Date" -- The date of completion of the acquisition, construction and equipment of the Project (or any phase of the Project financed with the proceeds of a series of Bonds), as that date shall be determined by the Company and certified as provided in Section 3.4 of the Lease Agreement.

"Construction Fund" -- The fund by that name created and established in Section 601 of this Indenture.

"Event of Default" -- Any event of default specified in Section 1001 hereof.

"Government Securities" -- Direct or fully guaranteed obligations of the United States of America (including any such securities issued or held in book-entry form on the books of the Department of Treasury of the United States of America).

"Guaranty Agreement" -- The Guaranty Agreement dated as of October 1, 2010, by and between the Company and the Trustee, pursuant to which the Company guarantees the payment of the principal of and interest on the Bonds, and any amendments and supplements thereto.

"Holder" or "bondholder" or "owner of the Bonds" -- The registered owner of any Bond.

"Indenture" -- This Trust Indenture and any amendments and supplements hereto.

"Interest Payment Date" -- Each April 1 and October 1 commencing April 1, 2010, or, if such day shall not be a Business Day, the next succeeding Business Day.

"Issuer" -- City of Fort Smith, Arkansas, a municipality organized and existing under the laws of the State of Arkansas, and its successors and assigns.

"Lease Agreement" -- The Lease Agreement dated as of October 1, 2010, by and between the Issuer and the Company, and any amendments and supplements thereto.

"Mayor" -- The person holding the office and performing the duties of the Mayor of the Issuer.

"Outstanding" -- When used with reference to the Bonds, as of any particular date, the aggregate of all Bonds authenticated and delivered under this Indenture except:

(a) Bonds canceled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation;

(b) Bonds deemed to be paid in accordance with Article IX of this Indenture; and

(c) Bonds in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture.

"Person" -- Includes natural persons, firms, associations, corporations and public bodies.

"Project" -- The land, the buildings, structures and other improvements, and those items of fixtures, machinery, equipment and other tangible personal property acquired, constructed and equipped, in whole or in part, with the proceeds of the Bonds, more particularly identified in the Lease Agreement. For identification purposes only, the Project site is described in Exhibit C attached hereto.

"Project Costs" -- The sum total of all reasonable or necessary costs actually incurred in constructing the Project and any such costs incidental thereto.

"Purchaser" -- Kraft Foods Global, Inc., a Delaware corporation, and its successors and assigns. The Purchaser is the original purchaser of the Bonds.

"Record Date" -- The fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not a Business Day.

"Revenues" -- All amounts payable pursuant to Section 5.3(a) of the Lease Agreement.

"Series 2010 Bonds" -- City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Kraft Foods Global, Inc. Project), Series 2010, in the aggregate principal amount of not to exceed \$18,000,000, issued under and secured by this Indenture.

"Trustee" -- The bank or trust company designated as Trustee in this Indenture, and its successor or successors as such Trustee under the provisions of the Indenture or by operation of law. The original Trustee is Regions Bank, Little Rock, Arkansas.

"Trust Estate" -- The property conveyed to the Trustee pursuant to the Granting Clauses hereof.

Section 102. Use of Words. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond", "owner", "holder" and "person" shall include the plural, as well as the singular, number.

## ARTICLE II

### THE BONDS

Section 201. Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued is hereby expressly limited to \$18,000,000, except as provided in Sections 209 and 212 hereof.

Section 202. Details of Series 2010 Bonds. (a) The Series 2010 Bonds (i) shall be designated "City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bonds (Kraft Foods Global, Inc. Project), Series 2010," (ii) shall be in the aggregate principal amount of not to exceed \$18,000,000, (iii) shall be dated the date of original issuance and delivery thereof to the Purchaser; (iv) shall bear interest at the rate of five percent (5%) per annum until paid, payable semiannually on each Interest Payment Date, and (v) shall mature, unless sooner redeemed in the manner in this Indenture set forth, on October 1, 2023. The Series 2010 Bonds shall be issued as registered bonds without coupons as is hereinafter provided.

The Series 2010 Bonds shall be issued in the denomination of \$100,000 each, or any integral multiple of \$5,000 in excess of \$100,000, numbered consecutively from R-1 upwards in order of issuance according to the records of the Trustee.

The Series 2010 Bonds shall be initially issued in the form of one fully registered bond in the principal amount of \$18,000,000 and may not be submitted in exchange for more than one fully registered bond until the Completion Date, at which time the Series 2010 Bond initially issued may, but shall not be required to, be submitted to the Trustee pursuant to the provisions of Section 210 hereof in exchange for more than one fully registered bond. The proceeds of the Series 2010 Bonds shall be advanced from time to time upon the submission of requisitions by the Company to the Trustee pursuant to the provisions of Section 602 hereof and Section 4.2 of the Lease Agreement. Upon receipt of each requisition by the Trustee, the Trustee shall telephonically notify the Purchaser of the principal amount of the Series 2010 Bonds which the Purchaser must purchase, which shall be the amount set forth in such requisition. Promptly upon receipt of such notice, the Purchaser shall pay to the Trustee the principal amount requisitioned by the Company, and the Trustee shall make a notation of such principal amount purchased on the Record of Advances and Principal Payments attached to the Bond. The amount shown on the Record of Advances and Principal Payments attached to the Bond shall be deemed to be conclusive evidence of the principal amount of the Series 2010 Bonds purchased by the Purchaser, absent manifest error. The principal amount of the Series 2010 Bonds so purchased shall be submitted by the Purchaser to the Trustee, and such amount shall be deposited by the Trustee into the Construction Fund. Any portion of the Series 2010 Bonds not sold to the Purchaser and any portion of the corresponding proceeds not delivered to the Company by the Completion Date shall not be issued or delivered thereafter. Notwithstanding anything herein to the contrary, until the Completion Date, upon the request of the Purchaser, the Trustee may maintain custody of the Bond as agent of the Purchaser.

The Series 2010 Bond initially issued shall bear interest from its date; provided, that the date of each Advance under such Bond shall be the interest commencement date from which the principal amount of such Advance bears interest. Series 2010 Bonds issued on the Completion Date and prior to the next Interest Payment Date shall bear interest from the Completion Date, and Series 2010 Bonds issued thereafter shall bear interest from the Interest Payment Date next preceding the date of authentication and delivery thereof by the Trustee, unless such date of authentication and delivery shall be an Interest Payment Date, in which case they shall bear interest from such date of authentication and delivery, or unless such date of authentication and delivery shall be during the period from the Record Date to the next Interest Payment Date, in which case they shall bear interest from such Interest Payment Date; provided, however, that if, as shown by the records of the Trustee, interest on any Series 2010 Bonds surrendered for transfer or exchange shall be in default, the Series 2010 Bonds issued in exchange for Series 2010 Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Series 2010 Bonds surrendered. Interest shall be computed on the basis of a year of three hundred sixty (360) days consisting of twelve 30-day months.

Section 203. Form. The Series 2010 Bond originally issued and delivered shall be substantially in the form set forth in Exhibit A attached hereto, with appropriate variations, omissions and insertions as permitted or required by this Indenture. The Series 2010 Bonds issued and delivered on and after the Completion Date shall be substantially in the form set forth in Exhibit B attached hereto, with such appropriate variations, omissions and insertions as are permitted or required by this Indenture.

Section 204. Payment. The principal of the Bonds shall be paid upon the presentation and surrender of said Bonds at the principal corporate trust office of the Trustee. The interest on the Bonds shall be payable by check or draft drawn upon the Trustee and mailed to or, at the option of the owners of Bonds in the aggregate principal amount of not less than \$1,000,000, transmitted by wire transfer to the registered owners as of the close of business on the Record Date next preceding the Interest Payment Date at their respective addresses as such appear as of the close of business on such Record Date on the bond registration books kept by the Trustee, or in connection with any wire transfer to the bank account number previously filed by the owner with the Trustee for such purpose, except that if and to the extent that there shall be a default in the payment of the interest due on such Interest Payment Date, such defaulted interest shall be paid to the owners in whose name any such Bonds (or any Bond or Bonds issued upon transfer or exchange thereof) are registered at the close of business on the fifth Business Day next preceding the date of payment of such defaulted interest. All payments shall be made in lawful money of the United States of America.

Section 205. Execution. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of the Mayor and the City Clerk and shall have impressed or imprinted thereon the corporate seal of the Issuer. A facsimile signature shall have the same force and effect as if personally signed. In case any officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature

or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

Section 206. Limited Obligation. The Bonds, together with interest thereon, shall be payable from the Bond Fund, as hereinafter set forth, and shall be a valid claim of the holders thereof only against the Bond Fund and the Revenues pledged to the Bond Fund, which Revenues are hereby pledged and mortgaged for the equal and ratable payment of the Bonds (principal and interest) and shall be used for no other purpose than to pay the principal of and interest on the Bonds, and the Trustee's fees, except as may be otherwise expressly authorized in this Indenture. The Bonds and interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision and shall never constitute an obligation or charge against the general credit or taxing powers of the Issuer.

Section 207. Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibits A and B attached hereto duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid and obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed if signed by an authorized signatory of the Trustee, but it shall not be necessary that the same signatory sign the certificate of authentication on all of the Bonds issued hereunder.

Section 208. Delivery of the Bonds. The Issuer shall execute and deliver to the Trustee and the Trustee shall authenticate the Bonds and deliver said Bonds to the Purchaser or the representative thereof. Prior to the delivery or original issuance by the Trustee of any authenticated Bonds there shall be or have been delivered to the Trustee:

(a) Original executed counterparts of this Indenture, the Lease Agreement, and the Guaranty Agreement (or, in the case of Additional Bonds, supplements thereto).

(b) A written order to the Trustee by the Issuer to authenticate and deliver the Bonds to the Purchaser upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such order plus or less accrued interest thereon, if any, as the case may be, to the date of delivery.

(c) A copy, duly certified by the City Clerk, of the proceedings of the Board of Directors of the Issuer authorizing the issuance of the Bonds.

(d) An opinion of Bond Counsel to the effect that the Bonds have been validly issued and are legally binding and enforceable under this Indenture.

Section 209. Mutilated, Destroyed or Lost Bonds. In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be

executed and the Trustee or the Trustee, as appropriate, may authenticate and deliver a new Bond of like date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the holder's paying the reasonable expenses and charges of the Issuer and the Trustee or the Trustee in connection therewith, and, in the case of a Bond destroyed or lost, his filing with the Trustee or the Trustee evidence satisfactory to it that such Bonds were destroyed or lost, and of his ownership thereof, and furnishing the Issuer and Trustee or the Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bonds shall have matured or shall have been called for redemption prior to maturity, instead of issuing a new Bond, the Issuer may pay the same without the surrender thereof.

Section 210. Registration and Transfer of Bonds. The Issuer hereby constitutes and appoints the Trustee as Registrar of the Issuer, and as Registrar the Trustee shall keep books for the registration and for the transfer of the Bonds as provided in this Indenture at the principal corporate trust office of the Trustee. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the registered owner thereof, or his legal representative, and neither the Issuer, the Trustee, nor the Bond Registrar shall be affected by any notice to the contrary but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Bonds may be transferred on the books of registration kept by the Registrar by the registered owner in person or by his duly authorized attorney, upon surrender thereof, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney. Upon surrender for transfer of any Bond at the principal corporate trust office of the Trustee, the Issuer shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds in the same aggregate principal amount and of any authorized denomination or denominations.

Bonds issued and delivered on and after the Completion Date may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Bonds of any other authorized denomination or denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding. The execution by the Issuer of any Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such bond.

The Trustee shall not be required to transfer or exchange any Bond during the period from and including a Record Date to the next succeeding Interest Payment Date of such Bond nor to transfer or exchange any Bond after the mailing of notice calling such Bond for redemption has been made and prior to such redemption.

Such transfers of registration or exchanges of Bonds shall be without charge to the holders of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the holder of the Bond requesting such transfer or exchange as a condition precedent to the exercise of such privilege.

Section 211. Cancellation. All Bonds surrendered for the purpose of payment or retirement, or for exchange, or for replacement or payment as provided above shall be canceled upon surrender thereof to the Trustee and, at the option of the Trustee, either cremated, shredded or otherwise disposed of. In the case of cremating, shredding or other disposition, the Trustee shall execute and forward to the Issuer an appropriate certificate describing the Bonds involved and the manner of disposition.

Section 212. Temporary Bonds. Until Bonds in definitive form are ready for delivery, the Issuer may execute, and upon the request of the Issuer the Trustee shall authenticate and deliver, subject to the provisions, limitations and conditions set forth herein, one or more Bonds in temporary form, whether printed, typewritten, lithographed or otherwise produced, substantially in the form of the definitive Bonds, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bonds in temporary form shall be entitled to the lien and benefit of this Indenture. Upon the presentation and surrender of any Bond or Bonds in temporary form, the Issuer shall, without unreasonable delay, prepare, execute and deliver to the Trustee and the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Trustee without making any charge therefor to the holder of such Bond in temporary form.

Section 213. Conversion of Bonds Upon Completion Date. Upon receipt of notice of the Completion Date as provided in Section 3.4 of the Lease Agreement, the Trustee shall give notice thereof to the registered owner of the Bonds (unless such registered owner is the Company). Such notice shall be given by mail in accordance with Section 302 hereof and shall state that such registered owner must deliver his Bond to the Trustee for conversion. The Trustee shall cancel the Bond so delivered and issue a form of Bond in lieu thereof pursuant to the provisions hereof.

Section 214. Home Office Payment Agreement. Notwithstanding any provision of this Indenture or of any Bond to the contrary, the Trustee may enter into a home office payment agreement with the Company and the owner of any Bond in a principal amount of at least \$1,000,000 providing for the making to such owner of all payments of principal, redemption premium (if any) and interest on such Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Indenture and in the Bonds without presentation or surrender of such Bonds, upon such conditions as shall be satisfactory to the Trustee. The Trustee agrees to make payments of principal, redemption premium (if any) and interest on the Bonds in accordance with the provisions thereof. Upon the transfer of any Bond being paid in accordance with the provisions of a home office payment agreement permitted by this Section, the Trustee, prior to the delivery of such Bond to the transferee, shall make a notation on

such Bond of the date to which interest has been paid thereon and the amount of any prepayments made on account of the principal thereof.

Section 215. Additional Bonds. The Issuer, at the request of the Company and to the extent permitted by law in effect at the time thereof, may issue from time to time one or more series of Additional Bonds for the purpose of completing the Project or acquiring, constructing and equipping an additional phase of the Project and paying the expenses of issuing the Additional Bonds. Any such Additional Bonds shall be secured equally and ratably with the Series 2010 Bonds and any other Additional Bonds theretofore issued and then outstanding, except insofar as any sinking, amortization or other fund, or any terms or conditions of redemption or purchase, established under this Indenture may afford additional benefit or security for the Bonds of any particular series. Before any Additional Bonds are authenticated there shall be delivered to the Trustee the items required for the issuance of Bonds by Section 208 hereof.

The proceeds of the issuance and sale of any series of Additional Bonds shall be applied simultaneously with the delivery of such Additional Bonds in the manner provided in this Indenture and in the supplemental indenture authorizing such Additional Bonds.

Notwithstanding anything herein to the contrary, no Additional Bonds shall be issued unless (i) the Lease Agreement is in effect, and (ii) at the time of issuance there is no Event of Default (defined in the Lease Agreement) under the Lease Agreement or Event of Default under this Indenture.

## ARTICLE III

### REDEMPTION OF BONDS BEFORE MATURITY

Section 301. Redemption of Bonds. The Bonds shall be subject to redemption prior to maturity at the option of the Issuer, to be exercised solely as directed by the Company, in whole or in part at any time (and if in part, by lot or in such other manner as may be determined by the Trustee to be fair and equitable), at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

Section 302. Notice. Notice of the call for any redemption, identifying the Bonds or portions thereof being called and the date on which they shall be presented for payment, shall be given by the Trustee by registered or certified mail to the registered owner of each such Bond addressed to such registered owner at his registered address and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bond with respect to which no such failure or defect has occurred.

Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice.

With respect to notice of redemption of the Bonds at the option of the Issuer (at the direction of the Company), unless moneys sufficient to pay the principal of and interest on the Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that said redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption. If such moneys shall not have been so received, such notice shall be of no force and effect, the Issuer shall not redeem such Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

Section 303. Redemption Payments. On or prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and Trustee is hereby authorized and directed to apply such funds to the payment of, the Bonds or portions thereof called, together with accrued interest thereon to the redemption date. Upon the giving of notice and the deposit of funds for redemption, interest on the Bonds or portions thereof thus called shall no longer accrue after the date fixed for redemption.

Section 304. Cancellation. All Bonds which have been redeemed shall not be reissued but shall be canceled and disposed of by the Trustee in accordance with Section 211 hereof.

Section 305. Partial Redemption of Bonds. In case a Bond is of a denomination larger than \$100,000, a portion of such Bond (\$100,000 or any integral multiple of \$5,000 in excess of

\$100,000) may be redeemed, but Bonds shall be redeemed only in the principal amount of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000. Upon surrender of any Bond for redemption in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the holder thereof a new Bond or Bonds in the same form and of authorized denominations in an aggregate principal amount equal to the unredeemed portion of the Bond surrendered.

## ARTICLE IV

### GENERAL COVENANTS

Section 401. Payment of Principal and Interest. The Issuer covenants that it will promptly pay or cause to be paid the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bond according to the true intent and meaning thereof. The principal and interest (except interest paid from the proceeds from the sale of the Bonds and accrued interest) are payable solely from the Trust Estate (including, without limitation, Revenues), which is hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or this Indenture should be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate in the manner and to the extent herein specified. Anything in this Indenture to the contrary notwithstanding, it is understood that whenever the Issuer makes any covenants involving financial commitments, including, without limitation, those in the various sections of this Article IV, it pledges no funds or assets other than the Trust Estate in the manner and to the extent herein specified, but nothing herein shall be construed as prohibiting the Issuer from using any other funds or assets.

Section 402. Performance of Covenants. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all ordinances pertaining thereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State of Arkansas, including particularly and without limitation the Act, to issue Bonds authorized hereby and to execute this Indenture and to make the pledge and covenants in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the holders and owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof.

Section 403. Instruments of Further Assurance. The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indenture or indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, pledging, assigning and confirming unto the Trustee the Trust Estate.

Section 404. Recordation and Other Instruments. The Company has covenanted in Section 6.7 of the Lease Agreement to cause this Indenture, the Lease Agreement, such security agreements, financing statements and all supplements thereto and other instruments as may be required from time to time to be kept, to be recorded and filed in such manner and in such places as may be required by law and in the opinion of counsel in order to fully preserve and protect the security of the holders and owners of the Bonds and the rights of Trustee hereunder, and to perfect the security interest created by this Indenture. The Issuer and the Trustee covenant that they will cooperate with the Company in satisfaction of the requirements of Section 6.7 of the Lease Agreement.

Section 405. Inspection of Project Books. The Issuer and the Trustee covenant and agree that all books and documents in their possession relating to the Project and the revenues derived from the Project shall at all reasonable times upon reasonable advance notice be open to inspection by such accountants or other agencies as the other party may from time to time designate and by the Company.

Section 406. Rights Under Lease Agreement. The Lease Agreement, duly executed counterparts of which have been filed with the Trustee, sets forth the covenants and obligations of the Issuer and the Company, including provisions that subsequent to the issuance of Bonds and prior to their payment in full or provision for payment thereof in accordance with the provisions hereof the Lease Agreement may not be effectively amended, changed, modified, altered or terminated, or any provision waived without the written consent of the Trustee, and reference is hereby made to the same for a detailed statement of said covenants and obligations of the Company thereunder, and the Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Lease Agreement, for and on behalf of the bondholders, whether or not the Issuer is in default hereunder.

## ARTICLE V

### REVENUES AND FUNDS

Section 501. Creation of Bond Fund. There is hereby created and ordered to be established with the Trustee a trust fund of and in the name of the Issuer to be designated "Taxable Industrial Development Revenue Bond Fund - Kraft Foods Global, Inc. Project."

Section 502. Payments Into Bond Fund. There shall be deposited into the Bond Fund as and when received:

- (a) All Revenues;
- (b) All moneys received under the Guaranty Agreement for the payment of the principal of and interest on the Bonds; and
- (c) All moneys received by the Trustee under and pursuant to any of the provisions of the Lease Agreement or this Indenture which are not directed to be paid into a fund other than the Bond Fund.

Section 503. Use of Moneys in Bond Fund. Moneys in the Bond Fund shall be used solely for the payment of the principal of and interest on the Bonds as in the Bonds and this Indenture provided.

Section 504. Withdrawals from Bond Fund. The Bond Fund shall be in the name of the Issuer, designated as set forth in Section 501, and the Issuer hereby irrevocably authorizes and directs the Trustee to withdraw from the Bond Fund sufficient funds to pay the principal of and interest on the Bonds when due (including at maturity or redemption prior to maturity) and to use such funds for the purpose of paying principal and interest in accordance with the provisions hereof pertaining to payment, which authorization and direction the Trustee hereby accepts.

Section 505. Non-Presentation of Bonds. In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if there shall have been deposited with the Trustee for that purpose, or left in trust if previously so deposited, funds sufficient to pay the principal thereof, together with all interest unpaid and due thereon, to the due date thereof, for the benefit of the holder thereof, all liability of the Issuer to the holder thereof for the payment of the principal thereof and interest thereon shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, the Bond.

Section 506. Fees, Expenses and Charges of Issuer and Trustee. It is understood and agreed that pursuant to the provisions of Section 5.3(b) of the Lease Agreement, the Company agrees to pay the reasonable fees, expenses and charges of the Trustee as authorized and provided by this Indenture and, pursuant to Section 5.3(c) of the Lease Agreement, the reasonable fees, expenses and charges of the Issuer as authorized, required and provided by this Indenture and by the Lease Agreement. All such payments under the Lease Agreement which are received by the Trustee shall not be paid into the Bond Fund, but shall be segregated by the Trustee and expended solely for the purpose for which such payments are received.

Section 507. Moneys to be Held in Trust. All moneys required to be deposited with or paid to the Trustee under any provision of this Indenture shall be held by the Trustee in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds notice of which redemption has been duly given, for moneys deposited with or paid to the Trustee pursuant to Article IX hereof, and for moneys held pursuant to Section 505 hereof, shall, while held by the Trustee, constitute part of the Trust Estate and be subject to the lien hereof. Any moneys received by or paid to the Trustee pursuant to any provisions of the Lease Agreement calling for the Trustee to hold, administer and disburse the same in accordance with the specific provisions of the Lease Agreement shall be held, administered and disbursed pursuant to such provisions, and where required by the provisions of the Lease Agreement the Trustee shall set the same aside in a separate account. The Issuer agrees that if it shall receive any moneys pursuant to applicable provisions of the Lease Agreement, it will forthwith upon receipt thereof pay the same over to the Trustee to be held, administered and disbursed by the Trustee in accordance with the provisions of the Lease Agreement pursuant to which the Issuer may have received the same. Furthermore, if for any reason the Lease Agreement ceases to be in force and effect while any Bonds are outstanding, the Issuer agrees that if it shall receive any moneys derived from the Project, it will forthwith upon receipt thereof pay the same over to the Trustee to be held, administered and disbursed by the Trustee in accordance with provisions of the Lease Agreement that would be applicable if the Lease Agreement were then in force and effect, and if there be no such provisions which would be so applicable, then the Trustee shall hold, administer and disburse such moneys solely for the discharge of the Issuer's obligations under this Indenture.

Section 508. Refund to Company of Excess Payments. Anything herein to the contrary notwithstanding, the Trustee is authorized and directed to refund to the Company all excess amounts as specified in the Lease Agreement, whether such excess amounts be in the Bond Fund or in special accounts.

Section 509. Termination of Rights of Bondholders. Anything herein to the contrary notwithstanding, including, without limitation, the provisions of this Article V and of Article IX and Article X hereof, all rights of any holder of any Bond hereunder to or with respect to any moneys or investments held in any fund hereunder shall terminate at the expiration of five years from the date of maturity of such Bond, whether by scheduled maturity or by call for redemption prior to maturity in accordance with the terms hereof, with respect to the principal thereof, or at the expiration of five years from an Interest Payment Date with respect to the interest payable on such date.

## ARTICLE VI

### APPLICATION OF PROCEEDS OF BONDS

Section 601. Deposits Into the Construction Fund. All moneys received by the Trustee from the Purchaser as Advances on the Bond shall be deposited in a special account of the Issuer in the Trustee, which account shall be designated "City of Fort Smith, Arkansas Taxable Industrial Development Revenue Bond Construction Fund - Kraft Foods Global, Inc. Project" (the "Construction Fund").

Section 602. Disbursements From Construction Fund. Moneys in the Construction Fund shall be disbursed by the Trustee to the Company (or to its order) for Project Costs (as defined in the Lease Agreement). Such disbursements shall be in accordance with and pursuant to requisitions which shall be signed by a Company Representative. Each requisition shall be in substantially the form attached as Exhibit D hereto and shall specify:

- (a) The name of the person, firm, corporation or bank to whom payment is to be made;
- (b) The amount of the payment;
- (c) The purpose of the expenditure; and
- (d) That the disbursement is for a proper item of Project Costs (as defined in the Lease Agreement).

The Trustee shall keep records concerning and reflecting all disbursements from the Construction Fund and shall file an accounting of disbursements if and when requested by the Issuer, the Company, or the Purchaser.

Section 603. Balance in Construction Fund. Upon receipt of the certificate specified in Section 3.4 of the Lease Agreement, the Trustee shall not accept any further requisitions pursuant to Section 602 hereof, but shall retain in the Construction Fund a sum equal to the amounts necessary for payment of the Project Costs not then due and payable as directed by a Company Representative. Any amount not to be retained in the Construction Fund for payment of Project Costs shall be used to prepay the Bonds.

## ARTICLE VII

### INVESTMENTS

Section 701. Investment of Moneys. (a) Moneys held for the credit of the Construction Fund shall, upon written direction by a Company Representative, be invested and reinvested by the Trustee in (i) Government Securities, (ii) interest bearing deposit accounts (which may be represented by certificates of deposit) in national or state banks (which may include the Trustee and any Paying Agent) having a combined capital and surplus of not less than \$10,000,000; (iii) bankers' acceptances drawn on and accepted by commercial banks (which may include the Trustee and any Paying Agent) having a combined capital and surplus of not less than \$10,000,000; (iv) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, any State of the United States of America, the District of Columbia or the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing, which are rated in any of the two highest rating categories by a nationally recognized rating agency; (v) obligations of any agency or instrumentality of the United States of America; (vi) commercial or finance company paper which is rated in any of the two highest rating categories by a nationally recognized rating agency; (vii) corporate debt securities rated in any of the two highest rating categories by a nationally recognized rating agency; (viii) repurchase agreements with banking or financial institutions having a combined capital and surplus of not less than \$10,000,000 (which may include the Trustee and any Paying Agent) with respect to any of the foregoing obligations or securities; (ix) shares in an investment company registered under the Federal Investment Company Act of 1940 whose shares are registered under the Federal Securities Act of 1933, or shares of a common trust fund established by a national banking association or a bank or trust company organized under the laws of any state (which may include the Trustee and any Paying Agent) with combined capital and surplus of at least \$10,000,000, under the supervision and regulation of the Comptroller of the Currency pursuant to 12 C.F.R. 9, or any successor regulation, and whose only investments are qualified investments described hereinabove; (x) money market funds or pooled or mutual investment funds whose assets consist primarily of investments which are qualified investments described in clause (iv) hereinabove or which are rated in one of the highest rating categories by a nationally recognized rating agency (including any such fund managed by the Trustee), and whose average maturity of such investment is less than twelve (12) months; and (xi) investment agreements or guaranteed investment contracts with any financial institution rated in one of the highest rating categories by a nationally recognized rating agency. Such investment shall have maturity dates, or shall be subject to redemption by the holder at the option of the holder, on or prior to the dates the moneys invested therein will be needed as reflected by a statement of the Company Representative which statement must be on file with the Trustee prior to any investment.

(b) Moneys held for the credit of the Bond Fund or any other fund or account shall, upon written direction by a Company Representative, be invested and reinvested in Government Securities (or in any fund or other pooling arrangement which exclusively purchases and holds Government Securities and which is rated in any of the two highest rating categories by a nationally recognized rating agency) which will mature, or which will be subject to redemption by the holder thereof at the

option of the holder, not later than the date or dates on which the money held for credit of the particular fund or account shall be required for the purposes intended, provided that moneys held pursuant to Section 505 hereof shall be held uninvested or shall be invested and reinvested in Government Securities maturing overnight from the date of purchase.

(c) Obligations so purchased as an investment of moneys in any fund or account shall be deemed at all times a part of such fund or account. Any profit and income realized from such investments shall be credited to the fund or account and any loss shall be charged to the fund or account.

Section 702. Trustee Not Liable for Losses. The Trustee shall not be liable or responsible for any loss resulting from any investment as authorized pursuant to Section 701 hereof.

## ARTICLE VIII

### **RIGHTS AND OBLIGATIONS UNDER THE LEASE AGREEMENT**

**Section 801. Rights of Company Under Lease Agreement.** Nothing herein contained shall be deemed to impair the rights and privileges of the Company set forth in the Lease Agreement and an Event of Default hereunder shall not constitute an "Event of Default" under the Lease Agreement unless by the terms of the Lease Agreement it constitutes an Event of Default thereunder.

**Section 802. Rights of Issuer Under Lease Agreement.** The Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer (except for the rights of the Issuer under Sections 5.3(c), 6.2, 6.5 and 8.5 thereof and any rights of the Issuer to receive notices, certificates, or other communications thereunder) and all obligations of the Company under and pursuant to the Lease Agreement, for and on behalf of the bondholders, whether or not the Issuer is in default hereunder.

**Section 803. Trustee's Obligations Under Lease Agreement.** The Trustee represents that it has familiarized itself with the provisions of the Lease Agreement and covenants and agrees that it will perform any and all of its obligations set forth therein with respect to the rights of the Issuer and the Company thereunder.

## ARTICLE IX

### DISCHARGE OF LIEN

Section 901. Discharge of Lien. If the Issuer shall pay or cause to be paid to the holders and owners of the Bonds the principal and interest to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void. Thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except moneys or Government Securities held by it for the payment of the principal of and interest on the Bonds.

Any Bond shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest on such Bond, (whether at maturity or upon redemption as provided in this Indenture, or otherwise), either (i) with respect to any Bond shall have been made or caused to be made in accordance with the terms thereof, or (ii) with respect to any Bond shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) noncallable Government Securities, maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payment and to purchase such Bonds, and all necessary and proper fees, compensation and expenses of the Trustee pertaining to the Bonds with respect to which such deposit is made and all other liabilities of the Company under the Lease Agreement shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

The Issuer or the Company may at any time surrender to the Trustee for cancellation by it any Bonds previously authenticated and delivered hereunder, which the Issuer or the Company may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

## ARTICLE X

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

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Section 1001. Events of Default. Each of the following events shall constitute and is referred to in this Indenture as an "Event of Default":

(a) Default in the due and punctual payment of any interest on any Bond hereby secured and outstanding.

(b) Default in the due and punctual payment of the principal of any Bond hereby secured and outstanding, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration.

(c) Default in the payment of any other amount required to be paid under this Indenture or the performance or observance of any other of the covenants, agreements or conditions contained in this Indenture, or in the Bonds issued under this Indenture, and continuance thereof for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied, shall have been given to the Issuer and the Company by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of bondholders of not less than 10% in aggregate principal amount of the Bonds then outstanding, unless the Trustee, or the Trustee and bondholders of an aggregate principal amount of Bonds not less than the aggregate principal amount of Bonds the bondholders of which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Issuer and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Issuer, or the Company on behalf of the Issuer, within such period and is being diligently pursued.

(d) The occurrence of an "Event of Default" under the Lease Agreement.

(e) The occurrence of an "Event of Default" under the Guaranty Agreement.

Section 1002. Acceleration. Upon the occurrence of an Event of Default described in the first paragraph of Section 1001 hereof, the Trustee may, and upon the written request of the holders of two-thirds (2/3) in aggregate principal amount of Bonds outstanding hereunder, shall, in either case only with prior written consent of the Purchaser (so long as the Purchaser is owner of not less than 100% in aggregate principal amount of the Bonds), by notice in writing delivered to the Issuer and the Company, declare the principal of all Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable and interest shall cease to accrue on all Bonds issued hereunder.

Section 1003. Other Remedies: Rights of Bondholders. Upon the occurrence of an Event of Default, the Trustee may, as an alternative, pursue any available remedy by suit at law or in equity to enforce the payment of the principal of and interest on the Bonds then outstanding hereunder.

If an Event of Default shall have occurred, and if it shall have been requested so to do by the holders of two-thirds (2/3) in aggregate principal amount of Bonds outstanding hereunder and shall have been indemnified as provided in Section 1101 hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred upon it by this Section and by Section 1002 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the bondholders.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Nothing in this Section 1003 shall be construed to relieve the Trustee of its obligation to cause an acceleration when required or to pay the bondholders the amounts due them when due.

Section 1004. Rights of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding the holders of a majority in aggregate principal amount of Bonds outstanding hereunder shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceeding hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 1005. Appointment of Receiver. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the tolls, rents, revenues, issues, earnings, income, products and profits thereof, pending such proceedings with such powers as the court making such appointment shall confer.

Section 1006. Waiver. In case of an Event of Default on its part, as aforesaid, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or thereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State of Arkansas.

Section 1007. Application of Moneys. Moneys remaining after discharge of costs, charges and liens prior to this Indenture shall be applied by the Trustee as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

Second: To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege of any Bond over any other Bond and without preference or priority of principal over interest or of interest over principal; and

Third: To the payment of the interest on and the principal of the Bonds, and to the redemption of Bonds, all in accordance with the provisions of Article V of this Indenture.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the person entitled thereto without discrimination or privilege.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as it shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date (other than in the case of a declaration under Section 1002 hereof) interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the holder of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 1008. Remedies Vested in Trustee. All rights of action (including the right to file proof of claim) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any holders of the Bonds hereby secured, and any recovery of judgment shall be for the equal benefit of the holders of the outstanding Bonds.

Section 1009. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 1101, or of which by said subsection it is deemed to have notice, nor unless such default shall have become an Event of Default and the holders of two-thirds (2/3) in aggregate principal amount of Bonds outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 1101 nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by his or their action or to enforce

any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, held and maintained in the manner herein provided for the equal benefit of the holders of all Bonds outstanding hereunder. Nothing in this Indenture contained shall, however, affect or impair the right of (i) any bondholders to enforce the payment of the principal of and interest on any Bonds at and after the maturity thereof, or the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective holders thereof at the time and place in said Bonds, and (ii) the Purchaser (so long as the Purchaser is owner of not less than 100% in aggregate principal amount of the Bonds) to institute in its own name any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the appointment of a receiver or any other remedy hereunder.

Section 1010. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken, except to the extent the Trustee is legally bound by such adverse determination.

Section 1011. Waivers of Events of Default. The Trustee may in its discretion waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal and shall do so upon the written request of the holders of two-thirds (2/3) in aggregate principal amount of Bonds outstanding hereunder, in either case only with prior written consent of the Purchaser (so long as the Purchaser is owner of not less than 100% in aggregate principal amount of the Bonds), provided, however, that there shall not be waived any Event of Default described in clause (a) or (b) of the first paragraph of Section 1001 hereof, unless prior to such waiver or rescission all arrears of principal (due otherwise than by declaration) and interest and all expenses of the Trustee, shall have been paid or provided for. In case of any such waiver or rescission the Issuer, Trustee and the bondholders shall be restored to their former positions and rights hereunder respectively; but no such waiver or rescission shall extend to any subsequent or other default, or impair any right subsequent thereon.

## ARTICLE XI

### TRUSTEE

Section 1101. Acceptance of Trusts. The Trustee hereby accepts the trust imposed upon it by this Indenture, and agrees to perform said trust as an ordinarily prudent trustee under a corporate mortgage, but only upon and subject to the following expressed terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any duties required of it by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and its duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care, or, if selected or retained by the Issuer prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section 1101, or of which by said subsection the Trustee is deemed to have notice, approved by the Trustee in the exercise of such care. The Trustee shall not be responsible for any loss or damage resulting from an action or non-action in accordance with any such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on such Bonds), or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplemental indentures or instrument of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of the title of the property herein conveyed or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the property herein conveyed pursuant to any provision of this Indenture, it shall use due diligence in preserving such property; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed.

(c) The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it, in the exercise of reasonable care, to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of the owner of any Bond secured hereby, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Mayor and attested by its City Clerk as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which it has been notified as provided in subsection (g) of this Section 1101, or of which by that subsection it is deemed to have notice, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion, at the reasonable expense of the Issuer, in every case secure such further evidence as it may think necessary or advisable but shall in no case be bound to secure the same. The Trustee may accept a certificate of the City Clerk of the Issuer under its seal to the effect that a resolution or ordinance in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution or ordinance has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee, and the Trustee shall be answerable only for its own negligence or willful default.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except a default under clause (a), (b) or (c) of the first paragraph of Section 1001 hereof concerning which the Trustee shall be deemed to have notice) unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the holders of at least ten percent (10%) in aggregate principal amount of Bonds outstanding hereunder and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered to the office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no such default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or non-fulfillment of contracts during any period in which it may be in the possession of or managing the real and tangible personal property as in this Indenture provided.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired, provided, however, that nothing contained in this subsection or in any other provision of this Indenture shall be construed to entitle the above named persons to any information or inspection involving the confidential know-how of the Company.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals, or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(l) Before taking such action hereunder, the Trustee may require that it be furnished an indemnity bond or other security satisfactory to it for the reimbursement to it of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the gross negligence or willful default of the Trustee, by reason of any action so taken by the Trustee; provided, however, the Trustee shall not require that it be furnished an indemnity bond prior to (i) declaring the maturity of principal of the Bonds pursuant to Section 1002 hereof, or (ii) holding, administering and disbursing moneys deposited in the Bond Fund.

Section 1102. Fees, Charges and Expenses of Trustee; Trustee's Prior Lien. The Trustee shall be entitled to payment and/or reimbursement for its reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Indenture and in and about the exercise and performance by the Trustee of the powers and duties of the Trustee hereunder, and for all reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the gross negligence or willful default of the Trustee). The Issuer has made provisions in the Lease Agreement for the payment of such reasonable and necessary advances, fees, costs and expenses and reference is hereby made to the Lease Agreement for the provisions so made. In this regard, it is understood that the Issuer pledges no funds or revenues other than those derived from and the avails of the Trust Estate to the payment of any obligation of the Issuer set forth in this Indenture, including the obligations set forth in this Section 1102, but nothing herein shall be construed as prohibiting the Issuer from using any other funds and revenues for the payment of any of its obligations under this Indenture. Upon default by the Issuer, but only upon default, pursuant to the provisions of this Indenture pertaining to default, the Trustee shall have a first lien with right of payment prior to payment on account of principal or interest of any Bond issued hereunder upon the Trust Estate (other than moneys, securities or obligations held for the redemption or payment of Bonds deemed to have been paid in accordance with Article IX hereof, or funds held pursuant to Section 505 hereof) for such reasonable and necessary advances, fees, costs and expenses incurred by the Trustee.

Section 1103. Notice to Bondholders of Default. The Trustee shall be required to make demand upon and give notice to the Company and each registered owner of Bonds then outstanding as follows:

(a) If the Company shall fail to make any installment payment under the Lease Agreement on the day such payment is due and payable, the Trustee shall give notice to and make demand upon the Company on the next succeeding Business Day.

(b) If a default occurs of which the Trustee is pursuant to the provisions of Section 1101(g) deemed to have or is given notice, the Trustee shall promptly give notice to the Company and to bondholders generally; provided, however, that no notice shall be required to be given to bondholders generally unless the default is such that the bondholders could require the Trustee to act pursuant to Section 1002 hereof.

Section 1104. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of holders of Bonds issued hereunder, the Trustee may intervene on behalf of bondholders and shall do so if requested in writing by the holders of at least ten percent (10%) of the aggregate principal amount of Bonds outstanding hereunder. The rights and obligations of the Trustee under this Section 1104 are subject to the approval of the court having jurisdiction in the premises.

Section 1105. Merger or Consolidation of Trustee. Any bank or trust company to which the Trustee may be merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any bank or trust company resulting from any such sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee hereunder and vested with all of the title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that such successor trustee shall have capital and surplus of at least \$50,000,000.

Section 1106. Resignation by Trustee. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice to the Issuer, and such resignation shall take effect at the end of such thirty (30) days (provided a successor trustee has been duly appointed) or upon the earlier appointment of a successor trustee by the bondholders or by the Issuer. Such notice may be served personally or sent by registered mail.

Section 1107. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer, and signed by the holders of a majority in aggregate principal amount of Bonds outstanding hereunder. Such removal shall not take effect until the appointment of a successor trustee.

Section 1108. Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by the court, a successor may be appointed by the Issuer, as directed by the Company (so long as no Event of Default has occurred and is continuing),

by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, or by the holders of a majority in aggregate principal amount of Bonds outstanding hereunder (if an Event of Default has occurred and is continuing), by an instrument or concurrent instruments in writing signed by such holders, or by their attorneys in fact, duly authorized; provided, nevertheless, that if within thirty (30) days of the resignation, removal or dissolution of the Trustee hereunder the Issuer or the holders, as the case may be, fail to so appoint a successor to fill such vacancy, the Trustee may apply to a court of competent jurisdiction which shall have authority to appoint a temporary trustee until a successor trustee shall be appointed by the Issuer or the bondholders in the manner above provided. Any such temporary trustee so appointed by a court of competent jurisdiction shall immediately and without further act be superseded by the trustee so appointed by the Issuer or such bondholders. Every such temporary trustee and every such successor trustee shall be a trust company or bank in good standing, having capital and surplus of not less than \$50,000,000, and shall be satisfactory to the Company so long as there is no termination of the interest of the Company by virtue of an event of default or otherwise.

Section 1109. Concerning Any Successor Trustee. Every successor or temporary trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor or temporary trustee, without any further act or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Issuer or of its successor trustee, execute and deliver an instrument transferring to such successor all the estate, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor trustee shall deliver all securities, moneys and any other property held by it as trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any trustee and the instrument or instruments removing any trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall, at the expense of the Issuer, be forthwith filed and/or recorded by the successor trustee in each recording office where the Indenture shall have been filed and/or recorded.

Section 1110. Reliance Upon Instruments. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted and relied upon by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

Section 1111. Appointment of Co-Trustee. The Issuer and the Trustee shall have power to appoint and upon the request of the Trustee the Issuer shall for such purpose join with the Trustee in the execution of all instruments necessary or proper to appoint another corporation or one or more persons approved by the Trustee, and satisfactory to the Company so long as there is no termination of the interest of the Company by virtue of an event of default or otherwise, either to act as co-trustee

or co-trustees jointly with the Trustee of all or any of the property subject to the lien hereof, or to act as separate trustee or trustee of all or any such property, with such powers as may be provided in the instrument of appointment and to vest in such corporation or person or persons as such separate trustee or co-trustee any property, title, right or power deemed necessary or desirable. In the event that the Issuer shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, the Trustee alone shall have the power to make such appointment. Should any deed, conveyance or instrument in writing from the Issuer be required by separate trustee or co-trustee so appointed for more fully and certainly vesting in and confirming to him or to it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Every such co-trustee and separate trustee shall, to the extent permitted by law, be appointed subject to the following provisions and conditions, namely:

(a) The Bonds shall be authenticated and delivered, and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody of all money and securities pledged or deposited hereunder, shall be exercised solely by the Trustee; and

(b) The Trustee, at any time by an instrument in writing, may remove any such separate Trustee or co-trustee.

Every instrument, other than this Indenture, appointing any such co-trustee or separate trustee, shall refer to this Indenture and the conditions of this Article XI expressed, and upon the acceptance in writing by such separate trustee or co-trustee, he, they or it shall be vested with the estate or property specified in such instrument, jointly with the Trustee (except insofar as local law makes it necessary for any separate trustee to act alone), subject to all the trusts, conditions and provisions of this Indenture. Any such separate trustee or co-trustee may at any time, by an instrument in writing, constitute the Trustee as his, their or its agent or attorney-in-fact with full power and authority, to the extent authorized by law, to do all acts and things and exercise all discretion authorized or permitted by him, them or it, for and on behalf of him, them or it and in his, their or its name. In case any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all the estate, properties, rights, powers, trusts, duties and obligations of said separate trustee or co-trustee shall vest in and be exercised by the Trustee until the appointment of a new trustee or a successor to such separate trustee or co-trustee.

## ARTICLE XII

### SUPPLEMENTAL INDENTURES

Section 1201. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, from time to time and at any time, without the consent of or notice to the bondholders, enter into supplemental indentures as follows:

(a) to cure any formal defect, omission, inconsistency or ambiguity in this Indenture;

(b) to grant to or confer or impose upon the Trustee for the benefit of the bondholders any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this Indenture as theretofore in effect, provided that no such additional liabilities or duties shall be imposed upon the Trustee without its consent;

(c) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in this Indenture other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Revenues of the Issuer from the Lease Agreement or of any other moneys, securities or funds;

(e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to amended;

(f) to modify, alter, amend or supplement this Indenture in any other respect which is not materially adverse to the bondholder and which does not involve a change described in clause (a), (b), (c), (d), (e) or (f) of Section 1202 hereof and which, in the judgment of the Trustee, is not to the prejudice of the Trustee;

(g) to effect any change required in connection with the rating of the Bonds; or

(h) to authorize the issuance and sale of one or more series of Additional Bonds.

**Section 1202. Supplemental Indentures Requiring Consent of Bondholders.** Subject to the terms and provisions contained in this Section, and not otherwise, the holders of not less than two thirds (2/3) in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing herein contained shall permit, or be construed as permitting, without the consent and approval of the holders of all of the Bonds then outstanding (a) an extension of the maturity (or mandatory redemption date) of the principal of or the interest on any Bond issued hereunder, or (b) a reduction in the principal amount of or rate of interest on any Bond issued hereunder, or (c) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate or any part thereof, except as hereinbefore expressly permitted, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, or (f) deprive the holder of any Bond then outstanding of the lien hereby created on the Trust Estate. Nothing herein contained, however, shall be construed as making necessary the approval of bondholders of the execution of any supplemental indenture as provided in Section 1201 of this Article.

If, at any time the Issuer shall request the Trustee to enter into any supplemental indenture for any of the purposes of this Section, the Trustee shall, at the expense of the Issuer, cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail to each registered owner of the Bonds. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by bondholders. The Trustee shall not, however, be subject to any liability to any bondholder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this Section. If the holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture, this Indenture shall be deemed to be modified and amended in accordance therewith.

**Section 1203. Consent of Company.** Anything herein to the contrary notwithstanding, a supplemental indenture under this Article XII shall not become effective unless and until the Company shall have consented to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture together with a copy of the proposed supplemental indenture to be mailed by certified or registered mail to the Company at least fifteen (15) days prior to the proposed date

of execution and delivery of any such supplemental indenture. The Company shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee receives a letter or other instrument signed by an authorized officer of the Company expressing consent.

## ARTICLE XIII

### AMENDMENT TO LEASE AGREEMENT OR GUARANTY AGREEMENT

Section 1301. Amendments Not Requiring Consent of Bondholders. The Trustee may from time to time, and at any time, consent to any amendment, change or modification of the Lease Agreement or the Guaranty Agreement for the purpose of curing any ambiguity or formal defect or omission or making any other change therein, which in the reasonable judgment of the Trustee is not to the prejudice of the Trustee or the holders of the Bonds. The Trustee shall not consent to any other amendment, change or modification of the Lease Agreement or the Guaranty Agreement without the approval or consent of the holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds at the time outstanding, evidenced in the manner provided in Section 1401 hereof.

Section 1302. Amendments Requiring Consent of Bondholders. If at any time the Issuer or the Company shall request the Trustee's consent to a proposed amendment, change or modification requiring bondholder approval under Section 1301, the Trustee, shall, at the expense of the requesting party, cause notice of such proposed amendment, change or modification to be mailed in the same manner as provided by Section 1202 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file in the principal office of the Trustee for inspection by any interested bondholder. The Trustee shall not, however, be subject to any liability to any bondholder by reason of its failure to publish or mail such notice, and any such failure shall not affect the validity of such amendment, change or modification when consented to by the Trustee in the manner hereinabove provided.

## ARTICLE XIV

### MISCELLANEOUS

Section 1401. Consents of Bondholders. Any request, direction, objection or other instrument required by this Indenture to be signed and executed by the bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such request, direction, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the Issuer maintained by the Trustee as Bond Registrar.

Section 1402. Notices. Except as otherwise provided in this Indenture, all notices, certificates or other communications shall be sufficiently given and shall be deemed given when delivered by hand delivery or when the same has been mailed by registered or certified mail, postage prepaid, to the Issuer, the Company, and the Trustee. Notices, certificates or other communications shall be sent to the following addresses:

Issuer: City of Fort Smith, Arkansas  
City Offices  
623 Garrison Avenue  
Fort Smith, Arkansas 72901  
Attention: City Administrator

Company: Kraft Foods Global, Inc.  
100 NE Columbia Blvd.  
Portland, Oregon 97211  
Attention: \_\_\_\_\_

With a copy to:

Kraft Foods Global, Inc.  
Corporate & Legal Affairs Department  
3 Lakes Drive  
Northfield, Illinois 60093  
Attention: Chief Counsel, Corporate & Business Services

Trustee: Regions Bank  
400 West Capitol Avenue  
Little Rock, Arkansas 72201  
Attention: Corporate Trust Department

Any of the foregoing may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 1403. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds issued hereunder, is intended or shall be construed to give to any person or company other than the parties hereto, and the holders of the Bonds secured by this Indenture any legal or equitable rights, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof being intended to be and being for the sole exclusive benefit of the parties hereto and the holders of the Bonds hereby secured as herein provided.

Section 1404. Severability. If any provisions of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 1405. Applicable Provisions of Law. This Indenture shall be considered to have been executed in the State of Arkansas and it is the intention of the parties that the substantive law of the State of Arkansas govern as to all questions of interpretation, validity and effect.

Section 1406. Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 1407. Successors and Assigns. All the covenants, stipulations, provisions, agreements, rights, remedies and claims of the parties hereto in this Indenture contained shall bind and inure to the benefit of their successors and assigns.

Section 1408. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 1409. Bonds Owned by the Issuer or the Company. In determining whether bondholders of the requisite aggregate principal amount of the Bonds have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer or the Company or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company (unless the Company or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall own not less than 100% in aggregate principal amount of the Bonds then outstanding) shall be disregarded and deemed not to be outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which the Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer or the Company or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and behalf by its Vice Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and, to evidence its acceptance of the trust hereby created, the Trustee has caused these presents to be signed in its behalf by its duly authorized officer.

CITY OF FORT SMITH, ARKANSAS

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

ATTEST:

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

(SEAL)

REGIONS BANK  
Trustee

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

**ACKNOWLEDGMENT**

STATE OF ARKANSAS    )  
                                  )  
COUNTY OF SEBASTIAN )

On this the \_\_\_\_ day of October, 2010, before me, \_\_\_\_\_ the undersigned officer, personally appeared Ray Baker and Cindy Remler, who acknowledged themselves to be the Mayor and the City Clerk, respectively, of the City of Fort Smith, Arkansas, a municipality, and that they, as such Mayor and City Clerk, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by themselves as Mayor and City Clerk.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2010.

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_

(SEAL)

**ACKNOWLEDGMENT**

STATE OF ARKANSAS    )  
  )  
COUNTY OF PULASKI    )

On this the \_\_\_\_ day of October, 2010, before me, \_\_\_\_\_ the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be the \_\_\_\_\_ of Regions Bank, a banking institution, and that he/she, as such \_\_\_\_\_, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the bank by himself/herself as \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of October, 2010.

\_\_\_\_\_  
Notary Public

My Commission expires:

\_\_\_\_\_

(SEAL)

**EXHIBIT A**

**Form of Initial Bond**

No. R-1

\$18,000,000

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
CITY OF FORT SMITH, ARKANSAS  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND  
(KRAFT FOODS GLOBAL, INC. PROJECT)  
SERIES 2010

Date of Bond: October \_\_\_\_, 2010

Maturity Date: October 1, 2023

Interest Rate: 5% per annum

Registered Owner: KRAFT FOODS GLOBAL, INC.

Principal Amount: EIGHTEEN MILLION DOLLARS  
(or the total principal amount outstanding as reflected by the  
Record of Advances and Principal Payments attached hereto)

**KNOW ALL MEN BY THESE PRESENTS:**

That the City of Fort Smith, Arkansas, a municipality organized and existing under the laws of the State of Arkansas (the "Issuer"), for value received, promises to pay to the registered owner shown above, or registered assigns, but solely from the source and in the manner hereinafter set forth, the principal amount shown above and in like manner to pay interest on said amount from the date hereof shown above until payment of such principal amount has been made or duly provided for, at the rate per annum shown above, semiannually on April 1 and October 1 of each year commencing on April 1, 2010, except as the provisions hereinafter set forth with respect to redemption of this Bond prior to maturity may become applicable hereto. The principal of this Bond is payable in lawful money of the United States of America upon the presentation and surrender hereof at the principal corporate trust office of Regions Bank, Little Rock, Arkansas, or its successor or successors, as Trustee (the "Trustee"), and interest on this Bond is payable in like money to the registered owner hereof by check or draft drawn upon the Trustee and mailed or, in certain circumstances described in the Indenture, by wire transfer to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month next preceding that in which such interest payment shall fall (the "Record Date"), at his address as it appears on the bond registration books of the Issuer kept by the Trustee.

This Bond is the single bond comprising a series of Bonds in the aggregate principal amount of not to exceed \$18,000,000 (the "Bonds"), issued for the purpose of financing the cost of acquiring, constructing and equipping an industrial project within the boundaries of the Issuer (the "Project"), for use by Kraft Foods Global, Inc., a Delaware corporation (the "Company"), and paying the expenses of issuing the Bonds. The Bonds are all issued under and are all equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of October 1, 2010 (the "Indenture"), duly executed and delivered by the Issuer to the Trustee. The Indenture provides that the Issuer may hereafter issue Additional Bonds from time to time under certain terms and conditions contained in the Indenture and, if issued, such Additional Bonds will be equally and ratably secured by and entitled to the protection of the Indenture. Reference is hereby made to the Indenture and all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Trustee and the registered owners of the Bonds, and the terms upon which the Bonds are issued and secured. The terms and conditions of the financing of the Project, the use of the proceeds of the Bonds by the Company for such purpose, and the payment of certain amounts thereunder, are contained a Lease Agreement dated as of October 1, 2010 (the "Lease Agreement"), by and between the Issuer and the Company.

The Bonds are issued pursuant to and in full compliance with the laws of the State of Arkansas, particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), and pursuant to an Order of the Issuer, which authorized the execution and delivery of the Indenture. The Bonds and the interest thereon do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation.

The Bonds are not general obligations of the Issuer but are special obligations payable solely from revenues derived from the Lease Agreement. The Lease Agreement provide for lease payments by the Company in amounts sufficient to provide for the payment of the principal of and interest on the Bonds as due and payable. Provision has been made in the Lease Agreement for such payments to be paid directly to the Trustee and deposited in a special account of the Issuer designated "Taxable Industrial Development Revenue Bond Fund - Kraft Foods Global, Inc. Project," and such payments have been duly assigned to the Trustee for that purpose. All the rights and interest of the Issuer in and to the Lease Agreement (except for certain rights specified in the Indenture) have been assigned under the Indenture to the Trustee to secure the payment of the principal of and interest on the Bonds. In addition, the payment of the principal and interest has been unconditionally guaranteed by the Company pursuant to a Guaranty Agreement dated as of October 1, 2010, entered into between the Company and the Trustee.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in and defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of this Bond may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon.

Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds are subject to redemption prior to maturity at the option of the Issuer, to be exercised solely as directed by the Company, in whole or in part at any time (and if in part, by lot or in such other manner as may be determined by the Trustee to be fair and equitable), at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

In the event any of the Bonds or portions thereof (which shall be \$100,000 or any integral multiple of \$5,000 in excess of \$100,000) are called for redemption, notice thereof shall be given by the Trustee by registered or certified mail to the registered owner of each such Bond addressed to such registered owner at his registered address, and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bond with respect to which no such failure or defect has occurred. Each notice shall identify the Bonds or portions thereof being called, and the date on which they shall be presented for payment. After the date specified in such call, the Bond or Bonds so called will cease to bear interest provided funds sufficient for their redemption have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

With respect to notice of redemption of the Bonds, unless moneys sufficient to pay the principal of and interest on the Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that said redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption. If such moneys shall not have been so received, such notice shall be of no force and effect, the Issuer shall not redeem such Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

This Bond may be transferred on the books of registration kept by the Trustee by the registered owner or by his duly authorized attorney upon surrender hereof, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney.

The Bonds are issuable as registered Bonds without coupons in denominations of \$100,000 or any integral multiple of \$5,000 in excess of \$100,000. Subject to the limitations and upon payment of the charges provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations.

This Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds do

exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Bonds, together with all obligations of the Issuer, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this Bond to be executed by its Mayor and City Clerk, thereunto duly authorized (by their manual or facsimile signatures), and its corporate seal to be affixed or imprinted, all as of the date of this Bond shown above.

CITY OF FORT SMITH, ARKANSAS

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

ATTEST:

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

(SEAL)

(Form of Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in and issued under the provisions of the within mentioned Indenture.

Date of registration and authentication: \_\_\_\_\_

REGIONS BANK  
Trustee

By \_\_\_\_\_  
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_ ("Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ ("Transferee") as attorney to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Transferor

GUARANTEED BY:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company.



**EXHIBIT B**

**Form of Bond After Completion Date**

No. R- \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
CITY OF FORT SMITH, ARKANSAS  
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND  
(KRAFT FOODS GLOBAL, INC. PROJECT)  
SERIES 2010

Date of Bond: October \_\_\_\_, 2010

Maturity Date: October 1, 2023

Interest Rate: 5% per annum

Registered Owner: \_\_\_\_\_

Principal Amount: \_\_\_\_\_ DOLLARS

**KNOW ALL MEN BY THESE PRESENTS:**

That the City of Fort Smith, Arkansas, a municipality organized and existing under the laws of the State of Arkansas (the "Issuer"), for value received, promises to pay to the registered owner shown above, or registered assigns, but solely from the source and in the manner hereinafter set forth, the principal amount shown above and in like manner to pay interest on said amount until payment of such principal amount has been made or duly provided for, at the rate per annum shown above, semiannually on April 1 and October 1 of each year, from the April 1 or October 1 next preceding the date on which this Bond is authenticated unless this Bond is authenticated on an interest payment date, in which case it shall bear interest from such date, or unless this Bond is authenticated during the period from the Record Date (as hereinafter defined) to the next interest payment date, in which case it shall bear interest from such interest payment date, or unless at the time of authentication of this Bond interest is in default hereon, in which case it shall bear interest from the date to which interest has been paid, except as the provisions hereinafter set forth with respect to redemption of this Bond prior to maturity may become applicable hereto. The principal of this Bond is payable in lawful money of the United States of America upon the presentation and surrender hereof at the principal corporate trust office of Regions Bank, Little Rock, Arkansas, or its successor or successors, as Trustee (the "Trustee"), and interest on this Bond is payable in like money to the registered owner hereof by check or draft drawn upon the Trustee and mailed or, in certain circumstances described in the Indenture, by wire transfer to the person in whose name this Bond is registered at the close of business on the fifteenth day of the calendar month next preceding

that in which such interest payment shall fall (the "Record Date"), at his address as it appears on the bond registration books of the Issuer kept by the Trustee.

This Bond is one of a series of Bonds in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), issued for the purpose of financing the cost of acquiring, constructing and equipping an industrial project within the boundaries of the Issuer (the "Project"), for use by Kraft Foods Global, Inc., a Delaware corporation (the "Company"), and paying the expenses of issuing the Bonds. The Bonds are all issued under and are all equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of October 1, 2010 (the "Indenture"), duly executed and delivered by the Issuer to the Trustee. The Indenture provides that the Issuer may hereafter issue Additional Bonds from time to time under certain terms and conditions contained in the Indenture and, if issued, such Additional Bonds will be equally and ratably secured by and entitled to the protection of the Indenture. Reference is hereby made to the Indenture and all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer, the Trustee and the registered owners of the Bonds, and the terms upon which the Bonds are issued and secured. The terms and conditions of the financing of the Project, the use of the proceeds of the Bonds by the Company for such purpose, and the payment of certain amounts thereunder, are contained a Lease Agreement dated as of October 1, 2010 (the "Lease Agreement"), by and between the Issuer and the Company.

The Bonds are issued pursuant to and in full compliance with the laws of the State of Arkansas, particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Act"), and pursuant to an Order of the Issuer, which authorized the execution and delivery of the Indenture. The Bonds and the interest thereon do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation.

The Bonds are not general obligations of the Issuer but are special obligations payable solely from revenues derived from the Lease Agreement. The Lease Agreement provide for lease payments by the Company in amounts sufficient to provide for the payment of the principal of and interest on the Bonds as due and payable. Provision has been made in the Lease Agreement for such payments to be paid directly to the Trustee and deposited in a special account of the Issuer designated "Taxable Industrial Development Revenue Bond Fund - Kraft Foods Global, Inc. Project," and such payments have been duly assigned to the Trustee for that purpose. All the rights and interest of the Issuer in and to the Lease Agreement (except for certain rights specified in the Indenture) have been assigned under the Indenture to the Trustee to secure the payment of the principal of and interest on the Bonds. In addition, the payment of the principal and interest has been unconditionally guaranteed by the Company pursuant to a Guaranty Agreement dated as of October 1, 2010, entered into between the Company and the Trustee.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in and defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of this Bond may be declared and

may become due and payable before the stated maturity thereof, together with accrued interest thereon.

Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds are subject to redemption prior to maturity at the option of the Issuer, to be exercised solely as directed by the Company, in whole or in part at any time (and if in part, by lot or in such other manner as may be determined by the Trustee to be fair and equitable), at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

In the event any of the Bonds or portions thereof (which shall be \$100,000 or any integral multiple of \$5,000 in excess of \$100,000) are called for redemption, notice thereof shall be given by the Trustee by registered or certified mail to the registered owner of each such Bond addressed to such registered owner at his registered address, and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bond with respect to which no such failure or defect has occurred. Each notice shall identify the Bonds or portions thereof being called, and the date on which they shall be presented for payment. After the date specified in such call, the Bond or Bonds so called will cease to bear interest provided funds sufficient for their redemption have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

With respect to notice of redemption of the Bonds, unless moneys sufficient to pay the principal of and interest on the Bonds to be redeemed shall have been received by the Trustee prior to the giving of such notice, such notice shall state that said redemption shall be conditional upon the receipt of such moneys by the Trustee on or prior to the date fixed for such redemption. If such moneys shall not have been so received, such notice shall be of no force and effect, the Issuer shall not redeem such Bonds and the Trustee shall give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

This Bond may be transferred on the books of registration kept by the Trustee by the registered owner or by his duly authorized attorney upon surrender hereof, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney.

The Bonds are issuable as registered Bonds without coupons in denominations of \$100,000 each, or any integral multiple of \$5,000 in excess of \$100,000. Subject to the limitations and upon payment of the charges provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations.

This Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Bonds, together with all obligations of the Issuer, does not exceed any constitutional or statutory limitation; and that the above referred to revenues pledged to the payment of the principal of and interest on the Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas has caused this Bond to be executed by its Mayor and City Clerk, thereunto duly authorized (by their manual or facsimile signatures), and its corporate seal to be affixed or imprinted, all as of the date of this Bond shown above.

CITY OF FORT SMITH, ARKANSAS

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

ATTEST:

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

(SEAL)

(Form of Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in and issued under the provisions of the within mentioned Indenture.

Date of registration and authentication: \_\_\_\_\_

REGIONS BANK  
Trustee

By \_\_\_\_\_  
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_ ("Transferor"), hereby sells, assigns and transfers unto \_\_\_\_\_, the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ ("Transferee") as attorney to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Transferor

GUARANTEED BY:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company.

**EXHIBIT C**

**Description of Project Site**

The following described real estate situated in Sebastian County, Arkansas, to-wit:

**EXHIBIT D**

**Form of Requisition**

REQUISITION NO. \_\_\_\_\_

DATE: \_\_\_\_\_

Regions Bank, as Trustee  
Little Rock, Arkansas

Re: City of Fort Smith, Arkansas Taxable Industrial Development  
Revenue Bond Construction Fund - Kraft Foods Global, Inc. Project

You are requested and authorized to make payment from the above account to:

\_\_\_\_\_

for: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

in the amount of \$ \_\_\_\_\_.

I hereby certify on behalf of Kraft Foods Global, Inc. (the "Company") that:

1. The disbursement is for a proper item of Project Costs.
2. The disbursement does not render inaccurate any of the representations with respect thereto contained in the Lease Agreement dated as of October 1, 2010, between City of Fort Smith, Arkansas and the Company.

CERTIFIED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

KRAFT FOODS GLOBAL, INC.

By \_\_\_\_\_  
Company Representative

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

**A RESOLUTION SUPPORTING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF ARKANSAS: (1) TO ELIMINATE CONSTITUTIONAL LIMITS ON INTEREST RATES FOR GOVERNMENT BONDS AND LOANS, REVISE INTEREST RATE LIMITS ON OTHER LOANS, AND AUTHORIZE THE FINANCING OF ENERGY SAVINGS PROJECTS – (ISSUE #2 AT NOVEMBER 2010 GENERAL ELECTION); AND (2) TO MODIFY AND IMPROVE THE FINANCING ALTERNATIVES AVAILABLE TO THE STATE IN SUPPORT OF MAJOR ECONOMIC DEVELOPMENT PROJECTS IN ARKANSAS (ISSUE #3 AT NOVEMBER 2010 GENERAL ELECTION).**

WHEREAS, provisions of the Arkansas Constitution that authorize bond financing by Arkansas municipal governments, such as Amendment 62 for tax secured bonds and Amendment 65 for revenue bonds, have interest rate limits substantially below market requirements that severely restrict and, in many cases, have halted the financing of essential projects to support the public welfare of citizens of Arkansas cities and towns; and,

WHEREAS, the current Constitutional interest rate limits could have prevented or significantly delayed the funding and construction of the wet weather sanitary sewer system improvements, which system is an important facility that contributes to the quality of life of the citizens of Fort Smith, and which improvements have alleviated overflows and backups of untreated sewage, and, had funding and construction delays resulted, would have increased the related costs of the project; and,

WHEREAS, the interest rate limits in Amendment 60 of the Arkansas Constitution currently restrict options for consumer financing that may be offered by businesses operating solely or primarily within the State of Arkansas, and that such limits have been preempted by Federal legislation for businesses conducting interstate operations, and that such circumstances produce a significant disadvantage for Arkansas businesses and limit the availability of affordable financing for their consumer customers, which, in turn, has a significant negative impact on the economic vitality on Arkansas cities and towns where they operate; and,

WHEREAS, expanded financing options should be available for projects that can provide savings in energy costs for Arkansas municipal governments; and,

WHEREAS, the financing authority for State support provided by Amendment 82 of the Arkansas Constitution for major economic development projects should be more flexible, while maintaining existing restrictions on the total State support that may be committed, in order to facilitate the financing of more projects over a wider area of the State, thus enhancing the economic benefit for the State and its citizens; and,

WHEREAS, the effectiveness of current Arkansas law on municipal and economic development financing is unduly restrictive and in need of updating in order to promote economic growth and to allow municipalities and the State to be better stewards of taxpayer dollars;

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

SECTION 1: The Board of Directors of the City of Fort Smith does hereby express its support and endorsement for Issues #2 and #3, which were referred by the 2009 Arkansas General Assembly as proposed amendments to the Arkansas Constitution, and the Board strongly encourages voters to approve these proposals at the November 2010 general election. These amendments will help city and town governments in Arkansas secure timely financing for important public improvements in a cost effective manner, will improve stewardship and save taxpayer dollars, and will stimulate and promote economic development.

SECTION 2: Additionally, following approval at the November 2010 general election, the Board also supports expeditious adoption by the Arkansas General Assembly in 2011 of Arkansas statutory revisions required to implement the amendments.

This Resolution passed this \_\_\_\_\_ day of September, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved - to print  
~~\_\_\_\_\_~~  
NPK



## MEMORANDUM

September 2, 2010

**TO:** Dennis Kelly, City Administrator

**FROM:** Ray Gosack, Deputy City Administrator

**SUBJECT:** Constitutional Amendments

In the November General Election, Arkansas voters will consider amendments to the state constitution. The Arkansas Municipal League has requested its member cities to adopt a resolution of support for two of the amendments which affect cities.

The first of the amendments, issue 2, addresses interest rate limits and bond financing limitations. The 3 major provisions of this amendment are:

- **Repeal an interest rate cap of 2% above the federal discount rate on bonds issued by governmental units including cities.** This limit almost prohibited Fort Smith from issuing bonds in 2008 when the federal discount rate was extremely low. The maximum interest rate we could pay was almost below what bond market conditions would have tolerated. This repeal will eliminate a condition which could limit or even prohibit some bond issuances.
- **Allow governmental entities to issue bonds to finance energy-efficiency projects and use savings from the projects to repay the loans.** The state legislature has previously provided legislation to allow this, but there's been some question about its constitutionality.
- **Remove an interest rate cap of 5% above the federal discount rate on consumer loans.** An existing 17% cap would remain in place. Because of historically low federal discount rates, the 5% cap has made lending difficult for Arkansas businesses who offer consumer financing.

The second of the amendments, issue 3, affects "superfund" economic development projects. Amendment 82 to the Arkansas Constitution restricts the issuance of economic development bonds to major projects with at least a \$500 million investment and at least 500 new jobs. Amendment 82 was intended to help Arkansas compete for large-scale projects. However, the \$500 million investment requirement is difficult to meet. This threshold has resulted in no use of these bonds in Arkansas. The amendment authorizes the legislature to set new financial criteria for the bond issues.

Approval of both of these constitutional amendments will help Arkansas' cities. The staff recommends approval of the attached resolution showing the City of Fort Smith's support for these amendments.

*Ray*

Attachment

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

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

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 10-7-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on July 13, 2010, that said change be made;

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

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

Lot 1, Circuit City, an addition to the City of Fort Smith, Sebastian County, Arkansas More commonly known as 7601 Rogers Avenue , should be, and is hereby rezoned from Commercial Light (C-2) to Commercial Heavy (C-5) by Extension, subject to a twenty-five (25) foot no development buffer strip of land along the northern boundary of the tract and no outdoor storage or display of merchandise on the property.

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF SEPTEMBER, 2010.**

**ATTEST:**

**APPROVED:**

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

\_\_\_\_\_  
Mayor

Approved as to Form:

*JSC*  
\_\_\_\_\_  
City Attorney  
*Public & team*

# MEMORANDUM

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**To:** Dennis Kelly, City Administrator  
**From:** Wally Bailey, Director of Development Services  
**Date:** September 1, 2010  
**Subject:** 7601 Rogers Avenue; Rezoning

The subject rezoning request was originally on the August 3, 2010, Board of Directors agenda. Mr. Alan Lewis, agent for DHC Properties, requested the request be tabled for 30 days. The Board approved the request to table the item.

Mr. Lewis has recently submitted a letter asking the rezoning request be withdrawn. The Unified Development Ordinance, section 27-306-3 states the following:

*If notice has been provided and a public hearing is required, the body conducting the hearing shall decide whether or not to approve the withdrawal request and may still decide to act on the application.*

The proposed rezoning ordinance and Mr. Lewis' request to withdraw the application will be placed on the September 7, 2010 Board of Directors agenda.

Please contact me if you have any questions.

# MITCHELL || WILLIAMS

John Alan Lewis  
Direct Dial: 479-464-5656  
Fax: 479-464-5680  
E-mail: jalewis@mwilliams.com

5414 Pinnacle Point Drive, Suite 500  
Rogers, Arkansas 72758-8131  
Telephone: 479-464-5650  
Fax: 479-464-5680

August 23, 2010

Wally Bailey  
Director of Development Services  
P.O. Box 1908 (02)  
623 Garrison Avenue (01)  
Fort Smith, AR 72901

Re: Rezoning request – 7601 Rogers Avenue, Fort Smith, Arkansas – DHC Properties,  
of Fort Smith, LLC (“DHC”)

Dear Mr. Bailey:

DHC must withdraw its rezoning request for the building located at 7601 Rogers Avenue. Despite our best efforts, we are unable to amend or lift the restrictive covenants that burden this property and the adjoining lands.

The Office Max building next door, the Circuit City building, and some adjoining land are all burdened by very specific restrictions that limit or restrict land uses for each the sites. One of the restrictions of record limits the right of an occupant of 7601 Rogers Avenue to serve food and show movies, the use DHC intended for the property. Even though these use restrictions were contemplated for an entirely different scheme or type of real estate development, they are of record and must be changed or a new owner is subject to them. As you may know, Dollar Tree has a sub-lease on the building next door to this site (formerly occupied by Office Max). Dollar Tree’s corporate real estate department refuses to sign a consent permitting DHC to amend the covenants for the area so that it could show movies and serve food in the building it had under contract. We also asked everyone to agree to a cross-parking agreement, but that was of less importance than amending the use restrictions imposed on the property.

We regret this development, particularly since Dollar Tree’s decision appears to be based on misinformation. However, for the reasons set forth above, we are withdrawing our rezoning request. I will be present at the September 7<sup>th</sup> meeting to answer any questions that the Board of Directors or Staff may have.

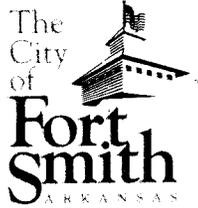
Wally Bailey  
August 23, 2010  
Page 2

Very truly yours,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, P.L.L.C.

By   
John Alan Lewis

JAL:mat



July 29, 2010

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

Re: Rezoning #10-7-10; A request by John Alan Lewis, agent, for Planning Commission consideration of a zone change from Commercial Light (C-2) to Commercial Heavy (C-5) located at 7601 Rogers Avenue.

On July 13, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow a movie lounge at this location. Mr. Bailey stated that patrons would be able to eat dinner and also watch a movie. He noted that a zoning change is needed due to the fact that movie theaters are not permitted in the current Commercial Light (C-2) zone.

Mr. Bailey also noted that a neighborhood meeting was held on Thursday, July 1, 2010, with two adjacent property owners attending the meeting. Mr. Bailey stated that staff recommended approval subject to a condition that a twenty-five (25) foot no development buffer strip of land along the northern boundary of this tract remain. Mr. Bailey stated that this condition was originally implemented with the adoption of Ordinance 76-92 that rezoned the property to Commercial Light.

Mr. Alan Lewis, 5414 Pinnacle Point Drive, Rogers, AR, was present to speak on behalf of this request.

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

Following a discussion by the Commission, Chairman Griffin called for the vote on the rezoning request. Motion was then made by Commissioner Lorenz, seconded by Commissioner Stephens and carried unanimously to amend this request to make approval subject to a twenty-five (25) foot no development buffer strip remaining on the land along the northern boundary.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 5 in favor, 0 opposed and 1 abstention (Lau).

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(501) 785-2801  
Administrative Offices FAX (501) 784-2407

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

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File  
City Administrator

# Memo

To: City Planning Commission  
From: Planning Staff  
Date: July 8, 2010  
Subject: Rezoning #10-7-10; A request by John Alan Lewis, agent, for Planning Commission consideration of a zone change from Commercial Light (C-2) to Commercial Heavy (C-5) by extension at 7601 Rogers Avenue.

## LOT LOCATION AND SIZE

The requested rezoning area is north of Rogers Avenue and to the east of South 74<sup>th</sup> Street. The area to be rezoned is approximately 2.2 acres.

## EXISTING ZONING

The existing zoning on this tract is Commercial-2. Characteristics of this zone are as follows:

The C-2 zone was established for business activities located at the edge of residential areas but which serve an area larger than adjacent neighborhoods.

Permitted Uses: A wide variety of retail uses including clothing stores, restaurants, grocery stores and specialty shops. Commercial-2 zones also allow professional offices and multi-family apartments.

Conditional uses allowed in C-2 zones include churches, schools, day care centers and taverns.

### Area Regulations:

Minimum Lot Size - 7,000 square feet

Street Right-of-Way Setback - 25 feet

Interior Side Yard Setback - 10 feet

Rear Yard Setback - 10 feet

Separation of Buildings – Determined by current city building and fire code.

Maximum Height – 35 feet

### Density Regulations:

Maximum Lot Coverage - 60%

2A

## **REQUESTED ZONING**

The existing 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.

Uses: Retail sales and outside storage, offices and other high volume activities.

### **Area Regulations:**

Lot Area - 14,000 square feet

Front Yard Setback - 25 feet

Side Yard Setback - 20 feet

Side Yard on Street Side of Corner Lot - 15 feet

Side/Rear Yard Setback (adjoining single family) - 30 feet

Rear Yard Setback - 20 feet

Separation of Buildings - Per current City Building/Fire Code

Maximum Height - 45 feet

## **SURROUNDING ZONING AND LAND USE**

The areas to the north is zoned Transitional and is developed as a fitness center.

The areas to the south and west are zoned Commercial Heavy (C-5) and are developed as shopping centers and restaurants.

The area to the east is zoned Commercial Light and is developed as a shopping center.

## **PROPOSED REZONING**

The applicant states the requested zone change is for a Movie Lounge. Patrons would be able to come to eat dinner and watch a movie. Movie theaters are not permitted in the current Commercial Light (C-2) zone.

## **LAND USE PLAN COMPLIANCE**

The Master Land Use Plan classifies this site as *Commercial Neighborhood* classification provides locations for convenience goods and services in a residentially compatible design, for surrounding neighborhoods. Appropriate uses include uses, such as coffee shops, movie rentals, specialty retail, personal and professional services..

## **MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies Rogers Avenue as a Major Arterial.

**STAFF COMMENTS AND RECOMMENDATIONS**

The proposed rezoning is to allow for a Movie Lounge which includes a movie theater and a restaurant. A neighborhood meeting was held on Thursday, July 1, 2010. Two adjacent property owners attended the meeting, heard a summary of the application, and had their questions answered. The summary of the meeting is enclosed.

Staff recommends approval of the requested rezoning subject to the condition that a twenty-five foot no development buffer strip of land along the northern boundary of this tract remain. This condition was originally implemented with the adoption of Ordinance 76-92 that rezoned the property to Commercial Light.

10-7-18

**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)

Lot 1, Circuit City, an addition to the City of Fort Smith, Sebastian County, Arkansas with a street address of 7501 Rogers Avenue, Fort Smith, Arkansas.

- 2. Address of property: 7601 Rogers Avenue
- 3. The above described property is now zoned: C-2
- 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?

Proposed land use, a movie theatre and restaurant serving alcoholic beverages, is not permitted under the C-2 zone. For this reason, C-5 by extension is requested.

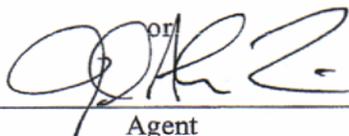
- 6. Submit any proposed development plans that might help explain the reason for the request.

Signed:

John Alan Lewis  
Owner or Agent Name  
(please print)

\_\_\_\_\_  
Owner

5414 Pinnacle Point Drive  
Owner or Agent Mailing Address  
Suite 500  
Rogers, AR 72758  
479-464-5656  
Owner or Agent Phone Number

  
Agent

# Rezoning #10-7-10: From Commercial-2 to Commercial Heavy (C-5)

2E

7601 Rogers Avenue



# Master Land Use Map for Rezoning #10-7-10: From Commercial-2 to Commercial Heavy (C-5)

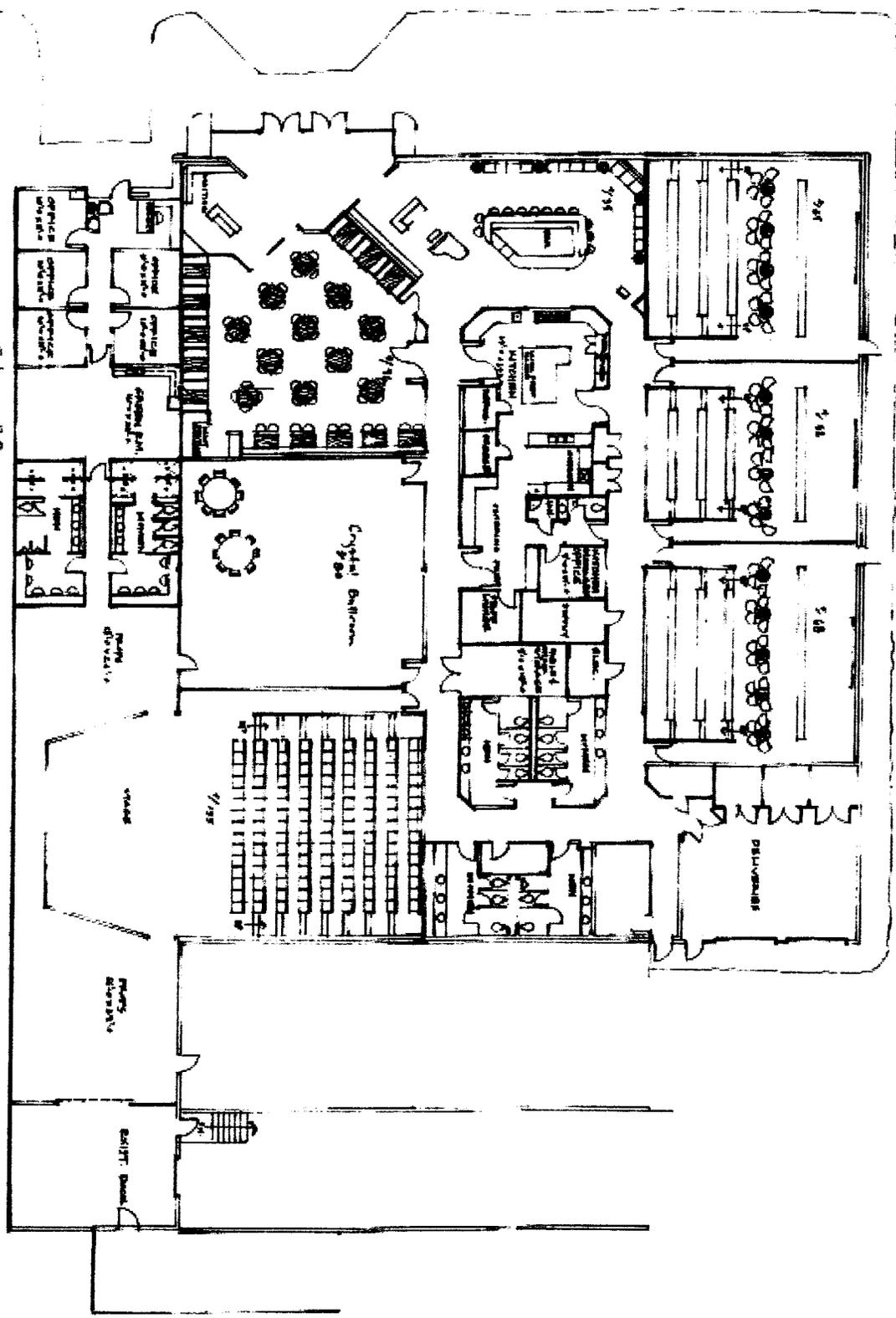
7601 Rogers Avenue

2F





Schedule #2  
 4-8-11 - 3N



## Rice, Maggie

---

**From:** Alan Lewis [JALewis@mwlaw.com]  
**Sent:** Thursday, July 01, 2010 6:28 PM  
**To:** Rice, Maggie  
**Cc:** Andrews, Brenda; Bailey, Wally; Dwight Curry; Lynn Weidman; Leslie Kimes; kellyunderwood@cox.net; keith lau; Tony Leraris  
**Subject:** Neighborhood meeting - 7601 Rogers Avenue  
**Attachments:** SCAN8912\_000.pdf

Maggie,

This is the synopsis of the neighborhood meeting held at 7601 Rogers Avenue on July 1, 2010 at 4:00 PM pursuant to 27-304-1. Attached is the attendance list. The only persons not affiliated with the applicant that came to the meeting were Mr. and Mrs. Roy Holland, adjoin property owners, and two representatives from St. Edward Mercy Medical Center, Cristelyn Udouj-Roebuck and Patrick Pendleton. Dwight Curry, a principal in DHC Properties of Fort Smith, LLC, the applicant, explained his plans for the building and the reasons zone change. He gave everyone an overview as to his expected use of the building – showing movies that might not otherwise be seen in the Fort Smith market, serving food (and alcoholic beverages), a possible event center, or a facility for showing other forms of satellite entertainment or video presentations for corporate functions. Dwight shared with Mr. and Mrs. Holland as well as the St. Edward representatives with a rendering of the building, a tentative layout for the interior and an overall development plan for the site. After a few questions, both parties appeared to be satisfied. The meeting adjourned at approximately 4:25 PM.

Alan Lewis

## MITCHELL WILLIAMS

### John Alan Lewis

T 479.464.5656 | C 479.462.4242 | F 479.464.5680

[jalewis@mwlaw.com](mailto:jalewis@mwlaw.com) | [MitchellWilliamsLaw.com](http://MitchellWilliamsLaw.com)

5414 Pinnacle Point Dr. | Ste. 500 | Rogers, AR 72758-8131

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

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IRS Circular 230 Disclosure: Any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code or promoting, marketing or recommending to another party any tax-related matters addressed herein.

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---

21

Hartness Living Trust  
813 Garrison  
Fort Smith, AR 72901

GMRI, Inc.  
P. O. Box 593330  
Orlando, FL 32859

Retail Buildings, Inc.  
7030 S. Yale Avenue-Suite 107  
Tulsa, OK 74136

ZP NO 64 LLC  
P. O. Box 2628  
Wilmington, NC 28402

St. Edward Mercy Medical  
P. O. Box 17000  
Fort Smith, AR 72917

Fort Smith Lodging LLC  
3336 East 32<sup>nd</sup> Street #217  
Tulsa, OK 74135

Kloma B. Holland Trust  
2716 Heather Oaks Way  
Fort Smith, AR 72908

National Western Life Insurance  
850 E. Anderson Lane  
Austin, TX 78752

Sam's Real Estate Business Trust  
Walmart Property Tax Dept. 8013  
Bentonville, AR 72712

K-mart Corporation  
Dept. 768  
Tax B2-116A  
Hoffman Estates, IL 60192

SBW Capital Partners, LLC  
433 N. Camdem Drive-Suite 1070  
Beverly Hills, CA 90210

Hugh, Tammy & Nghiem Nguyen  
100 Rivercrest Drive  
Fort Smith, AR 72903

Lynn Ellison  
Fort Smith Public Schools  
P. O. Box 1948  
Fort Smith, AR 72902

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
AGENDA  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
JULY 13, 2010**

On roll call, the following Commissioners were present: Keith Lau, Jennifer Parks, Steve Griffin, Mike Lorenz, Travis Stephens and Walton Maurras. Commissioners Pam Weber, Jennifer Canada and Brandon Woodrome were absent.

Chairman Griffin then called for the vote on the minutes from the June 8, 2010, Planning Commission meeting. Motion was made by Commissioner Lorenz, seconded by Commissioner Parks and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

**1. Fort Smith Redevelopment Plan 2010 – Fort Smith Housing Authority**

Mr. Wally Bailey stated that the Fort Smith Housing Authority was seeking City approval of its plan that would designate the Housing Authority as a Redevelopment Agency under the Arkansas Housing Authority Act. Mr. Bailey stated that the Housing Authority's plan focuses on bringing jobs and economic development to Fort Smith, especially in the low to moderate income areas by providing a financial incentive for commercial, retail, industrial and housing development in those areas.

Mr. Ken Pyle, Director of the Fort Smith Housing Authority, was present to speak on behalf of this redevelopment plan and to ask the Planning Commission for their endorsement.

No one was present to speak in opposition to this redevelopment plan.

Motion was then made by Commissioner Parks, seconded by Commissioner Lau and carried unanimously to endorse the Redevelopment Plan as submitted by the Housing Authority.

**2. Rezoning #10-7-10; A request by John Alan Lewis, agent, for a zone change from Commercial-2 to Commercial-5 by Extension located at 7601 Rogers Avenue.**

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow a movie lounge at this location. Mr. Bailey stated that patrons would be able to eat dinner and also watch a movie. He noted that a zoning change is needed due to the fact that movie theaters are not permitted in the current Commercial Light (C-2) zone.

DRAFT

Mr. Bailey also noted that a neighborhood meeting was held on Thursday, July 1, 2010, with two adjacent property owners attending the meeting. Mr. Bailey stated that staff recommended approval subject to a condition that a twenty-five foot no development buffer strip of land along the northern boundary of this tract remain. Mr. Bailey stated that this condition was originally implemented with the adoption of Ordinance 76-92 that rezoned the property to Commercial Light.

Mr. Alan Lewis, 5414 Pinnacle Point Drive, Rogers, AR, was present to speak on behalf of this request.

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

Motion was then made by Commissioner Lorenz, seconded by Commissioner Stephens and carried unanimously to amend this request to make approval subject to a twenty-five foot no developer buffer strip remaining on the land along the northern boundary.

Chairman Griffin then called for the vote on the rezoning request as amended. The vote was 5 in favor, 0 opposed and 1 abstention (Lau).

3. **Rezoning #11-7-10; A request by Pat Mickle, agent, for a zone change from R-5 to RSD-4 by Classification located at 4121, 4119, 4102, 4100, 4017, 4015, 4007, 4005, 4003, 4002, 4001 and 4000 Seminole Circle. (companion item to item #4)**
4. **Development Plan – Leigh Ridge – Seminole Circle – Tim Risley & Associates**

Mr. Bailey read the staff reports for these items. He noted that these items would be discussed together but would need to be voted on separately. Mr. Bailey stated that the purpose of these requests is to allow for the construction of six duplexes (12 dwelling units) for the proposed Leigh Ridge development to be located to the north of the intersection of Cliff Drive and Seminole Circle. Mr. Bailey noted that a neighborhood meeting was held on June 23, 2010, at 8:00 a.m. at the development site on Seminole Circle. He stated that the meeting was attended by developers Cliff Ivey and Robert Young and Brenda Andrews from the planning department. No property owners attended the meeting. Mr. Bailey noted that Mr. Ivey had spoken with adjacent property owners, including Lynn Ellison with the Fort Smith Public Schools and Matt Scott, Vice President of Kelley Realty Company who had no opposition to the proposed rezoning or proposed development plan.

Mr. Pat Mickle, 3434 Country Club, was present to speak on behalf of these requests.

No one was present to speak in opposition.

Chairman Griffin then called for the vote on these requests separately.

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

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

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 13-8-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on August 10, 2010, that said change be made;

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

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

Lots 13 & 14, Block 1, Hendricks Hills #2

More commonly known as 4101 Rogers Avenue , should be, and is hereby rezoned from Residential-Multi-Family Medium Density (RM-3) to Commercial Neighborhood Compatible (C-1) by Classification.

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF SEPTEMBER, 2010.**

**ATTEST:**

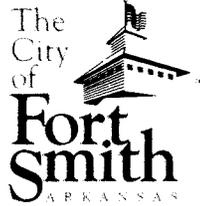
**APPROVED:**

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

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

Approved as to Form:

\_\_\_\_\_  
**City Attorney**  
*Publish & True*



August 31, 2010

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

Re: Rezoning #13-8-10; A request by Damon Wright, agent, for a zone change from Residential-Multi-Family Medium Density (RM-3) to Commercial Neighborhood (C-1) located at 4101 Rogers Avenue.

On August 10, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow the property to be utilized for commercial use. Mr. Bailey noted that the applicant had originally requested rezoning the property to Commercial-2; however after hearing the concerns from neighbors at the neighborhood meeting held on July 29<sup>th</sup>, the applicant is amending the request to a Commercial-1 zoning designation. He also stated that although this property is currently zoned RM-3, it has had a long history of commercial uses, including restaurants and appliance sales and service. Previous uses were permitted as legal non-conforming uses. Mr. Bailey stated that the requested Commercial-1 zone would allow a variety of small-scale office and retail uses that would be compatible with the surrounding zoning and land uses.

Mr. Damon Wright, 3307 Old Greenwood Road, was present to speak on behalf of this request.

Commissioners Lau and Lorenz noted that they would be more in favor of a Commercial-2 zone for this particular piece of property.

Mr. Mike Thames, 1310 South Albert Pike, was present to voice his concerns relative to allowing this property to be rezoned to Commercial-2 rather than a Commercial-1 zoning classification. Mr. Thames stated that his outdoor living area is less than 30 feet from this location and his concerns are those of noise and lighting. Mr. Thomas also noted that he would prefer to not have this property zoned commercial but that he would be willing to compromise with a Commercial-1 zone rather than the original proposal of Commercial-2.

Ms. Suzie Smith, owner of Beland Bed & Breakfast also addressed the Commission with her concerns relative to noise and odors.

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request as amended to Commercial-1. The vote was 6 in favor and 0 opposed.

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(501) 785-2801  
Administrative Offices FAX (501) 784-2407

A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

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

Respectfully submitted,

CITY PLANNING COMMISSION

Steve Griffin, Chairman

SG/lp

cc: File  
City Administrator

# Memo

**To:** City Planning Commission  
**From:** Planning Staff  
**Date:** August 2, 2010  
**Re:** Rezoning # 13-8-10; a request by Damon Wright, agent, for consideration of a zoning change from Residential Multifamily Medium/High Density (RM-3) to Commercial Neighborhood (C-1). The applicant originally requested rezoning the property to Commercial Light (C-2) however, after hearing concerns from neighbors amended the request to Commercial Neighborhood (C-1) at 4101 Rogers Avenue

## LOT LOCATION AND SIZE

The proposed rezoning request site is located on the northeast corner of Rogers Avenue and South 41<sup>st</sup> Street. The subject property consists of two lots totalling approximately 28,700 square feet (.65 acres) in size and with approximately 174 feet of street frontage on Rogers Avenue and 165 feet of street frontage on South 41<sup>st</sup> Street

## EXISTING ZONING

The existing zoning on this tract is Residential-3-Multi-Family (RM-3).

Characteristics of the Residential-3-Multi-Family (RM-3) zone are as follows:

**Purpose:** To provide for medium density attached homes, including multi-unit residential buildings in areas where such development already exists or is planned for the future.

**Uses:** Permitted uses include detached and duplex dwellings, row houses, zero lot line dwelling units, multi-family apartments/condominiums, family group home, neighborhood group home and community residential facility.

### Area Regulations:

Lot Area - 6,500 square feet  
Front Yard Setback - 25 feet  
Side Yard Setback - 7.5 feet  
Side Yard on Street Side of Corner Lot - 15 feet  
Side Yard (adjacent to RS Dist/Development) - 30 feet  
Rear Yard Setback - 10 feet  
Separation of Buildings - 10 feet  
Maximum Height - 40 feet

### Density Requirements:

20 dwelling units per acre

2A

## **REQUESTED ZONING**

The requested zoning on this tract is Commercial Neighborhood Compatible (C-1).

Characteristics of the Commercial Neighborhood Compatible (C-1) zone are as follows:

**Purpose:** To provide for small scale areas for limited office, professional service and local retail businesses designed in scale with surrounding residential land uses.

**Permitted Uses:** Bakery and confectionery shops, bridal shops, architectural and engineering offices, laundry and cleaning facilities (self-service), photography studios and shoe repair shops.

Conditional uses allowed in C-1 zones include parks, public community recreational centers, commercial communication towers, barber shops/salons, restaurants, bed and breakfast inns, senior citizens center and commercial communication towers.

### **Area Regulations:**

Minimum lot size - 21,000 square feet  
Maximum building size - 30,000 square feet  
Minimum lot width at building line - 50 feet  
Maximum Lot Coverage - 60%  
Minimum Street frontage - 20 feet  
Minimum Separation of Buildings - Determined by the current City building & fire codes

### **Density Requirements:**

Minimum front yard setback - 20 feet  
Minimum side yard setback - 10 feet  
Minimum side yard on street side of corner lot - 10 feet  
Minimum rear yard setback - 10 feet

## **SURROUNDING ZONING AND LAND USE**

The area to the north is zoned Transitional and is an office. The area to the east and west is zoned Residential Multifamily Medium Density (RM-3) and is developed as a bed and breakfast and apartment complex. The area to the south is zoned Commercial Light (C-2) and is developed as a restaurant, convenience store, and retail.

## **PROPOSED ZONING CHANGE**

The applicant originally requested rezoning the property to Commercial Light (C-2) however, after hearing concerns from neighbors, amended the request to Commercial Neighborhood (C-1). Attached is the applicant's letter agreeing to change the request from C-2 to C-1.

## **LAND USE COMPLIANCE**

The site is classified as Neighborhood Commercial by the Master Land Use Plan. The proposed rezoning will be in compliance with the Master Land Use Plan.

## **STREET CLASSIFICATION**

2B

The Master Street Plan classifies Rogers Avenue as a Major Arterial and South 41<sup>st</sup> Street as a local street.

**STAFF COMMENTS AND RECOMMENDATIONS**

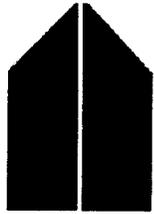
A neighborhood meeting was held on July 29<sup>th</sup> at 5:00 p.m., at 3307 Old Greenwood Road. Several neighbors were in attendance. Their concern was the original request for Commercial Light (C-2) zoning and the uses allowed within this zone. Following the neighborhood meeting, the applicant agreed to change their zoning request to Commercial Neighborhood (C-1). A summary of the meeting is attached.

The proposed zoning request to C-1 will allow the property to be used for any permitted use allowed in that zone. Attached is a list of permitted uses and uses allowed by conditional use approval in the C-1 zone. For comparative purposes, also enclosed is list of uses permitted in the C-2 zone as well as uses allowed with conditional use approval.

Although this property is zoned RM-3, it has a long history of commercial uses including restaurants and appliance sales and service. The requested C-1 zone will allow a variety of small-scale office and retail uses that will be compatible with the surrounding zoning and land uses.

Staff recommends approval of the requested zoning.

20



**NUNNELEE**  
**WRIGHT**  
COMMERCIAL PROPERTIES

3307 Old Greenwood Road, Suite A  
Fort Smith, AR 72903  
479 785-4343 Fax: 479 649-9545

Fort Smith Planning Department

RE: 4101 Rogers Avenue Rezoning

DATE: August 4, 2010

To: Brenda Andrews

I have spoken with the property owner and based upon our conversations the owner is in agreement to apply for a C1 zoning instead of the C2 zoning on our original application.

Sincerely,

Damon L. Wright  
Principal Broker/Owners Agent

20

Neighborhood Meeting on July 29, 2010

**Summary**

We had three neighbors in attendance plus a representative from the City of Fort Smith. All of their concerns rested with the C2 zoning and what that would allow to operate there. Their concern was with the hours of operation, noise relating to a drive thru, and any odor from the preparation of food with a restaurant. Based upon this meeting and an additional call that was received by the City, the property owner has agreed to request a C1 zoning which would only allow for a restaurant if a conditional use application was submitted.

In addition, we had a representative from Big Brother Big Sister's who was in attendance. They are looking at the space for a possible donations drop off facility and it appeared that none of the neighbors in attendance had a problem with them occupying this location. Occupancy would be subject to them applying for and being granted a condition use permit.

Damon L. Wright  
Agent for Property Owner

2 E

**ATTENDANCE LIST FOR NEIGHBORHOOD MEETING**

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

Meeting Location 3307 Old Greenwood Rd, Ft. Smith, Ar. 72903

Meeting Time & Date 5:00 - 6:00 pm on 7/29/2010

Meeting Purpose Rezoning of 4101 Logans to C-2

	<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE #</u>
1.	<u>Ms Betty J Caperton</u>	<u>4100 Millard Ln. FSA 72903</u>	
2.	<u>Scott Hill</u>	<u>BBBS</u>	<u>501.779.8045</u>
3.	<u>Lucy James</u>	<u>1310 S. Albert Pike</u>	<u>479.783.0925</u>
4.	<u>Jim Chin</u>	<u>City F.S.</u>	<u>784-2241</u>
5.	<u>Mike Smith</u>	<u>1320 S. Albert Pike</u>	<u>#782-3300</u>
6.			
7.			
8.			
9.			
10.			
11.			

**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)

S-T-R: 22-08-30  
 Subdivision: Hendricks Hills #2  
 Lots 13 + 14, BLK 1

2. Address of property: 4101 Rogers Avenue

3. The above described property is now zoned: R-3-MF

4. Application is hereby made to change the zoning classification of the above described property to C-2 by extension.  
 (Extension or classification)

5. Why is the zoning change requested?

This is a commercial building that fronts Rogers Avenue. Prior tenants include an appliance sales store, fast food restaurant.

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

Damon Wright  
 Owner or Agent Name  
 (please print)

3307 Old Greenwood Rd FSA  
 Owner or Agent Mailing Address

(479) 785-4343  
 Owner or Agent Phone Number

Signed:

Bennie B. Westphal  
 Owner  
 Bennie B. Westphal

or  
[Signature]  
 Agent

**From:** Cain, Jim  
**Sent:** Monday, August 02, 2010 11:02 AM  
**To:** Planning Email Group  
**Subject:** 4101 Rogers Avenue

Ms. Betty Sternberg, 6608 Eastgate Drive phoned in today at 10:55a.m.  
Inquiring about the rezoning request. She owns property at 1217 South 41st Street.

She is not opposed to the Big Brothers/Sisters project but is concerned with  
All the uses allowed in the C-2 District. After explaining the uses she would prefer if they amend their  
request to C-1.

She will be out of town and cannot attend the PC Meeting.

Jim Cain, AICP  
Senior Planner

2H

## Commercial-1 Land Uses

### Permitted by Right:

- Accessory residential dwelling unit
- Locksmith
- Bookstore
- Bridal shop
- Cameras, photographic supplies and services
- Clothing, jewelry, luggage, shoes, accessories
- Computer and software shop
- Gift shop
- Antique Shop
- Arts and craft shop
- Florist Shop
- Hobby Shop
- Bakery or confectionery shop
- Fund, trust or other financial establishment
- Insurance office
- Investment banking, securities and brokerages
- Abstract services
- Accounting, tax, bookkeeping, payroll
- Advertising and media services
- Architectural, engineering
- Consulting services
- Legal services
- Offices, corporate
- Offices, general
- Property management services (office only)
- Business support services
- Collection agency
- Facilities support services
- Office and administrative services
- Laundry and cleaning facilities (self-service)
- Laundry, cleaner (drop-off station)
- Photocopy shop
- Photography Studio
- Shoe Repair Shop
- Tailor Shop
- Government Office
- Emergency response station
- Fire and rescue station
- Police substation (no incarceration)
- Child and youth services (office)

- Rectory, convent, monastery (Accessory Use)
- Contractor's office

Permitted with Conditional Use Approval:

- Bed and breakfast inn
- Bicycle sales and service
- Art dealers, art studio, galleries, supplies
- Fruit and vegetable store
- Graphic, industrial, interior design
- Restaurant
- Barber shop/salon/spa/massage services
- Tattoo/body piercing parlor
- Mail services
- Commercial communication towers
- Amateur radio transmitting towers
- Recycling collection station
- Utility substation
- Country club
- Community recreation center
- Golf course
- Park or playground (public and nonpublic)
- Fine art and performance education
- Nursery school
- Preschool
- School business professional
- Police station
- Senior citizen center
- Church, synagogue, temple, mosque
- Rectory, convent, monastery (Accessory Use)

25

## Commercial Light (C-2) Land Uses

### Permitted by Right:

- Multifamily dwellings
- Community Residential Facility
- Group Home, Neighborhood
- Accessory Residential Dwelling Unit
- Assisted Living
- Retirement housing
- Bed and Breakfast Inn
- Rooming or Boarding house
- Clothing and Personal Items (repair)
- Electronics and Appliances (new)
- Furniture and Home Furnishings (new)
- Hardware Store (neighborhood)
- Locksmith
- Bookstore
- Bridal Shop
- Cameras, photographic supplies and services
- Clothing, jewelry, luggage, shoes, and accessories
- Computer and software shop
- Gift shop
- Sporting goods, toys, and musical instruments
- Thrift Store
- Antique Shop
- Art dealers, art studio, galleries, and supplies
- Arts and craft shop
- Florist shop
- Hobby shop
- Tobacco shop
- Bakery and confectionary shop
- Convenience store (with gasoline sales)
- Farmer's market
- Fruit and vegetable store
- Grocery store or supermarket
- Neighborhood store
- Cosmetics, beauty supplies, and perfume stores
- Medical Appliance services
- Optical Shop
- Pharmacy or drug store
- Auto Insurance Claims Office
- Automatic Teller Machine
- Bank, Credit Union, or Savings Institution
- Credit and Finance Establishment
- Fund, trust, or other financial establishment
- Insurance Office
- Investment banking, securities, and brokerages
- Consumer Rental Center
- Video, Music, Software
- Abstract Services

- Accounting, tax, bookkeeping, payroll
- Advertising and media services
- Architectural, engineering
- Consulting services
- Graphic, industrial, and interior design
- Legal Services
- Offices, corporate
- Offices, general
- Property Management Services (office only)
- Real Estate Agency
- Travel arrangement and reservation services
- Business support services
- Collection Agency
- Facilities support services
- Office and administrative services
- Catering Service
- Restaurant
- Barber Shop/Salon/Spa/Massage Services
- Laundry and cleaning facilities (self service)
- Laundry, cleaner
- Laundry, cleaner (drop-off station)
- Photocopy Shop
- Photography Studio
- Print Shop
- Shoe Repair Shop
- Tailor Shop
- Tanning Salons
- Weight Loss Centers
- Animal and Pet Services (indoor)
- Veterinary Clinic (no outdoor kennels)
- Parking Lot (off site)
- Carnival or Circus (temporary with permit)
- Amusement Center (indoor)
- Government Office
- Emergency Response Station
- Fire and Rescue Station
- Police Substation (no incarceration)
- Doctor Office and Clinic
- Hospice Residential Care Facility
- Hospital
- Child and Youth Services (office)
- Contractor's Office

Permitted with Conditional Use Approval:

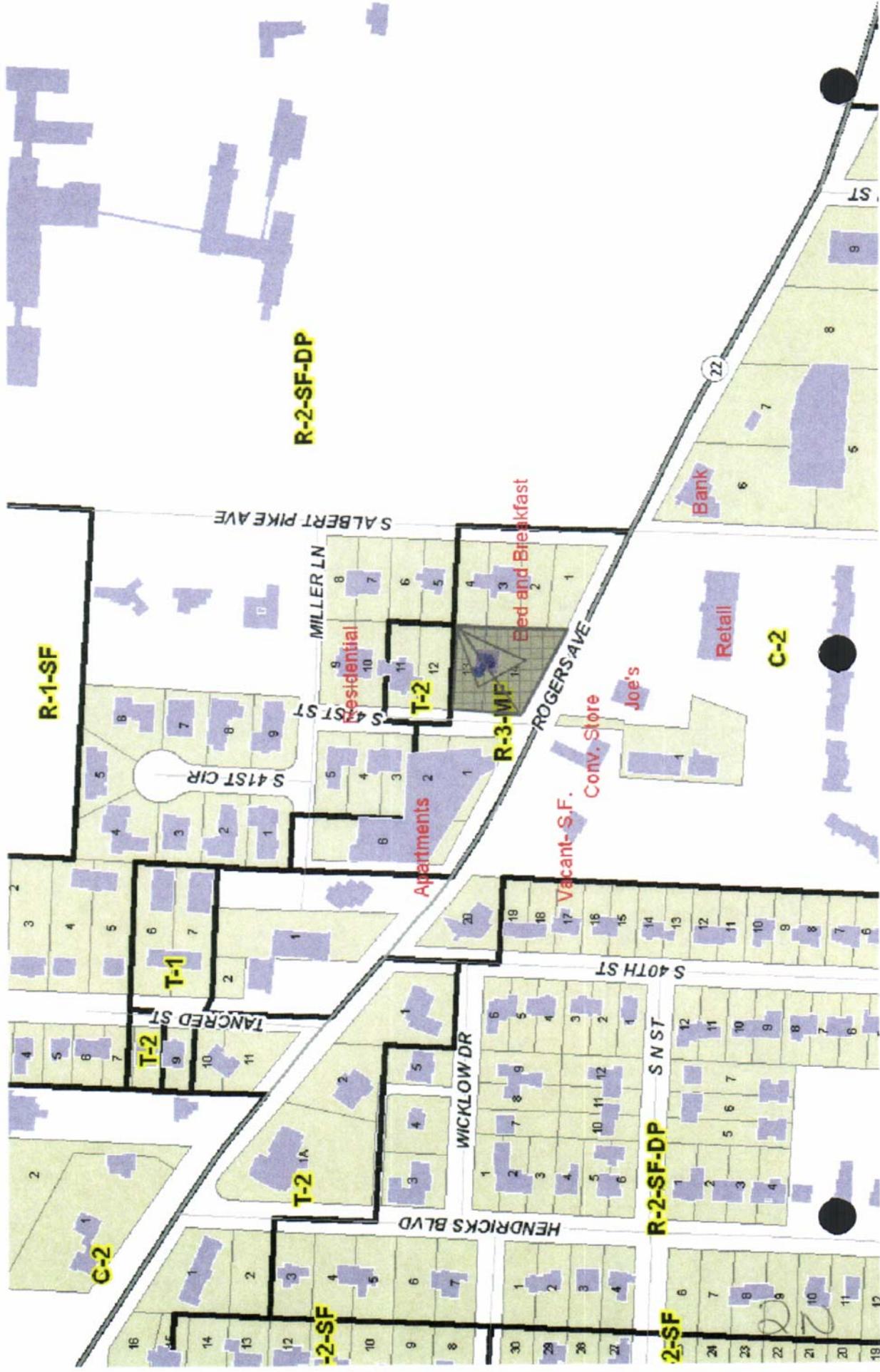
- Orphanage
- Dormitory, Sorority, Fraternity
- Auto Detailing Service
- Auto glass, muffler, and seat cover shop
- Car wash (self service)
- Lawn and garden supplies

26

- Bicycle sales and service
- Beer, wine, and liquor store (without drive-through)
- Bar or Tavern
- Restaurant (with drive-through service)
- Pet Cemetery
- Pet Shop
- Pet Supply Store
- Courier or Messenger Services
- Mail Services
- Commercial Communication Towers
- Data Processing Facility
- Amateur Radio Transmitting Towers
- Radio, television, and microwave transmitting towers
- Recycling collection station
- Utility Substation
- Museum
- Country Club
- Bowling Alley
- Community Recreation Center
- Golf Course
- Health Club
- Pool Hall
- Swimming Pool
- Park or Playground (public and nonpublic)
- College, University, or Seminary
- Fine art and performance education
- Library or public art complex
- Nursery School
- Preschool
- Primary or Secondary School
- School, business or professional
- Convention Center
- Police Station
- Diagnostic laboratory testing facility
- Mental Health Hospital
- Nursing Home
- Substance Abuse Treatment Facility
- Day care center
- Senior Citizen Center
- Church, synagogue, temple, or mosque
- Rectory, Convent, monastery (Accessory Use)
- Cemetery, mausoleum, crematorium, funeral home, and mortuary
- Lodge or fraternal organization

# Vicinity Map for Rezoning #13-8-10: From Residential Multifamily Medium Density (RM-3) to Commercial Light (C-2)

4101 Rogers Avenue



# Rezoning #13-8-10: From Residential Multifamily Medium Density (RM-3) to Commercial Light (C-2)

4101 Rogers Avenue



20

## Commercial Light (C-2) Land Uses

### Permitted by Right:

- Multifamily dwellings
- Community Residential Facility
- Group Home, Neighborhood
- Accessory Residential Dwelling Unit
- Assisted Living
- Retirement housing
- Bed and Breakfast Inn
- Rooming or Boarding house
- Clothing and Personal Items (repair)
- Electronics and Appliances (new)
- Furniture and Home Furnishings (new)
- Hardware Store (neighborhood)
- Locksmith
- Bookstore
- Bridal Shop
- Cameras, photographic supplies and services
- Clothing, jewelry, luggage, shoes, and accessories
- Computer and software shop
- Gift shop
- Sporting goods, toys, and musical instruments
- Thrift Store
- Antique Shop
- Art dealers, art studio, galleries, and supplies
- Arts and craft shop
- Florist shop
- Hobby shop
- Tobacco shop
- Bakery and confectionary shop
- Convenience store (with gasoline sales)
- Farmer's market
- Fruit and vegetable store
- Grocery store or supermarket
- Neighborhood store
- Cosmetics, beauty supplies, and perfume stores
- Medical Appliance services
- Optical Shop
- Pharmacy or drug store
- Auto Insurance Claims Office
- Automatic Teller Machine
- Bank, Credit Union, or Savings Institution
- Credit and Finance Establishment
- Fund, trust, or other financial establishment
- Insurance Office
- Investment banking, securities, and brokerages
- Consumer Rental Center
- Video, Music, Software
- Abstract Services

- Accounting, tax, bookkeeping, payroll
- Advertising and media services
- Architectural, engineering
- Consulting services
- Graphic, industrial, and interior design
- Legal Services
- Offices, corporate
- Offices, general
- Property Management Services (office only)
- Real Estate Agency
- Travel arrangement and reservation services
- Business support services
- Collection Agency
- Facilities support services
- Office and administrative services
- Catering Service
- Restaurant
- Barber Shop/Salon/Spa/Massage Services
- Laundry and cleaning facilities (self service)
- Laundry, cleaner
- Laundry, cleaner (drop-off station)
- Photocopy Shop
- Photography Studio
- Print Shop
- Shoe Repair Shop
- Tailor Shop
- Tanning Salons
- Weight Loss Centers
- Animal and Pet Services (indoor)
- Veterinary Clinic (no outdoor kennels)
- Parking Lot (off site)
- Carnival or Circus (temporary with permit)
- Amusement Center (indoor)
- Government Office
- Emergency Response Station
- Fire and Rescue Station
- Police Substation (no incarceration)
- Doctor Office and Clinic
- Hospice Residential Care Facility
- Hospital
- Child and Youth Services (office)
- Contractor's Office

Permitted with Conditional Use Approval:

- Orphanage
- Dormitory, Sorority, Fraternity
- Auto Detailing Service
- Auto glass, muffler, and seat cover shop
- Car wash (self service)
- Lawn and garden supplies

- Bicycle sales and service
- Beer, wine, and liquor store (without drive-through)
- Bar or Tavern
- Restaurant (with drive-through service)
- Pet Cemetery
- Pet Shop
- Pet Supply Store
- Courier or Messenger Services
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- Commercial Communication Towers
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- College, University, or Seminary
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- Library or public art complex
- Nursery School
- Preschool
- Primary or Secondary School
- School, business or professional
- Convention Center
- Police Station
- Diagnostic laboratory testing facility
- Mental Health Hospital
- Nursing Home
- Substance Abuse Treatment Facility
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- Senior Citizen Center
- Church, synagogue, temple, or mosque
- Rectory, Convent, monastery (Accessory Use)
- Cemetery, mausoleum, crematorium, funeral home, and mortuary
- Lodge or fraternal organization

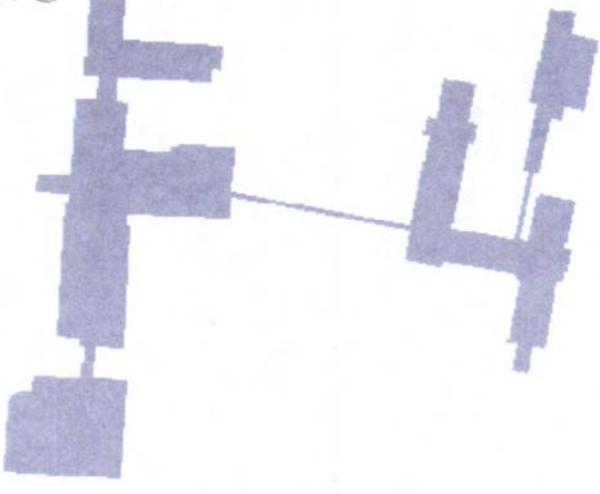
2R



4101 Rogers Avenue

**Rezoning # 13-8-10 - Proximity of Residential**

25



# Master Land Use Map for Rezoning #13-8-10: From Residential Multifamily Medium Density (RM-3) to Commercial Light (C-2)

4101 Rogers Avenue



Jess & Mary Honeycutt  
1212 S. Albert Pike Avenue  
Fort Smith, AR 72903

Chaffey Rental Properties, LLC  
8710 Royal Ridge Drive  
Fort Smith, AR 72903

Thanh Chung & Hoa Truong  
1306 South 41<sup>st</sup> Street  
Fort Smith, AR 72903

Westphal Leasing, LLC  
109 North 6<sup>th</sup> Street  
Fort Smith, AR 72901

Michael & Margaret Smith  
1320 S. Albert Pike Avenue  
Fort Smith, AR 72903

Michael Thames  
1310 S. Albert Pike Avenue  
Fort Smith, AR 72903

Drucilla Hughart  
1300 S. Albert Pike Avenue  
Fort Smith, AR 72903

Ralph & Betty Caperton  
4100 Miller Lane  
Fort Smith, AR 72903

Richard organ  
1309 South 41<sup>st</sup> Street  
Fort Smith, AR 72903

Concettin Bianchi Narisi Trust  
P. O. Box 7  
Fort Smith, AR 72902

Richard & Janet Beauchamp  
P. O. Box 1426  
Texarkana, AR 75504

Palmer Hanson, LLC  
8636 Rogers Avenue  
Fort Smith, AR 72903

Patranna Properties, LLC  
P. O. Box 3495  
Fort Smith, AR 72913

Williamsburg Square, LLC  
P. O. Box 3908  
Fort Smith, AR 72913

Kralicek Investments, LLC  
2300 South 57<sup>th</sup> Street-Suite #4  
Fort Smith, AR 72903

Betty Sternberg  
6608 Eastgate Drive  
Fort Smith, AR 72903

Saint Scholastica Academy  
1301 S. Albert Pike Avenue  
Fort Smith, AR 72901

Simmons First National Bank  
4200 Rogers Avenue  
Fort Smith, AR 72901

DRAFT

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
AGENDA  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
AUGUST 10, 2010**

On roll call, the following Commissioners were present: Keith Lau, Jennifer Parks, Steve Griffin, Mike Lorenz, Travis Stephens and Walton Maurras. Commissioner Pam Weber was absent.

Chairman Griffin then called for the vote on the minutes from the July 13, 2010, Planning Commission meeting. Motion was made by Commissioner Maurras, seconded by Commissioner Lorenz and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

**1. Final Plat – Phoenix Village Mall Subdivision – Lots 1-9**

Ms. Brenda Andrews read the staff report indicating that this is a final plat for a commercial and retail development. Ms. Andrews stated that the Planning Department is recommending approval of this plat 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.

Mr. Ricky Hill was present to speak on behalf of the plat.

No one was present to speak in opposition.

Chairman Griffin then called for the vote on the final plat. The vote was 6 in favor and 0 opposed.

**2. Rezoning #13-8-10; A request by John Damon Wright, agent, for a zone change from Residential-Multi-Family Medium Density (RM-3) to Commercial Light (C-2) by Extension located at 4101 Rogers Avenue.**

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow the property to be utilized for commercial use. Mr. Bailey noted that the applicant had originally requested rezoning the property to Commercial-2; however after hearing the concerns from neighbors at the neighborhood meeting held on July 29<sup>th</sup>, the applicant is amending the request to a Commercial-1 zoning designation. Mr. Bailey stated that the proposed zoning request to Commercial-1 would allow the property to be used for any permitted use allowed in that zone. He also stated that although this property is currently zoned RM-3, it has had a long history of commercial uses, including restaurants and appliance sales and service. Mr. Bailey stated that the requested

DRAFT

Commercial-1 zone would allow a variety of small-scale office and retail uses that would be compatible with the surrounding zoning and land uses.

Mr. Damon Wright, 3307 Old Greenwood Road, was present to speak on behalf of this request.

Commissioners Lau and Lorenz noted that they would be more in favor of a Commercial-2 zone for this particular piece of property.

Mr. Mike Thames, 1310 South Albert Pike, was present to voice his concerns relative to allowing this property to be rezoned to Commercial-2 rather than a Commercial-1 zoning classification. Mr. Thames stated that his outdoor living area is less than 30 feet from this location and his concerns are those of noise and lighting. Mr. Thames noted that he would prefer to not have this property zoned commercial but that he would be willing to compromise with a Commercial-1 zone rather than the original proposal of Commercial-2.

Ms. Suzie Smith, owner of Beland Bed & Breakfast also addressed the Commission with her concerns relative to noise, which she noted is already an issue, and also her concerns relative to smells.

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request as amended to Commercial-1.

The vote was 6 in favor and 0 opposed.

- 3. Rezoning #14-8-10; A request by Angela Mayfield, agent, for a zone change from Transitional-1 to Commercial Light (C-2) by Classification located at 5801 Jenny Lind.**

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow for a therapeutic massage business to occupy the existing building. Mr. Bailey noted that a neighborhood meeting was held on July 23<sup>rd</sup> at 11:00 a.m. at the site on Jenny Lind Road which was attended by the tenants and Mr. Tom Monaco of the Planning Department staff. No property owners attended the meeting. Mr. Bailey stated that this property had previously been used as offices for employment agencies and developed with a parking lot. An issue for this property is the pending widening of Jenny Lind Road, which will eventually take this property. He noted that City staff has made the property owner and applicant aware of the taking which will occur in the next 12 to 24 months. Mr. Bailey advised the Commission that although the property will ultimately be taken for the widening project, the request was evaluated on the technical merits of the application and the requested zoning is compatible with the existing land use classification and surrounding areas.

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

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

WHEREAS, the City Planning Commission has heretofore held a public hearing upon request No. 14-8-10 to rezone certain properties hereinafter described, and, having considered said request, recommended on August 10, 2010, that said change be made;

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

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

Lot 1, Except South 139', Brazil & Jacobs, Block D

More commonly known as 5801 Jenny Lind Road, should be, and is hereby rezoned from Transitional (T) to Commercial Light (C-2) by Classification.

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF SEPTEMBER, 2010.**

**ATTEST:**

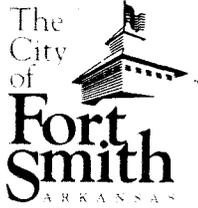
**APPROVED:**

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

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

Approved as to Form:

\_\_\_\_\_  
City Attorney  
*Public 1 Time*



August 31, 2010

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

Re: Rezoning #14-8-10; A request by Angela Mayfield, agent, for a zone change from Transitional (T) to Commercial-Light (C-2) located at 5801 Jenny Lind.

On August 10, 2010, the City Planning Commission held a public hearing to consider the above rezoning request.

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow for a therapeutic massage business to occupy the existing building. Mr. Bailey noted that a neighborhood meeting was held on July 23<sup>rd</sup> at 11:00 a.m. at the site on Jenny Lind Road. Mr. Bailey stated that this property had previously been used as offices for employment agencies and is already developed with a parking lot. An issue for this property is the future widening of Jenny Lind Road, which will eventually take this property. He noted that City staff has made the property owner and applicant aware of the taking which will occur in the next 12 to 24 months. Mr. Bailey advised the Commission that although the property will ultimately be taken for the widening project, the request should be evaluated on the technical merits of the application and the requested rezoning is compatible with the existing land use classification and surrounding areas.

Ms. Angela Mayfield, 8900 Gary Street, was present to speak on behalf of this request. She stated that she is aware of the future taking of this property, but it would allow her enough time to establish her business prior to having to move.

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

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request.. The vote was 6 in favor and 0 opposed.

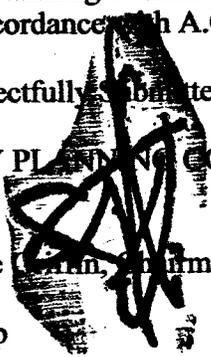
A copy of the draft minutes and staff report to the Planning Commission is enclosed for your review.

623 Garrison Avenue  
P.O. Box 1908  
Fort Smith, Arkansas 72902  
(501) 785-2801  
Administrative Offices FAX (501) 784-2407

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

Respectfully Submitted,

CITY PLANNING COMMISSION

Steve  Chairman

SG/lp

cc: File  
City Administrator

# Memo

**To:** City Planning Commission  
**From:** Planning Staff  
**Date:** July 30, 2010  
**Re:** Rezoning # 14-8-10; a request by Angela Mayfield, agent, for consideration of a zoning change from Transitional (T) to Commercial Light (C-2) at 5801 Jenny Lind Road

## LOT LOCATION AND SIZE

The proposed rezoning request site is located at the intersection of Jenny Lind Road and Brazil Avenue. The subject property is 12,510 square feet (.28 acres) in size and has approximately 90 feet of street frontage on Brazil Avenue and 139 feet of street frontage on Jenny Lind Road.

## EXISTING ZONING

The existing zoning for the property is Transitional (T). Characteristics are as follows:

Purpose: A buffer zone that allows the gradual conversion of residential, on the fringe of a commercial area, into uses that are incidental to the businesses but not harmful to the residential character of the neighborhoods.

Permitted Uses: Single family detached, and attached residential, duplexes, family group home, retirement housing, banking establishments, offices.

Conditional Uses: Assisted living, bed & breakfast inn, utility substation, country club, park or playground, college, library, primary and secondary school, business professional schools, fire and rescue station, emergency response station, police substation, daycare homes, hospital, substance abuse treatment facility, senior citizen center, churches.

### Area Regulations:

Lot Area - 5,000 square feet  
Front Yard Setback - 20 feet  
Side Yard Setback - 5 feet  
Side Yard on Street Side of Corner Lot - 20 feet  
Rear Yard Setback - 10 feet  
Density - 3 Dwelling Units/Acre single family homes, 6 Dwelling Units/Acre two-family homes  
Separation of Buildings - 10 feet  
Maximum Height - 35 feet

## **REQUESTED ZONING**

The existing zoning on this tract is Commercial Light (C-2). Characteristics of this zone are as follows:

The C-2 zone was established for business activities located at the edge of residential areas but which serve an area larger than adjacent neighborhoods.

**Permitted Uses:** A wide variety of retail uses including clothing stores, restaurants, grocery stores and specialty shops. Commercial-2 zones also allow professional offices and multi-family apartments.

Conditional Uses allowed in C-2 zones include churches, schools, day care centers and taverns.

### **Area Regulations:**

Minimum Lot Size - 7,000 square feet  
Street Right-of-Way Setback - 25 feet  
Interior Side Yard Setback - 10 feet  
Rear Yard Setback - 10 feet  
Separation of Buildings – Determined by current city building and fire code.  
Maximum Height – 35 feet  
Maximum Lot Coverage - 60%

## **SURROUNDING ZONING AND LAND USE**

The property requesting to be rezoned is surrounded by Transitional zoning and is developed as apartments, a Union Hall, a church, Bost Men's Facility and single-family residences. The only exception is the property to the northwest which has a Commercial Heavy zoning and is developed as single family residences.

## **PROPOSED ZONING CHANGE**

The applicant has requested rezoning the property to Commercial Light (C-2) to allow for a therapeutic massage business to occupy the existing building.

## **LAND USE COMPLIANCE**

The site is classified as Commercial by the Master Land Use Plan. The proposed rezoning will be in compliance with the Master Land Use Plan.

## **STREET CLASSIFICATION**

The Master Street Plan classifies Jenny Lind Road as a Minor Arterial and Brazil Avenue as a Local Road.

**STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held on July 23, at 11:00 a.m., at the site on Jenny Lind Road. The meeting was attended by the tenants and Tom Monaco with the planning department. No property owners attended the meeting.

This property has previously been used as offices for employment agencies and developed with a parking lot. An issue for this property is the pending widening of Jenny Lind Road, which will take this property. City staff has made the property owner and applicant aware of the taking, which will occur in the next 12 to 24 months.

Although the property will ultimately be taken for the widening project, the requested zoning is compatible with the existing land use classification and surrounding areas.

**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)

Lot 1 Except 135' BLK D  
Brazil Gardens  
City of Fort Smith

2. Address of property: 5801 Jenny Lind

3. The above described property is now zoned: T-1

4. Application is hereby made to change the zoning classification of the above described property to C-2 by classification.  
(Extension or classification)

5. Why is the zoning change requested?

So a Therapeutic Massage business  
can be in this location.

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

Westphal Investment Management Inc.  
Bennie B. Westphal President  
Owner or Agent Name  
(please print)

Signed:  
Bennie B. Westphal  
Owner  
Bennie B. Westphal, President

109 N 6th St.  
Owner or Agent Mailing Address  
Fort Smith, Ark 72901

or  
Annela Mayfield  
Agent

479 783 2792  
Owner or Agent Phone Number

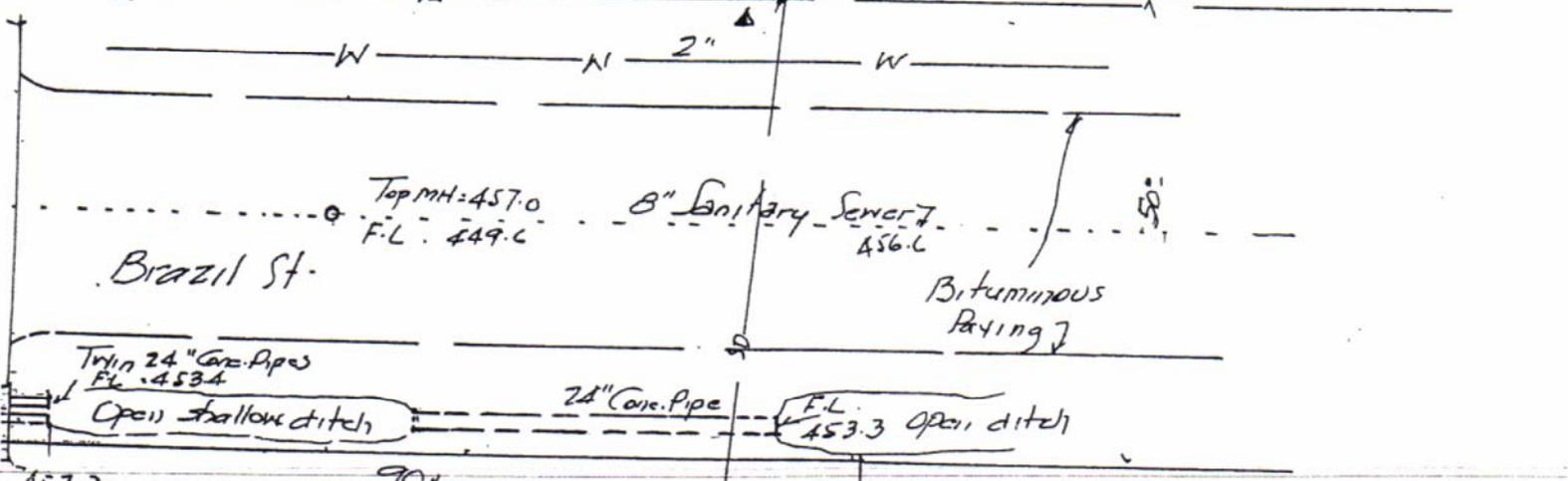
# Master Land Use Map for Rezoning #14-8-10: From Transitional (T) to Commercial Light (C-2)

5801 Jenny Lind Road



3E

3b, 10' Secondary



The North 139.0 feet of Lot 1, Block "D" Brazil & Jacob's Homesite Acres

Base Flood Elev. = 457 MSL  
(Department of Housing & Urban Development)

8"

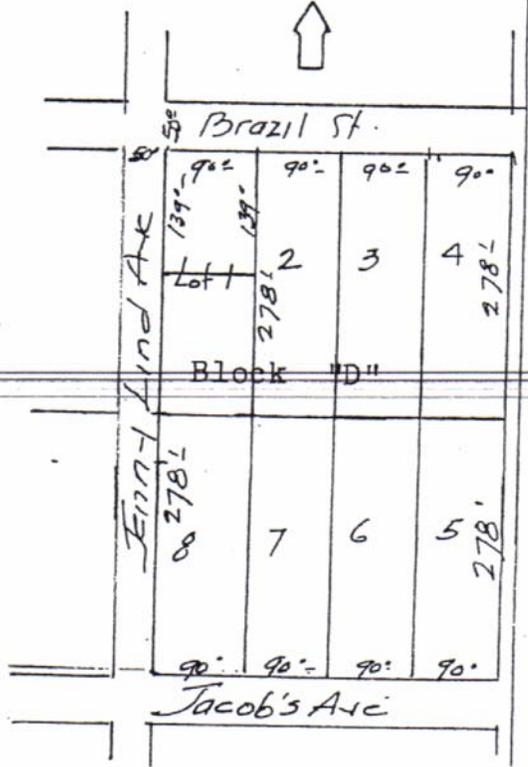
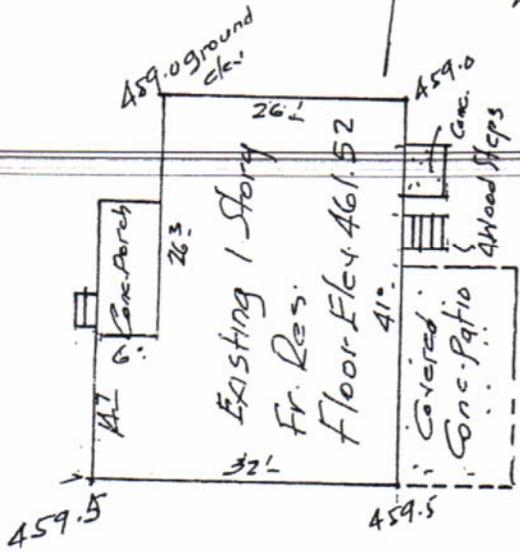
20"

15' -

42"  
- Gas meter -  
- Water meter -

24"

19.7

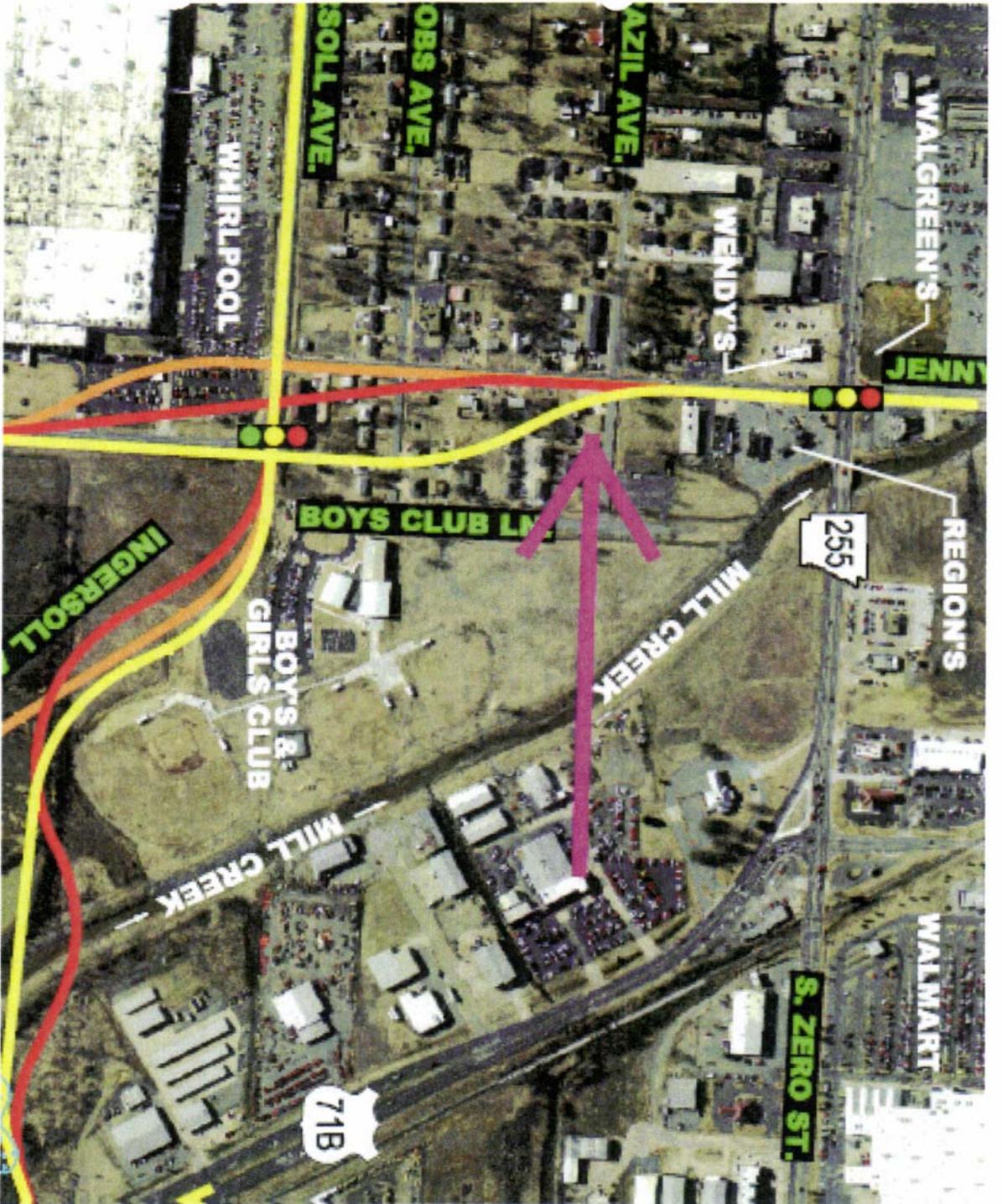


Vicinity Map  
Scale 1"=200'

Dominic Leraris  
By: DOMINIC LERARIS  
Professional Engineer  
#551

7 Jan. '80

3F

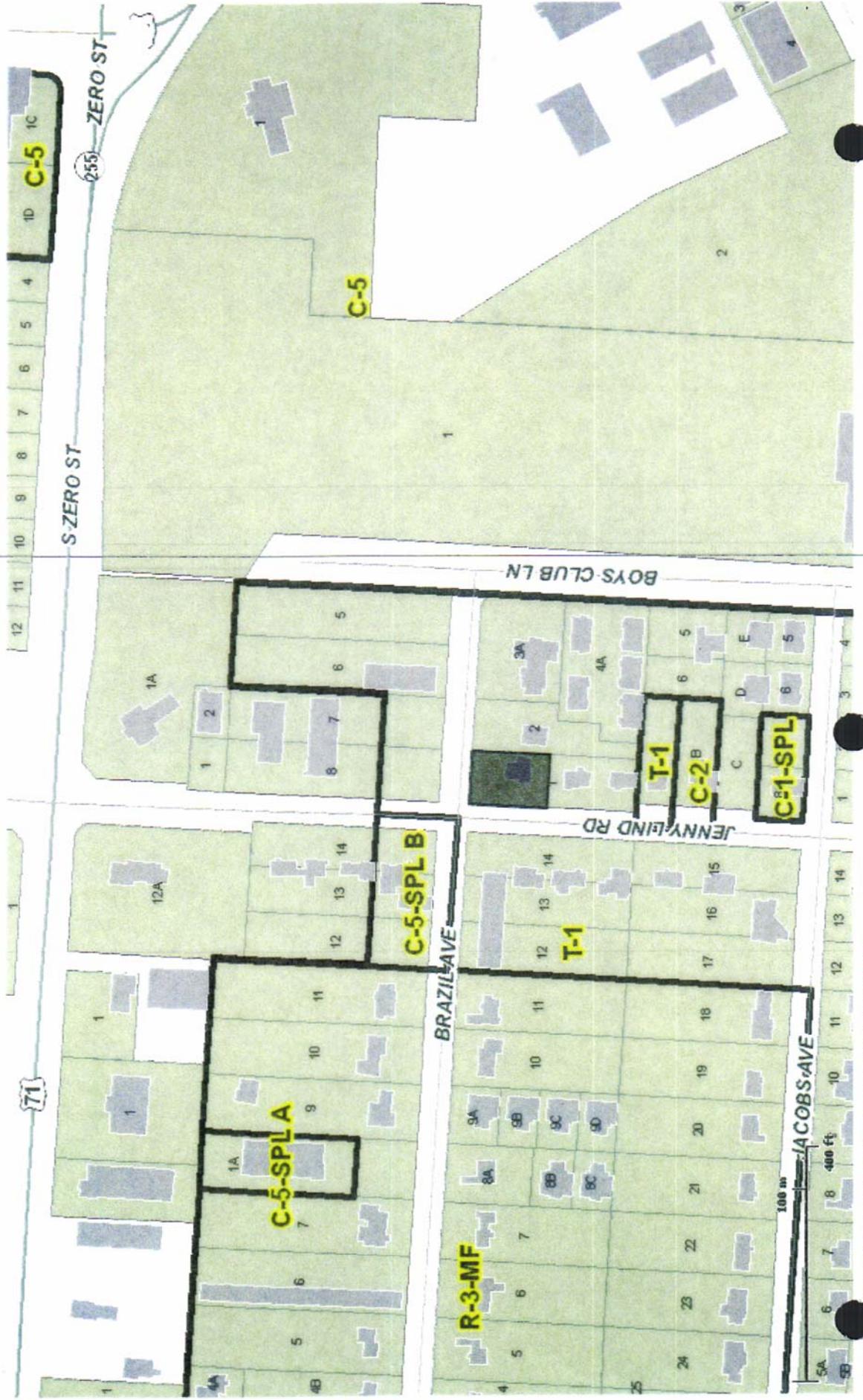


Rezoning # 14-8-10 - 5801 Jenny Lind Road

Alternatives for Jenny Lind Road/Ingersoll Road Widening

# Rezoning #14-8-10: From Transitional (T) to Commercial Light (C-2)

5801 Jenny Lind Road



3 F

# Vicinity Map for Rezoning #18-10: From Transition (T) to Commercial Light (C-2)

5801 Jenny Lind Road



# ROBERT WESTPHAL & Co.

109 NORTH SIXTH STREET  
FORT SMITH, ARKANSAS 72901

BUSINESS PHONE: 479-783-2792  
FAX: 479-783-0028

August 10, 2010

Mr. Wally Bailey  
City of Fort Smith  
P.O. Box 1908  
Fort Smith, AR 72902

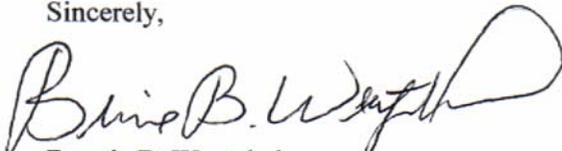
Re: 5801 Jenny Lind

Dear Wally:

This letter acknowledges that we are agreeing to an appraisal and acquisition of the property at 5801 Jenny Lind Road based on the current transition zoning. As a further clarification of our understanding, and to facilitate the future appraisal and acquisition process, we have outlined the following information:

1. The desired rezoning from Transition One (T-1) to Commercial Two (C-2) is to accommodate an interim use of the existing property by a commercial lease. The existing structure and parking improvements will remain unchanged except for minor tenant accommodation and maintenance.
2. The City has identified the subject property for acquisition with the Jenny Lind Road project. We understand that the entire property is to be acquired and the structure and parking facilities will be removed. Subject to Arkansas State Highway and Transportation Department (AHTD) and other agency schedules and approvals, the appraisal and acquisition process is anticipated to begin within the next 12 months.
3. We agree that the appraisal and acquisition process (including, if necessary, any eminent domain action) will be based on the current T-1 zoning; all other aspects of the appraisal will be based on the conditions at the established date of the appraisal.
4. We understand notification will be provided to us and the tenant with regard to onsite inspection(s) for appraisal purposes.
5. We understand that appropriate notice will be given at the time of acquisition to allow relocation by the tenant.
6. We understand that no commitments are being made at this time for reimbursement for relocation of the tenant. Any relocation reimbursement will be in compliance with federal acquisition guidelines.

Sincerely,



Bennie B. Westphal

cc: Angela Mayfield

Maham, LLC  
3808 Jenny Lind Road  
Fort Smith, AR 72901

Bost Human Development  
P. O. Box 11495  
Fort Smith, AR 72917

Ben Jack Living Trust  
29062 S 558 Road  
Park Hill, OK 74451

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

John Przybysz  
3808 Jenny Lind  
Fort Smith, AR 72908

Kralicek & Flusche, LLC  
2300 South 57<sup>th</sup> Street  
Fort Smith, AR 72901

Westphal Investment  
109 North 6<sup>th</sup> Street  
Fort Smith, AR 72901

Shirley Farmer Revocable Trust  
3105 Chelsea Mead  
Fort Smith, AR 72908

Daniel Wik  
4324 S. 35<sup>th</sup> Drive  
Fort Smith, AR 72903

Reith Properties, LLC  
1614 Gilcrest Circle  
Fort Smith, AR 72916

Allied Industrial Workers Local 370  
2107 Brazil  
Fort Smith, AR 72908

Larry Johnson  
5703 Jenny Lind Avenue  
Fort Smith, AR 72901

Maham, LLC  
3808 Jenny Lind  
Fort Smith, AR 72901

William & Myrna Mathews  
3656 Dizzy Dean Drive  
Booneville, AR 72927

William Newbold Living Trust  
12001 Mathews Lane  
Fort Smith, AR 72916

Jarrett Family Trust  
5812 Jenny Lind  
Fort Smith, AR 72908

Rosemary Lovett  
1905 Brazil  
Fort Smith, AR 72908

DRAFT

**Planning Commission Minutes  
August 10, 2010**

Commercial-1 zone would allow a variety of small-scale office and retail uses that would be compatible with the surrounding zoning and land uses.

Mr. Damon Wright, 3307 Old Greenwood Road, was present to speak on behalf of this request.

Commissioners Lau and Lorenz noted that they would be more in favor of a Commercial-2 zone for this particular piece of property.

Mr. Mike Thames, 1310 South Albert Pike, was present to voice his concerns relative to allowing this property to be rezoned to Commercial-2 rather than a Commercial-1 zoning classification. Mr. Thames stated that his outdoor living area is less than 30 feet from this location and his concerns are those of noise and lighting. Mr. Thames noted that he would prefer to not have this property zoned commercial but that he would be willing to compromise with a Commercial-1 zone rather than the original proposal of Commercial-2.

Ms. Suzie Smith, owner of Beland Bed & Breakfast also addressed the Commission with her concerns relative to noise, which she noted is already an issue, and also her concerns relative to smells.

Following a discussion by the Commission, Chairman Griffin called for the vote on this rezoning request as amended to Commercial-1.

The vote was 6 in favor and 0 opposed.

**3. Rezoning #14-8-10; A request by Angela Mayfield, agent, for a zone change from Transitional-1 to Commercial Light (C-2) by Classification located at 5801 Jenny Lind.**

Mr. Wally Bailey read the staff report indicating that the purpose of this rezoning request is to allow for a therapeutic massage business to occupy the existing building. Mr. Bailey noted that a neighborhood meeting was held on July 23<sup>rd</sup> at 11:00 a.m. at the site on Jenny Lind Road which was attended by the tenants and Mr. Tom Monaco of the Planning Department staff. No property owners attended the meeting. Mr. Bailey stated that this property had previously been used as offices for employment agencies and developed with a parking lot. An issue for this property is the pending widening of Jenny Lind Road, which will eventually take this property. He noted that City staff has made the property owner and applicant aware of the taking which will occur in the next 12 to 24 months. Mr. Bailey advised the Commission that although the property will ultimately be taken for the widening project, the request was evaluated on the technical

merits of the application and the requested zoning is compatible with the existing land use classification and surrounding areas.

Ms. Angela Mayfield, 8900 Gary Street, was present to speak on behalf of this request. She stated that she is aware of the future taking of this property but it would allow her enough time to establish her business prior to having to move. No one was present to speak in opposition to this request.

Chairman Griffin then called for the vote on the rezoning request. The vote was 6 in favor and 0 opposed.

4. **Conditional Use #13-8-10; A request by Galen Hunter, agent, for a conditional use for the Fort Smith Regional Art Museum located at 1601 Rogers Avenue. (companion item to item #8)**
8. **Variance #19-8-10; A request by Galen Hunter, agent, for a variance from 10 feet to 4 feet rear yard setback located at 1601 Rogers Avenue. (companion item to item #4)**

Mr. Bailey read the staff reports for these items. He noted that these items would be discussed together but would need to be voted on separately. Mr. Bailey stated that the purpose of these requests is to allow the existing building to be utilized as a regional arts center museum. He indicated that the site plan shows a total of 26 rear parking spaces (two of which are proposed to be handicapped spaces to be accessed from North 16<sup>th</sup> Street. Amenities proposed include a sculpture plaza in the area adjacent to Rogers Avenue, existing large trees to remain along North "A" Street, and an outside sculpture garden and brick pavers at the front and rear entranceways. The egress stairways to be added to the east side of the building will require the approval of a 6 foot interior side yard setback variance from 10 to 4 feet.

Mr. Bailey noted that a neighborhood meeting was held on Monday, August 2<sup>nd</sup> at 10:00 a.m. at the proposed art museum building to discuss these requests. The meeting was attended by Galen Hunter and Adam Day of MAHG and Jim Cain of the Planning Department. No property owners attended the meeting.

Mr. Galen Hunter was present to speak on behalf of these requests.

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

Following a discussion by the Commission, Chairman Griffin called for the vote on the conditional use request. The vote was 5 in favor and 0 opposed. Commissioner Parks was absent at the time of this vote.

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

**MEMORANDUM****To: The Honorable Mayor and Board of Directors****From: Dennis W. Kelly, City Administrator****Subject: Riverfront Analysis-Benny Westphal Presentation****Date: September 2, 2010**

The consulting firm, Cushman & Wakefield, completed the Riverfront Opportunity Analysis and presented it to representatives from the three entities that made up the partnership for the study: The City of Fort Smith, the Fort Smith Regional Chamber of Commerce and the Westphal Group. Because the property is owned by the Westphal Group and they are the direct beneficiaries of the study, we thought it appropriate that Mr. Benny Westphal come before the Board of Directors to present his views on where we go from here.

Attached is the Executive Summary taken from the Study. Copies of the entire study are available in the City Clerk's or City Administrator's offices. As always, any questions or comments, please call or e-mail us any time.

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

## EXECUTIVE SUMMARY

The subject property is 84.5+/- acres of land located between the Arkansas River and Clayton Expressway, just north of North B Street in Fort Smith, Arkansas.

The development of an outdoor and/or indoor entertainment and sports related development should provide the necessary anchor to enhance the "organic" growth projections noted below. The site is one of the best situated to enhance office and retail demand in the region. If developed as planned, The RIVER Fort Smith will garner national attention and should attract the "Best in Class" users. It is important to note that prospective users would require a "pre-commitment" for offsite and partial on-site utility infrastructure prior to committing the necessary capital for development committal.

Despite the lack of current commitment from the city to fund offsite utility infrastructure, letters of interest have been obtained from:

- The American Association of Independent Professional Baseball; and
- A major national retirement home builder

With development committal of the outdoor and/or indoor entertainment and sports related development, the following prospective tenant types have located to similar type developments:

- Fitness: Bally's, Curves, 24 Hr. Fitness, Lifetime Fitness, LA Fitness
- Golf retail/instruction/range: Golf Galaxy, Full Swing Golf
- Roller Skating/Roller Hockey (indoor and outdoor)
- Ice Rink
- Skate Park (indoor and outdoor)
- Indoor Recreation: Fieldhouse USA
- Gymnastics/Cheerleading/Dance: WOGA Gymnastics, Kurt Thomas Gymnastics
- Water Park: Hawaiian Falls, Hurricane Harbor, Wet 'n Wild, Looney Tunes Water Park
- Hotel/Water Park: Great Wolf Lodge, Sheraton/Co Co Key Water Park
- Indoor/Outdoor Fun Center: Zuma, Putt Putt Golf & Games, Dave & Busters, bounce house with inflatables, Main Event, Adventure Landing
- Bowling Center: Lucky Strike, AMF, Brunswick
- Recreation sport center with baseball cluster, softball cluster, indoor sports pavilion, and soccer complex
- Ballpark is the anchor for one corner of retail lined boulevards with a couple of big block retail spots at the terminus on each end (AMC, Dillard's, etc.) and a hotel
- Family fun center would have go-carts, mini-golf, laser tag, etc.
- Sports Themed Restaurant: ESPN Zone, Champs, Champions, Hooters, Buffalo Wild Wings, FOX Grill
- Sports Themed Retail: Sport Clips, Ticket Reseller, Lids, Sports Authority, Dicks, Scheel's, sports authentic/collectibles, shoes, garments, Orvis Fishing Lodge, Outdoor Outfitters, Bass Pro Shop, Cabela's, Modell's, Sports Chalet
- Theater: Regal, AMC
- Race Track: Speed Zone

- BMX Park
- Sports Rehab Center: Velocity Performance Center
- City Sports Authority, City Swim Center

Without the sports/entertainment anchor or a replacement anchor that garners regional attention and draw, many of these tenants would not view the subject as a viable development location.

The subject is proposed with regional entertainment and sports recreational facilities. These will provide regional attractions and the need for overnight stays from commuters. A review of similar type developments adjacent to regional entertainment and sports recreational facilities throughout the U.S. substantiated that a "suite" type, affordable hotel.

The proposed uses will also enhance the uses and occupancy at the Convention Center.

The tenant mix is an important aspect of a successful development. Typically anchor tenancy drives smaller tenant demand and economic success. This anchor tenancy can be a regional entertainment or sports recreational facility with year round use; in addition to typical anchor tenancy, like "big box" retailers.

### Summary of Demand

The following characteristics are evidenced in the micro-market.

- Identified opportunity to provide some residential housing – townhouse and condo demand
- Retail demand will come from organic growth within the community, but would be substantially enhanced with the development of anchor outdoor and/or indoor sports and entertainment venues
- Office demand will be limited to FIRE categories and would be enhanced with the development of anchor outdoor and/or indoor sports and entertainment venues
- Sports and entertainment venues will be a regional attraction and will spur enhanced economic development, tourism and tax generators for the city of Fort Smith
- A suite hotel would compliment land uses and be a logical addition to the development
- Given the anticipated development of sports and entertainment venues, there should be saleable and developable land remaining to construct retail, office and residential facilities

Current economics affecting existing/near term development are:

- Serious downturn in housing sales and permitting that could be spurred by anchor outdoor and/or indoor sports and entertainment venues
- Real estate projects lack financing
- Fort Smith will rebound much quicker than other areas of the state and country
- By national home-price standards, Fort Smith stacks up favorably on the affordability front

Fort Smith should be able to attract the following levels of demand through 2013:

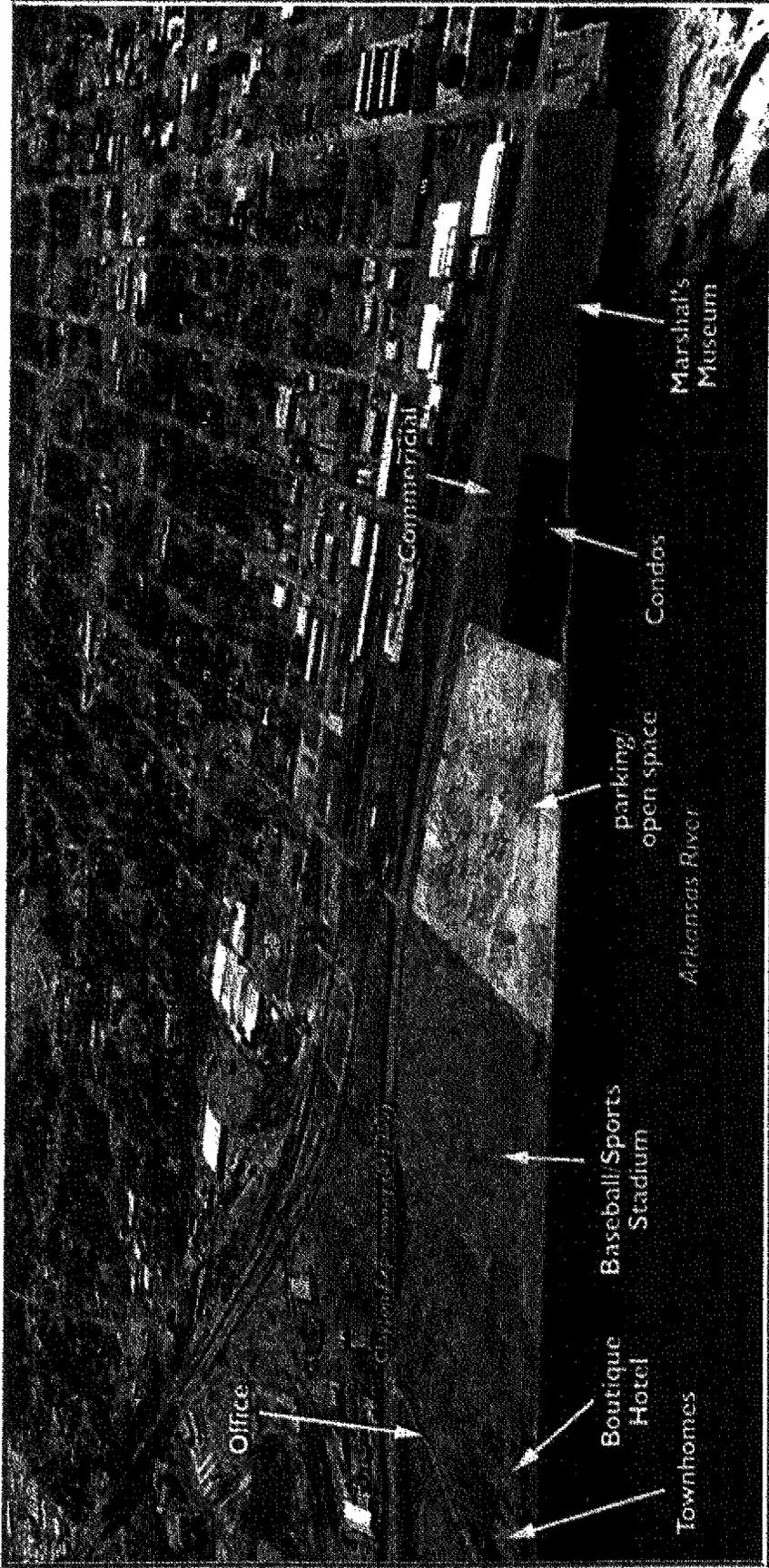
- 1,646 to 2,984 detached housing units
- Approximately 175 attached residential unit absorption
- Approximately 4,133 square feet of office absorption over the next 5 years
- Approximately 7.78 acres absorption for retail and commercial space demand
- Baby Boomers are continuing to be an important economic factor in large scale development: their numbers increase and their ability to relocate to cost affordable areas are changing socio-economic factors in many

communities – retirees are younger, healthier and wealthier than ever. The subject is a viable location for retirement housing and we have procured a Letter of Interest from a national builder/operator.

Catering a portion of the land use to retirement housing (likely rental) could enhance overall residential demand and the "daytime" use of the various retail and entertainment portions of the property.



# CONCEPTUAL BUBBLE PLAN



RESOLUTION \_\_\_\_\_

**A RESOLUTION TO ACCEPT THE BIDS AND AUTHORIZE  
CONTRACT FOR THE CONSTRUCTION OF  
SUNNYMEDE TRIBUTARY DRAINAGE IMPROVEMENTS  
PROJECT NO. 09-06-A**

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

SECTION 1: The bid of Goodwin & Goodwin, Inc., received August 31, 2010, for the construction of Sunnymede Tributary Drainage Improvements, Project No. 09-06-A, in the amount of \$730,538.00 be accepted.

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

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

This resolution adopted this \_\_\_\_\_ day of September, 2010.

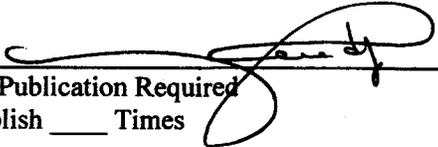
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

  
\_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_ Times

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

**RESOLUTION ACCEPTING A DONATION OF PROPERTY FOR  
THE SUNNYMEDE TRIBUTARY DRAINAGE IMPROVEMENTS  
PROJECT NO. 09-06-A**

---

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

Whereas, the owners of property described at Lot 6B, North Pointe, Phase 1, Being a Replat of Lot 6, North Pointe, Phase 1, Fort Smith, Arkansas wish to donate the property to the City of Fort Smith, and;

Whereas, the City of Fort Smith wishes to accept ownership in order to facilitate the Sunnymede Tributary Drainage Improvements, Project No. 09-06-A;

Now Therefore Be It Resolved, that the Board of City Directors authorizes the Mayor to accept this property donation.

This resolution adopted this \_\_\_\_\_ day of September, 2010.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

- \_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_\_\_ Times

## INTER-OFFICE MEMO

**TO:** Dennis Kelly, City Administrator

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

**DATE:** August 31, 2010

**SUBJECT:** Sunnymede Drainage Improvements  
Project No. 09-06-A

The above subject project includes drainage capacity improvements in the upper portion of Sunnymede Creek extending from Midland Boulevard to North 6<sup>th</sup> Street. The project consists of the construction of approximately 500 linear feet of double 6 foot by 5 foot box culverts including the crossing of two railroads. A stormwater detention basin will also be constructed as shown. The proposed improvements are shown on the attached exhibit.

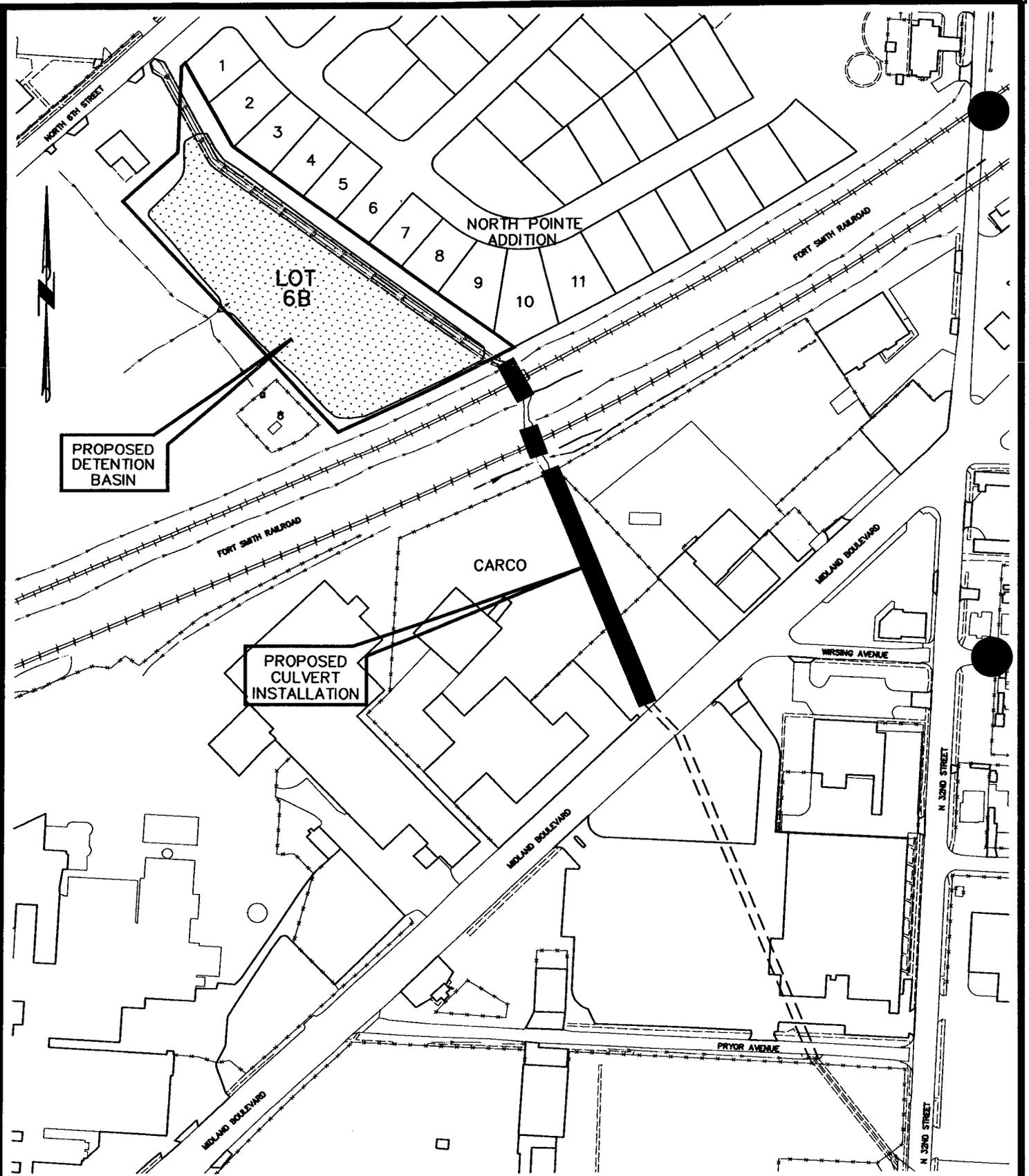
The property shown as Lot 6B on the sketch is needed to allow the construction of the stormwater detention basin. This property is being donated to the City by the North Pointe Limited Partnership. Carco Properties has also donated a drainage and construction easement to allow for construction of the box culverts across their property.

Construction plans and specifications were prepared by Hawkins-Weir Engineers, Inc., of Van Buren, Arkansas. An advertisement was published and bids were received on August 31, 2010. Ten contractors requested plans and specifications and six bids were received which are summarized as follows:

CONTRACTOR	AMOUNT	CONTRACTOR	AMOUNT
1. Goodwin & Goodwin Fort Smith, AR	\$730,538.00	4. Crawford Construction Van Buren, AR	\$1,035,841.00
2. Forsgren, Inc. Fort Smith, AR	\$809,905.90	5. Burgess Company Arkoma, OK	\$1,234,285.00
3. Wilson Brothers Co., Inc. Alma, AR	\$942,742.50	6. Steve Beam Construction Barling, AR	\$1,360,975.50
Engineer's Estimate		\$1,100,000.00	

I recommend that the lowest bid be accepted and that the construction contract be awarded to Goodwin & Goodwin, Inc. The estimated notice to proceed date for this contract is October 4, 2010. Based on the contract duration of 180 days, the estimated completion date would be April 11, 2011.

Attached is a Resolution to award the construction contract and a Resolution to accept the donation of Lot 6B which is needed for the project. I recommend approval of both of these Resolutions. Funds are available in the Sales Tax Program (1105) for the project.



2009 CAPITAL IMPROVEMENTS PROGRAM  
 SUNNYMEDE CREEK  
 DRAINAGE IMPROVEMENTS



Project:	09-06-A
Date:	SEPT. 2010
Scale:	NONE
Drawn By:	RBR

7C

RESOLUTION \_\_\_\_\_

**A RESOLUTION TO ACCEPT THE BIDS AND AUTHORIZE  
CONTRACT FOR THE CONSTRUCTION OF  
TRAFFIC SIGNAL IMPROVEMENTS  
PROJECT NO. 10-09-A**

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

SECTION 1: The bid of Traffic Signals, Inc., received August 31, 2010, for the construction of Traffic Signal Improvements, Project No. 10-09-A, in the amount of \$197,212.30 be accepted.

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

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

This resolution adopted this \_\_\_\_\_ day of September, 2010.

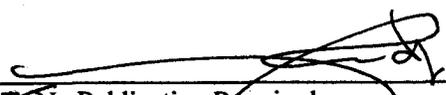
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form

  
\_\_\_\_\_  
 No Publication Required  
 Publish \_\_\_\_\_ Times

## INTER-OFFICE MEMO

**TO:** Dennis Kelly, City Administrator

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

**DATE:** August 31, 2010

**SUBJECT:** Traffic Signal Improvements  
Project No. 10-09-A

The above subject project includes the installation of new traffic signals at Towson Avenue and South B Street and Towson Avenue and South D Street. These signals will replace the old signals in those locations and provide interconnection to other newer signals on Towson Avenue to allow better flow of traffic. The project also includes the installation of a left turn arrow at Massard Boulevard and Zero Street allowing the increasing traffic on Massard Boulevard a protected left turn movement onto Zero Street. The proposed improvements are shown on the attached exhibit.

Construction plans and specifications were prepared by Traffic Engineering Consultants, Inc., of Oklahoma City, OK. An advertisement was published and bids were received on August 31, 2010. Seven contractors requested plans and specifications and six bids were received which are summarized as follows:

CONTRACTOR	AMOUNT	CONTRACTOR	AMOUNT
1. Traffic Signals, Inc. Edmond, OK	\$197,212.30	4. Midstate Traffic Control OK City, OK	\$280,351.00
2. All Service Electric, Inc. Hot Springs, AR	\$243,723.30	5. Township Builders, Inc. Little Rock, AR	\$324,183.00
3. Traffic & Lighting Ok City, OK	\$258,702.25	6. Goodwin & Goodwin Fort Smith, AR	\$341,600.00
Engineer's Estimate		\$225,000.00	

I recommend that the lowest bid be accepted and that the construction contract be awarded to Traffic Signals, Inc. The estimated notice to proceed date for this contract is October 4, 2010. Based on the contract duration of 210 days, the estimated completion date would be May 11, 2011.

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



2010 CAPITAL IMPROVEMENTS PROGRAM  
SIGNAL IMPROVEMENTS



Project:	10-09-A
Date:	SEPT. 2010
Scale:	NONE
Drawn By:	RBR

7D

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

A 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 September 9, 2010.

This Resolution adopted this \_\_\_\_\_ day of September, 2010.

**APPROVED:**

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

**ATTEST:**

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

Approved as to form:



No Publication Required

Publish \_\_\_\_ Times

## Interoffice Memorandum

**TO:** Dennis Kelly, City Administrator  
**FROM:** Alie Bahsoon, Purchasing Manager *AB*  
**SUBJECT:** *2010 AUCTION*  
**DATE:** September 1, 2010



---

The 2010 City Auction is scheduled to be held on **Thursday, September 9<sup>th</sup>, 2010** (starting at 10:00) at the Fort Smith Transit Facility, located at 6821 Jenny Lind Road. The auction 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 among taxpayers and citizens of the City of Fort Smith, a complete list of items being sold is available on the City's website at [www.fortsmithar.gov](http://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-2010 AUCTION  
VEHICLES/TRUCKS**

DEPARTMENT	PROG. #	VEHICLE DESCRIPTION (Year/Make/Model); Used For...	Mileage	VIN Number	CONDITION	ASSET NO. (If Applicable)
Police	4704	2005 Chevrolet Impala; K-9 car	112500	2G1WF55K359188180	Fair; high mileage; heavy hail damage	961
Police	4704	2000 Ford Crown Victoria; travel car	130500	2FAFP71W7YX142432	Fair; high mileage; heavy hail damage	910
Police	4704	2006 Chevrolet Impala; patrol	135000	2G1WSS81369350101	Fair; high mileage; heavy hail damage	932
Police	4704	1999 Ford Crown Victoria; travel car	128000	2FAFP71W5XX232967	Fair; high mileage; heavy hail damage	911
Fire	4802	1997 Oshkosh Snorkel 65 foot; fire & rescue	40113	SVF8VA356192	Fair: poor hydraulic system; high maintenance	308
Street Maintenance	5304	2001 EIDorado Aerotech Bus-A Team	245000	1FDXE45F81HB21927	Poor; high mileage	144
Street Maintenance	5304	1996 International 3800 Bus-A Team	194000	1HVBABPOTH363255	Poor; high mileage	420
Sewer Line Maint.	5611	2006 Ford F-150 PU; city business	40017	1FTRF12206NB57758	Wrecked-front end collision	939
Metering	5613	1996 Chevrolet Astro Van; reading water meters	157068	1GCDM19W2TB171506	Poor; high mileage; bad rear differential	431
Metering	5613	2002 Strace 14' Single Axle Tilt Trailer; used to haul tractor	N/A	1AU7T0146WF100931	Poor; damaged frame	2039
Transit	6550	2005 Ford Econoline Van 350; passenger transpor	152757	1FBSS3IL15HA87241	Fair; runs, wheelchair lift does not work	842
Library	N/A	1987 GMC Safari Van; 112284 miles	112284	1GKDM15Z4HB526140	Poor	N/A

7E

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

A RESOLUTION ACCEPTING BIDS FOR THE  
RE-ROOFING OF FIRE STATION #3

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

The bid, as indicated on the attached Bid Tabulation No. 08-26-10BA for  
the re-roofing of Fire Station #3 by Dale Crampton Company for \$67,669, is  
accepted.

This Resolution adopted this \_\_\_\_\_ day of September, 2010.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

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

Approved as to form:



No Publication Required

Publish \_\_\_\_ Times

## Interoffice Memorandum

**TO:** Dennis Kelly, City Administrator  
**COPY TO:** Mike Richards, Fire Chief  
**FROM:** Alie Bahsoon, Purchasing Manager *AB*  
**SUBJECT:** Re-Roof of Fire Station #3 Bid Tabulation  
**DATE:** August 31, 2010  
**BID TAB:** 08-26-10BA

---



Attached you will find the bid tabulation for the re-roofing of Fire Station #3, located at 2020 North 6<sup>th</sup> Street.

Due to the age and condition of the roof, this project necessitated the expertise of an architectural firm. We acquired the services of Guest Reddick Architects to provide architectural services including the structural review, design, construction & specification documentation, and inspections necessary to oversee the project. It was their recommendation that we replace the HVAC unit as well. With their assistance, bids were solicited for this project which consisted of complete removal and replacement of the existing roof and flashing with a new roof and insulation system of approximately 5,400sf and the replacement of the roof top HVAC Unit.

Two bid proposals were submitted per the attached bid tabulation and the bid proposal of \$67,669 from Dale Crampton Company meets our specifications and requirements and I am recommending that we proceed with the approval of the enclosed resolution. You will also find attached a memorandum from Chief Mike Richards regarding this project and the funding sources. In an effort to save paper, the specifications are not attached but are available in my office should you or any of the board members wish to view them.

Please let me know if should you have any questions.

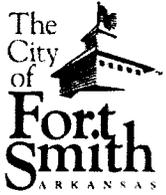
**Tabulation of Bids - City of Fort Smith  
Re-Roof of Fort Smith Fire Station #3  
Bid Tab #08-26-10BA**

Contractor	COST
Harness Roofing, Inc. Fort Smith, AR	\$81,195.00
Dale Crampton Company Fort Smith, AR	\$67,669.00 ✓

✓ Awarded Bid

Date Advertised: 08-08-10 & 08-15-10

Bid Opening Date: 08-26-10



## FORT SMITH FIRE DEPARTMENT

200 NORTH FIFTH STREET  
FORT SMITH, ARKANSAS 72901  
479-783-4052



Mike Richards  
Fire Chief

### Memo

**To: Dennis Kelly, City Administrator**

**From: Mike Richards, Fire Chief**

**Date: September 1, 2010**

**Re: Re-Roof of Fire Station #3**

The roof of Fire Station #3, located at 2020 North 6<sup>th</sup> St, needs to be completely replaced. It has several significant leaks that are beyond minor repairing or patching. The leaks have already ruined several ceiling tiles, some insulation, and could cause a mold problem if not replaced immediately.

As mentioned in Purchasing Manager Alie Bahsoon's memo, we contracted the services of Guest Reddick Architects to review and oversee the project. This was done to ensure consistency in the design and review process and to make sure the project is completed to meet specifications. During the review, we determined the HVAC unit should also be replaced. This was primarily due to the age and footprint of the unit on the roof as this was a major problem area of leakage.

Even though we did not budget for a roof replacement in the 2010 budget, we will be able to pay for the project without a budget adjustment. As it became evident earlier this year that we would have to replace the roof, we intentionally cut spending in other account codes to offset the shortage in our 4802-208 (Repair of Buildings) account. We intend to use a combination of funds from 4802- 202 (Small Equipment), 4802-207 (Repair of Equipment), and 4802-208 to pay for the project.

Please feel free to contact me if you have any questions.

pc: Alie Bahsoon, Purchasing Manager

INSTRUCTIONS TO BIDDERS

1. RECEIPT AND OPENING OF BID PROPOSALS

The City of Fort Smith, Arkansas (herein called the "Owner"), invites bids on the forms attached hereto, all blanks of which must be appropriately filled in. The envelopes containing the bids must be sealed, addressed to the Owner and designated as Re-roofing of Fire Station #3, Fort Smith, Arkansas.

The Owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any formalities or informalities or reject any and all bids. Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified will not be considered. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof.

2. EXAMINATION OF SITE

Bidders shall examine existing conditions at the site and proposals shall take into account any conditions affecting work..

3. PRE-BID CONFERENCE

A Pre-Bid Conference will be held for the benefit of the bidders at the project site , 2020 North Sixth Street in Fort Smith at 8:30AM on Thursday, August 19, 2010. A ladder will be provided for access to the roof. James Reddick of Guest♦Reddick Architects will be present to field and/or answer questions. Attendance is **mandatory** for the prime bidders in order to bid the project.

4. PREPARATION OF BID PROPOSALS

Each bid proposal must be submitted on the prescribed forms. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures.

Each Bid Proposal must be submitted in sealed envelopes (outer and inner) both of which shall be clearly labeled "Bid Documents" so as to guard against opening prior to the time set therefor. The bidder shall be responsible for the placement of his firm name and address, his Arkansas Contractor's License Number and the name of the project on the outside of such envelopes.

Attention is directed to the fact that this specification has bound hereto a complete set of bidding and contract forms; they are for the convenience only of bidders and are not to be detached from the specification and filled out or executed. Separate copies of Form of Bid Proposal are furnished for that purpose, in triplicate, two to be submitted with each Bid and one to be retained by the bidder for his records.

5. LIST OF SUB-CONTRACTORS

Each Contractor will be required to furnish names of subcontractors and the amounts of their sub-contracts, if any. The sub-contracts shall be as listed on the "Form of Bid Proposal". Sub-contract amounts must be submitted on a separate list in a sealed envelope and accompany Bid Proposals. The sub-contractor's name and license number must appear on outside of sealed envelope. Sub-contractors must be licensed in the State of Arkansas, if such work exceeds \$20,000.00. All sub-contractors listed must be retained for work in the project by the particular sub-contractor or General Contractor. Each particular contractor may not change subs without the written consent of the Architect and Owner. Sub-contractors must be licensed when turning in their bid per Arkansas State Law.

6. FACSIMILE MODIFICATIONS

Any bidder may modify his bid proposal by facsimile communication at any time prior to the scheduled closing time for receipt of bids, provided such facsimile communication is received by the Owner prior to the closing time, and, provided further, the Owner is satisfied that a written confirmation of the facsimile modification over the signature of the bidder was mailed prior to the closing time. If written confirmation is not received within two days from the closing time, no consideration will be given to the facsimile modification.

Facsimile modifications shall be directed to Alie Bahsoon, Purchasing Manager for the City of Fort Smith at 1-479-784-2484.

7. QUALIFICATIONS OF BIDDER

The Owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

8. QUALIFICATIONS OF SUB-CONTRACTORS

The Owner may make such investigations as he deems necessary to determine the ability of any subcontractor to perform the work and the bidder and subcontractor shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any subcontractor if the evidence submitted by, or investigation of, such contractor fails to satisfy the Owner that such subcontractor is properly qualified to carry out the obligations of the contract and to satisfactorily complete the work contemplated therein. If the Owner has a reasonable objection to a proposed person or entity, the bidder may, at the bidder's option, withdraw the bid or submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid(s) to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price(s) or disqualify the bidder.

9. BID SECURITY

Each bid must be accompanied by a certified check, cashier's check or bid bond accompanied by a power of attorney and prepared on a form acceptable to the Owner, duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner, in the amount of 5% of the bid. Such checks or bid bonds will be returned to all except the three lowest bidders within three days after the opening of bids, and the remaining checks or bid bond will be returned promptly after the Owner and the accepted bidder have executed the contract, or if no award has been made within 60 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

10. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with bid.

11. TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Owner requires completion of the work required for the Re-roofing of Fire Station #3 for the City of Fort Smith as soon as possible after written acceptance of the contract. Bidders shall state in the Form of Bid Proposal the number of calendar days required to complete the contract. Should the work

INSTRUCTIONS TO BIDDERS

Page 3

not be completed within time stated in the Form of Bid Proposal, the Contractor shall pay the Owner as liquidated damages and not as a penalty, the sum of \$150.00 per day in excess of time allotted (including Saturdays, Sundays and Holidays).

12. CONDITIONS OF WORK

Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

13. ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other documents will be made to any bidder orally. Oral interpretations, if offered, will not be honored, but must be in writing by the Architect.

Every request for such interpretation should be in writing addressed to the Architects, as follows:

Guest♦Reddick, Inc.  
602 Garrison Avenue, Suite 800  
Fort Smith, Arkansas 72901

and to be given consideration must be received at least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed or delivered to all prospective bidders (at the respective addresses furnished for such purposes), not later than three days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addenda or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents and bidder shall acknowledge receipt of same on the bid proposal form.

14. LAWS AND REGULATIONS

- (a) The bidder's attention is directed to the fact that all applicable Federal and State Laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.
- (b) Bidder's attention is directed to the following Arkansas Laws which are pertinent to the proposed project.

Ark. Code Ann § 26-53-101, "The Arkansas Compensating Three Per Cent Tax in 1949.

Act 37 of 1992, which provided a procedure for collection of use taxes from contractors.

Ark. Code Ann § 23-60-101, which provides for issuance of insurance requirements for construction projects.

Act 862 of 1983.

15. METHOD OF AWARD - LOWEST QUALIFIED BIDDER

If at the time this contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the Owner as available to finance the contract, the contract will be awarded on the base bid only. If such bid exceeds such amount, the Owner may reject all bids or may award the contract on the base bid combined with such deductible alternates or negotiated items as produces a net amount which is within the available funds.

16. OBLIGATION OF BIDDER

At the time of the opening of bids each bidder will be presumed to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument or document or to inform himself of the conditions relating to the construction of the project, shall in no way release any bidder from any obligation in respect of his bid.

17. COMPLIANCE WITH STATE LAWS

Proposals shall be submitted in compliance with all the requirements of Act 150 of 1965 of the General Assembly of the State of Arkansas, as amended by Act 142 of 1967 and Act 293 of 1969, "The Arkansas State Licensing Law for Contractors", and Act 270 of 1941 as amended by Act 219 of 1957 and 157 of 1959 known as the Arkansas Architectural Act. Bidders who submit proposals in excess of \$20,000 must submit evidence of having contractor's license before their bids will be considered.

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

**A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FORT SMITH, ARKANSAS, AND SEBASTIAN COUNTY, ARKANSAS, REGARDING THE 2010 EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT (JAG) PROGRAM**

---

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

Section 1. The Memorandum of Understanding between the City of Fort Smith, Arkansas, and Sebastian County, Arkansas, which shall be substantially in the form attached hereto, is hereby approved and provides for the terms, conditions, and mutual understandings concerning the 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) Program between the two parties.

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

**THIS RESOLUTION ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.**

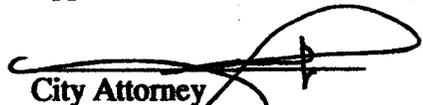
**APPROVED:**

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

**ATTEST:**

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

Approved as to form:

  
City Attorney  
NPR

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF FORT SMITH, ARKANSAS, AND SEBASTIAN COUNTY,  
ARKANSAS, CONCERNING THE 2010 EDWARD BYRNE MEMORIAL  
JUSTICE ASSISTANCE GRANT (JAG) PROGRAM.**

This agreement is made and entered into this 24<sup>th</sup> day of August, 2010, by and between the County of Sebastian, acting by and through its governing body, the Quorum Court, hereinafter referred to as "COUNTY," and the City of Fort Smith, acting by and through its governing body, the Board of Directors, hereinafter referred to as "CITY," both of Sebastian County, State of Arkansas, witnesseth:

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement; and,

**WHEREAS**, this agreement is made necessary to comply with applicable grant requirements; and,

**WHEREAS**, the CITY will be designated as the fiscal agent for the program and as such will be responsible for required financial and program reporting; and,

**WHEREAS**, the COUNTY shall receive \$31,946 and the CITY shall receive \$75,000 of the awarded 2010 JAG Fund,

**NOW, THEREFORE**, the CITY and COUNTY agree as follows:

**Section 1**

COUNTY agrees the CITY shall receive \$75,000 and the CITY agrees the COUNTY shall receive \$31,946 of the awarded 2010 JAG funds, anticipated to be \$106,946.

**Section 2**

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

**Section 3**

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 4

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any part not a signatory hereto.

CITY of Fort Smith, Arkansas

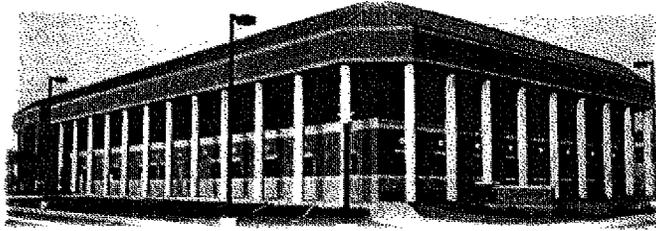
COUNTY of Sebastian, Arkansas

A handwritten signature in cursive script, appearing to read "David Hudson", written over a horizontal line.

---

Ray Baker  
Mayor

David Hudson  
County Judge



## **Fort Smith Police Department**

Kevin Lindsey, Chief of Police

### **INTERDEPARTMENTAL MEMORANDUM**

**To: Dennis Kelly, City Administrator**

**From: Kevin Lindsey, Chief of Police**

**Subject: Bureau of Justice Assistance FY 2010 Edward Byrne Memorial Justice Assistance Grant Program**

**Date: September 1, 2010**

The City of Fort Smith has been invited to apply for the 2010 JAG Grant in the amount of \$106,946. This is the regular solicitation of this annual grant. With this current grant the City of Fort Smith and Sebastian County are considered disparate agencies and thus must execute a Memorandum of Understanding (MOU) to delineate the amount that each government agency will receive.

After meeting with officials from the Sebastian County Sheriff's Office, it was determined that their portion of the 2010 JAG Grant will be in the amount of \$31,946. This will allow the Sebastian County Sheriff's Office to complete their ongoing in-car video system project. These monies will allow the Sheriff's Office to finish replacing their existing in-car video system.

The Fort Smith Police Department anticipates using our portion of 2010 JAG funds, in the amount of \$75,000, to assist in the purchase of new Computer Aided Dispatch / Records Management System (CAD/RMS) software. Fort Smith Police Department staff has researched various companies which supply CAD/RMS software and are in the process of choosing a software system that will meet the present and future needs of the Police Department. Staff recommends approval of the MOU between Sebastian County and the City of Fort Smith.

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



## David Hudson

Sebastian County Judge  
County Court House  
35 South 6th Street, Room 106  
Fort Smith, Arkansas 72901  
(479) 783-6139  
FAX (479) 784-1550

August 26, 2010

Mr. Dennis Kelly  
City Administrator  
623 Garrison Avenue  
Fort Smith, AR 72901

Mr. Kevin Lindsey  
Chief of Police  
100 S. 10th Street  
Fort Smith, AR 72901

Re: Memorandum of Understanding for the JAG Grant

Dear Gentlemen:

Enclosed is a signed copy of the Resolution adopting the Memorandum of Understanding between the County and the City concerning the JAG Grant [see enclosure].

This program has been very successful in setting an example of cooperation between the City and the County in the best interest of the citizens we serve.

Sincerely,

David Hudson  
County Judge

jw

Enclosure

RESOLUTION NO. 2010 - 11

"BE IT RESOLVED BY THE QUORUM COURT OF THE COUNTY OF SEBASTIAN, STATE OF ARKANSAS:"

A RESOLUTION AUTHORIZING THE SEBASTIAN COUNTY JUDGE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING FOR FUNDING THE JAG GRANT PROGRAM WITH THE CITY OF FORT SMITH.

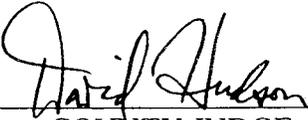
WHEREAS, Sebastian County and the City of Fort Smith wish to cooperate in a combined Grant application from the JAG Grant Program; and

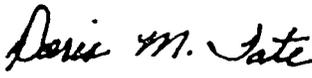
WHEREAS, the City of Fort Smith agrees to administer the combined JAG Grant; and

WHEREAS, the County shall receive \$31,946 and the City shall receive \$75,000 of the awarded 2010 JAG Fund; and

WHEREAS, the projected cost of equipment at the Sheriff's Office from this Grant totals \$31,946.

NOW, THEREFORE BE IT RESOLVED, that the County Judge is hereby authorized to enter into a Memorandum of Understanding for funding in cooperation with the City of Fort Smith to the JAG Grant Program in the Sebastian County amount of \$31,946.

DATED: 8/24/2010 APPROVED:   
COUNTY JUDGE

ATTEST:   
COUNTY CLERK

7 G

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

**RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND AUTHORIZING  
FINAL PAYMENT TO KAJACS CONTRACTORS, INC., FOR CONSTRUCTION  
OF THE NEIGHBORHOOD WATER SYSTEMS IMPROVEMENTS**

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

SECTION 1: The construction of the Neighborhood Water System Improvements,  
Project 08-06-C2, is accepted as complete.

SECTION 2: Final payment to KAJACS Contractors, Inc., in the amount of \$64,484.60,  
is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of September 2010.

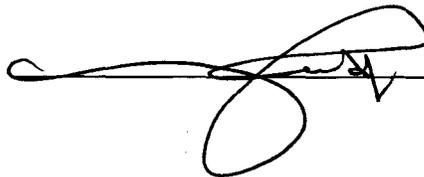
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

 \_\_\_\_\_ npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** August 17, 2010

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

**SUBJECT:** Neighborhood Water System Improvements  
Project Number 08-06-C2

KAJACS Contractors, Inc., has submitted a final pay request in the amount of \$64,484.60 for work completed on the Neighborhood Water System Improvements, Project Number 08-06-C2. This final payment represents a contract underrun of \$125,680.31. An exhibit showing the location of the work and a project summary sheet are attached for your information.

The attached Resolution authorizes the final payment to KAJACS Contractors. Should you or the members of the Board have any questions or need additional information, please let me know.

attachment



**NEIGHBORHOOD WATER SYSTEM  
IMPROVEMENTS 50th & N SERVICE AREA  
PROJECT NO. 08-06-C2**

## Project Summary

Project status: Completed

Project name: Neighborhood Water System Improvements

Today's date: August 17, 2010

Project number: 08-06-C2

Staff contact name: Steve Parke

Project engineer: Morrison-Shipleigh Engineers, Inc.

Staff contact phone: 784-2231

Project contractor: KAJACS Constructors, Inc.

	Dollar Amount	Contract Time (Days)
Original contract:	675,968.50	180
Change orders:		
1		
2		
Subtotal:	<u>0.00</u>	
Final contract amount:	<u>675,968.50</u>	
Total work completed:	550,288.19	
Payments to date (as negative):	-485,803.59	
Final payment:	64,484.60	
Retainage held:	0.00	
Contract balance remaining:	125,680.31	
Amount over (under) original as a percentage:	-18.59%	

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

7 H

RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND AUTHORIZING FINAL  
PAYMENT TO WILSON BROTHERS CONSTRUCTION COMPANY, INC., FOR  
THE SUB-BASIN 10-2 WEST SANITARY SEWER REHABILITATION

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

SECTION 1: The construction of the Sub-Basin 10-2 West Sanitary Sewer  
Rehabilitation, Project 09-02-C1, is accepted as complete.

SECTION 2: Final payment to Wilson Brothers Construction Company, Inc., in the  
amount of \$158,637.32, is hereby approved.

This Resolution adopted this \_\_\_ day of September 2010.

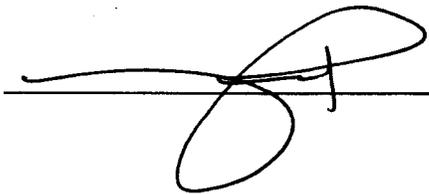
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** August 30, 2010

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

**SUBJECT:** Sub-Basin 10-2 West Sanitary Sewer Rehabilitation  
Project Number 09-02-C1

Wilson Brothers Construction Company, Inc., has submitted a final pay request in the amount of \$158,637.32 for work completed on the Sub-Basin 10-2 West Sanitary Sewer Rehabilitation, Project 09-02-C1. This final payment represents a contract underrun of \$79,268.46. An exhibit showing the location of the work and a project summary sheet are attached for your information.

The attached Resolution authorizes the final payment to Wilson Brothers Construction. Should you or the members of the Board have any questions or need additional information, please let me know.

attachment



Basin 10-2 West  
Project No. 09-02-C1

### Project Summary

Project Status: Complete

Today's date: August 30, 2010

Staff contact name: Steve Parke

Staff contact phone: 784-2231

Completion date: August 25, 2010

Project Name: Sub-Basin 10-2 West Sanitary Sewer Rehabilitation

Project number: 09-02-C1

Project engineer: RJN Group, Inc.

Project Contractor: Wilson Brothers Construction Company, Inc.

	Dollar Amount	Contract Time (Days)
Original Contract:	978,486.00	180
Change Orders:		
1	24,780.00	
2		
	<u>24,780.00</u>	
Final Contract Amount:	<u>1,003,266.00</u>	
Total Work Completed:	923,997.54	
Payments to Date (as negative)	-765,360.22	
Final Payment:	158,637.32	
Retainage Held:	0.00	
Contract Balance Remaining:	79,268.46	
Amount Over (under) Original as a percentage:	-7.90%	

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

7 I

RESOLUTION AUTHORIZING CHANGE ORDER NUMBER  
ONE WITH UTILITY SERVICE COMPANY FOR FIANNA  
HILLS ELEVATED STORAGE TANK PAINTING

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

Change Order Number One in the amount of \$41,500.00 to the contract with Utility  
Service Company for the performance of the Fianna Hills Elevated Storage Tank Painting,  
Project Number 09-06-C1, adjusting the contract amount to \$256,100.00 and adding 20 calendar  
days to the contract time, is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of September 2010.

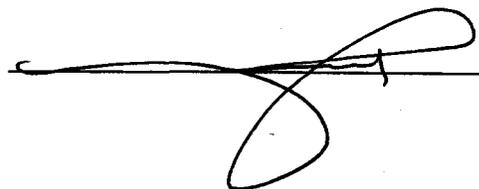
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** August 30, 2010

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

**SUBJECT:** Fianna Hills Elevated Storage Tank Painting  
Project Number 09-06-C1

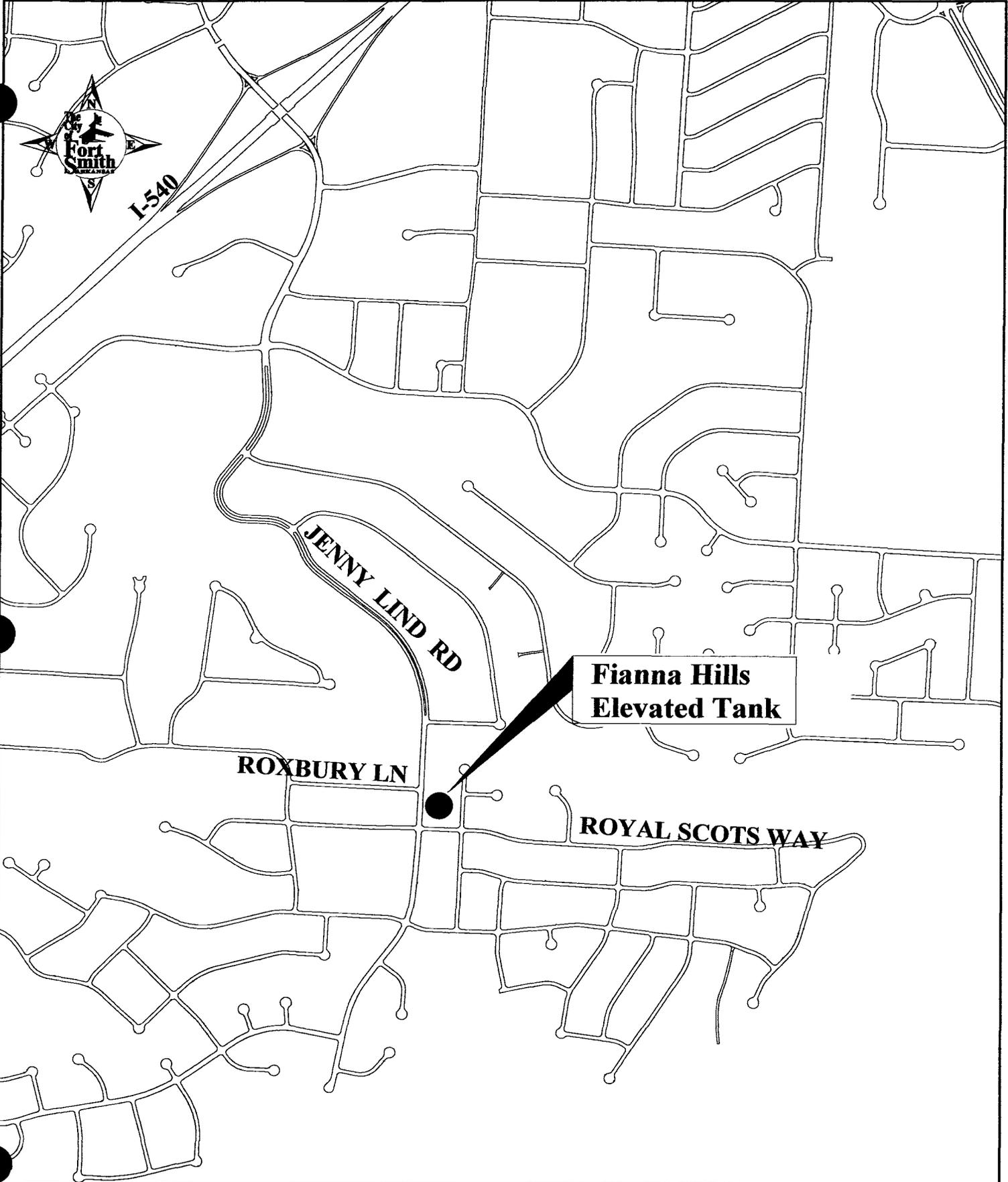
After being taken out of service and the contractor started preparing the Fianna Hills elevated tank for painting, staff was able to inspect the interior of the riser pipe. The riser pipe was found to be badly corroded and in need of replacement. This tank was constructed in 1973. An exhibit showing the tank location is attached.

Staff requested Utility Service Company to provide a proposal for replacing the riser pipe. Utility Service Company submitted a cost in the amount of \$41,500.00 to perform the additional work to replace the riser pipe. This change order will adjust the contract amount to \$256,100.00. Funding for this additional work is available from the Water and Wastewater Capital Improvement Fund. It is my recommendation that the attached Resolution authorizing Change Order Number One be approved.

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

attachment

O:\UtilityDept\General\TA\Exhibits\09-06-C1\Fianna Hills Elev Tank Painting Site Plan 09-06-C1.dwg, 6/9/2010 8:11:31 AM, \\khy...L\_HP5550HDN



**CITY OF FORT SMITH, ARKANSAS**  
**FIANNA HILLS ELEVATED TANK PAINTING**  
**PROJECT NO. 09-06-C1**  
**PROJECT VICINITY MAP**

## Project Summary

Project Status: In process

Project name: Fianna Hills Elevated Storage Tank  
Painting

Today's date: August 30, 2010

Project number: 09-06-C1

Staff contact name: Steve Parke

Project engineer: Mickle Wagner Coleman, Inc.

Staff contact phone: 784-2231

Project contractor: Utility Service Company .

Notice to proceed issued: August 5, 2010

Completion date: October, 2010

	Dollar Amount	Contract Time (Days)
Original contract	\$214,600.00	85
Change orders: Number One	\$41,500.00	20
Total change orders	\$41,500.00	<u>20</u>
Adjusted contract	<u>\$256,100.00</u>	<u>105</u>
Payments to date (as negative):	\$0.00	0.0%
Amount of this payment (as negative)	\$0.00	0.0%
Retainage held	\$0.00	
Contract balance remaining	\$256,100.00	100.0%
Amount Over (under) as a percentage	19.3%	

Final Comments:

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

7 J

**RESOLUTION AUTHORIZING PARTIAL PAYMENT TO CROSSLAND  
HEAVY CONTRACTORS, INC., FOR CONSTRUCTION OF THE LAKE  
FORT SMITH WATER TREATMENT PLANT - CONTRACT 3**

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

Partial payment number twelve to Crossland Heavy Contractors, Inc., in the amount of  
\$1,090,461.58, for construction of the Lake Fort Smith Water Treatment Plant - Contract 3,  
Project Number 07-09-C3, is hereby approved.

This Resolution adopted this \_\_\_\_\_ day of September 2010.

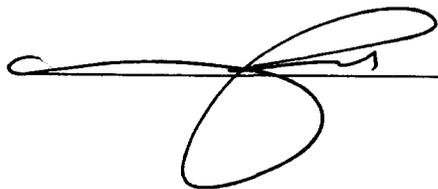
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** August 31, 2010

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

**SUBJECT:** Lake Fort Smith Water Treatment Plant Improvements  
Project Number 07-09-C3

Crossland Heavy Contractors, Inc., has submitted partial pay request number twelve in the amount of \$1,090,461.58 for work completed on the Lake Fort Smith Water Treatment Plant Improvements - Contract 3. A project summary sheet is attached for your information. The quality of Crossland's work continues to be very good and they are still on schedule to complete the project by the contract completion date. Major items of work completed during the time period covered by this pay request are as follows:

- Site Piping
- Site Electrical
- Clarification Facility
- Backwash Pump Station
- Chemical Building
- Chemical Storage and Feed Systems

The attached Resolution authorizes payment to Crossland. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

## Project Summary

Project status: Underway

Project name: Lake Fort Smith Water Treatment Plant  
Improvements - Contract 3

Today's date: August 31, 2010

Project number: 07-09-C3

Staff contact name: Steve Parke

Project engineer: Burns & McDonnell, Inc.

Staff contact phone: 784-2231

Project contractor: Crossland Heavy Contractors, Inc.

Notice to proceed issued: August 31, 2009

Completion date: December 27, 2011

	Dollar Amount	Contract Time (Days)
Original contract	\$31,641,000.00	785
Change orders:		
Change Order No. 1	\$22,902.00	14
Change Order No. 2	\$89,078.00	49
Change Order No. 3	\$-19,174.00	
Total change orders	\$92,806.00	<u>63</u>
Adjusted contract	<u>\$31,733,806.00</u>	<u>848</u>
Payments to date (as negative):	\$-15,119,858.15	
Amount of this payment (as negative)	\$-1,090,461.58	
Retainage held	\$1,586,690.30	
Contract balance remaining	\$15,523,486.27	
Amount Over as a percentage	1.00%	

### Final Comments:

To date contractor has completed 51% of the work (does not include payment for materials stored) and utilized 43% of the contract time (to substantial completion).

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

7 K

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN  
AGREEMENT WITH FSM REDEVELOPMENT PARTNERS, LLC,  
FOR THE RELOCATION OF SANITARY SEWER LINES

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

The Mayor is authorized to execute the attached Agreement between FSM  
Redevelopment Partners, LLC, a limited liability corporation, and the City of Fort Smith to  
provide for the relocation of certain sanitary sewer lines located within the Phoenix Village Mall  
Subdivision.

This Resolution adopted this \_\_\_\_\_ day of September 2010.

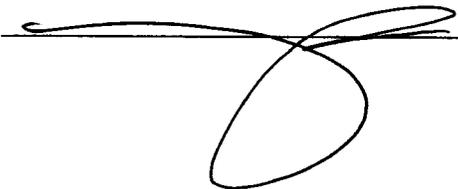
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

  
\_\_\_\_\_  
npr

**INTER-OFFICE MEMO**

**TO:** Dennis Kelly, City Administrator

**DATE:** September 2, 2010

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

**SUBJECT:** Sanitary Sewer Relocations for  
Phoenix Village Mall Subdivision Lots 1 - 9

The original construction of the buildings as part of the Phoenix Village Square and subsequent construction of the Phoenix Village Mall placed structures over and within easement areas held by the city for existing sanitary sewer lines. Over the years the city has claimed dominant easement rights related to its ability to maintain, repair or replace these sewers. The mall property has historically be owned by one owner. The new owner of the Phoenix Village Mall desires to subdivide the current property into 9 individual lots. The subdivision of the property now requires the city to take additional action at this time to clarify its position related to the easement rights and necessary actions for the sewer line relocations.

A Covenant has been negotiated with the current owner of the Phoenix Village Mall property, FSM Redevelopment Partners, LLC, which puts in place mutually agreed to terms for the resolution of the sanitary sewer line and building conflicts. A copy of the Covenant is attached. Some of the key points provided by the Covenant are as follows:

- The owner will provide, at no cost, the necessary easements for the relocation of the sanitary sewers.
- The city will use its best efforts to initiate the construction for the sewer relocations within 12 months.
- The city is responsible for the design cost and construction management of the sewer relocation work.
- The owner and city will equally share the cost of the sewer relocation up to a stated maximum responsibility of the owner's share at \$125,000.00. The total cost of the relocations is estimated at \$235,275.70; and the estimated cost to the owner and city is about \$117,637 each.

The approval of the Covenant is required for the city to release the proposed final plat for the Phoenix Village Mall Subdivision - Lots 1 through 9. A Resolution authorizing the Mayor to execute the Covenant with FSM Redevelopment Partners is attached. Staff recommends its approval.

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

attachment

pc: Mr. Lance Beaty, FSM Redevelopment Partners, LLC  
Mr. Jeb Joyce, Attorney

COVENANT WITH REFERENCE TO REAL PROPERTY

This Covenant made this \_\_\_ day of September, 2010 by **FSM Redevelopment Partners, LLC**, an Arkansas limited liability company ("Owner"), and the City of Fort Smith, Arkansas ("City"), as follows:

WITNESSETH:

In exchange for the forbearance by the City in enforcing certain rights and restrictions with reference to the existing permanent structures constructed over or within easements containing sanitary sewer lines in the Phoenix Village Mall Subdivision, to the City of Fort Smith, Arkansas, and an adjacent unplatted parcel of land generally described as 4510 Towson Avenue, Owner agrees as follows:

1. The subject real property is located in the Fort Smith District, County of Sebastian, State of Arkansas and is more particularly described as follows, to-wit (the "Owner Property"):

Phoenix Village Mall Subdivision

Phoenix Village Mall Subdivision, to the City of Fort Smith, Arkansas and a part of the Northeast Quarter of the Northeast Quarter, Section 32, Township-8-North, Range-32-West, Sebastian County Arkansas, and filed of record October 30, 1984

and

Unplatted Parcel

Part of the Southeast Quarter of the Northeast Quarter of Section 32, Township-8North, Range-32- West, described as: Beginning at

the Northeast corner of said Southeast Quarter of the Northeast Quarter; thence West 307.8 feet; thence South 200 feet; thence East 307.8 feet; thence North 200 feet to the point of beginning. Less and except public roads, easements and rights of way.

2. The Owner recognizes City's dominant easement right and that the City is not waiving any of its rights or protections provided to the City by law.

3. The Owner hereby expressly releases the City and its employees from any and all liability for any harm or damage to the Owner's property and building(s) arising from the existence of the sewer lines in question or the work performed to maintain, repair or relocate the sewer lines in question by the City. Any contractor retained by the City to perform work, maintenance, repair or relocation of the sewer lines in question shall be required to maintain liability insurance to protect the Owner's property and buildings.

4. Owner does hereby grant, bargain, sell and quitclaim to the City, TO HAVE AND TO HOLD, its successors and assigns, a permanent easement, without cost, over and across the Owner Property, in the locations depicted on the attached **Exhibit A** (collectively, the "Relocation Easements"), and further depicted on the plat for the subdivision of the Owner Property, to be filed in the real estate records of the Fort Smith District of Sebastian County, Arkansas. The purpose of the Relocation Easements is to relocate those certain portions of sanitary sewer lines currently on the Owner Property, further identified as an eighteen (18) inch diameter line located between manholes MC04-0570 and MC04-0460, and an eight (8) inch diameter line located between manholes MC04-0250 and MC04-0230 (collectively, the "Existing Sewer Lines"). The Relocation Easement locations are further described by the attached **Exhibit B**.

Owner does also hereby grant to the City rights of ingress, egress and access on,

across and over such portion of the Owner Property as necessary to obtain access to the Relocation Easements, for the purposes of constructing new sanitary sewer lines and related improvements within the Relocation Easements (the "Relocation Work"), and also for maintaining the new sanitary sewer lines and related improvements after initial construction. The City will provide written notice to Owner in advance of issuing a notice-to-proceed to its contractor of the proposed start of construction of the Relocation Work.

5. The parties agree the City shall use its best efforts to perform the Relocation Work within twelve (12) months from the date of this Agreement (the "Relocation Date"). The City shall consult with Owner regarding scheduling of the Relocation Work, and the parties shall use their best efforts to allow the Relocation Work to be performed on a mutually agreeable timetable.

The parties further agree that all design and engineering work with respect to the Relocation Work shall be performed by the City, at the City's sole cost and expense. The City shall receive bids on the Relocation Work, and the City agrees, if possible, the City will bid the Relocation Work as part of a larger construction contract, in order to minimize the construction cost of the Relocation Work. The City shall cause the Relocation Work to be performed.

The parties agree the estimated cost of the Relocation Work is set forth on the attached **Exhibit C**. Owner shall reimburse the City for fifty percent (50%) of the Relocation Work, but in any event Owner's contribution of the Relocation Work shall not exceed One Hundred Twenty-five Thousand and No/100 United States Dollars

(\$125,000.00) ("Owner's Maximum Share"). The Owner shall pay the City for fifty percent (50%) of each draw request during performance of the Relocation Work within ten (10) days of presentation from the City of a draw request by the contractor performing the Relocation Work.

6. In the event of a Relocation Event which occurs prior to the Relocation Date, the City shall cause the Existing Sewer Lines to be relocated to the Relocation Easements as soon as feasible. The term "Relocation Event" shall mean any failure or blockage of any portion of the Existing Sewer Lines. The word "failure" shall refer to any condition of the portion of the Existing Sewer Lines (i) in which the line is determined to be cracked or deflected to the extent to compromise its structural integrity or functionality; or (ii) in which the portion of line in question causes the exfiltration of sanitary sewer waste to occur onto real properties or streams. The Owner agrees that the City may use, at its sole discretion, any engineering practicable method, including sewer system televised inspection systems or flow monitoring devices immediately upstream and downstream from the portion of the sewer line in question, in making the determination of "failure". The term "blockage" shall refer to any condition caused by a physical defect which causes the reduction of the conveyance capacity through the line or any obstruction or collapse which prevents flow through the line.

In the event that the City determines that a Relocation Event has occurred, the City shall give notice thereof to Owner, if feasible in light of the urgency of the Relocation Event. The City may thereafter immediately establish and arrange temporary bypass pumps and piping as necessary to prevent the overflow or bypass of the sanitary sewer waste onto real

properties or streams (collectively, the "Emergency Repairs"), and to fully utilize the Owner Property in performing such Emergency Repairs without limitation or interference by Owner. The City will endeavor to provide Owner notice of any changes to the bypass pumping which may result in changed circumstances which impact Owner's property.

In the event a Relocation Event then the City shall establish bypass pumping to maintain the continued operation of the sanitary sewer system. The City shall perform Emergency Repairs to offset the need for continued bypass pumping operations unless it is determined by the City that the cost of said Emergency Repairs will exceed the cost associated with bypass pumping through the period of time required to accomplish the Relocation Work in an expeditious manner. Thereafter, the City shall immediately undertake actions to perform the Relocation Work in an expeditious manner and the costs associated with bypass pumping and/or Emergency Repairs, together with the Relocation Work performed in an Expeditious manner shall be split equally between the City and Owner, subject to the Owner's Maximum Share stated by paragraph 5 above.

7. The Owner does hereby covenant that no additional improvements, structures or fill material, shall be placed over the Existing Sewer Lines, the Relocation Easements, or at any other location or manner such that would interfere with the City's operation of the Existing Sewer Lines or the Relocation Easements.

8. The Owner hereby expressly encumbers the entirety of the Owner Property with the obligation of performing the duties and covenants in behalf of the Owner as contained in this Covenant. This Covenant is binding on the Owner, its successors and assigns, and runs with the title to the real property in question. For that reason, this Covenant shall be recorded in the real estate records of the Fort Smith District of Sebastian County,

Arkansas.

9. When all such relocations or removals have been completed so that the Relocation Work is completed, the provisions of this Covenant shall terminate and Owner may petition the City to abandon those portions of existing easements no longer required as a result of the Relocation Work, and if those portions of the existing easements are not utilized by other franchised utility companies, the City will not unreasonably withhold its approval of the Owner's petition.

10. This Covenant expresses the entire understanding of the parties in all negotiations resulting in the execution of the Covenant are merged herein. This Covenant shall not be altered except in writing mutually agreed upon by the City and Owner.

**IN WITNESS WHEREOF** this Agreement has been duly executed and made effective by the parties on this \_\_\_\_ day of \_\_\_\_\_, 2010.

**FSM REDEVELOPMENT  
PARTNERS, LLC,**  
an Arkansas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CHAMBERS BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE CITY OF FORT SMITH,  
ARKANSAS,**  
a municipal subdivision of the State of  
Arkansas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARKANSAS    )  
                                  )  
COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named **Lance Beaty**, to me well known, who stated that he is Managing Member of **FSM REDEVELOPMENT PARTNERS, LLC**, an Arkansas limited liability company, and was duly authorized in that capacity to execute the foregoing instrument for and in the name and on behalf of said limited liability company, and further stated and acknowledged 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 hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
( S E A L )

STATE OF ARKANSAS    )  
                                  )  
COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person \_\_\_\_\_ and \_\_\_\_\_ to me well known, who stated that they were the Mayor and City Clerk of **THE CITY OF FORT SMITH, ARKANSAS**, a municipal subdivision of the State of Arkansas, and are duly authorized in that capacity to execute the foregoing instrument for and in the name and on behalf of said municipal subdivision, and further stated and acknowledged that they 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 hereunto set my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_  
( S E A L )

O:\UtilityDept\_General\DWG\_BATA\Exhibits\Phoenix Village Mall\Exhibit A.dwg, 9/27/2010 12:10:18 PM, \\khyip01\UTL\_HP5550\HDN

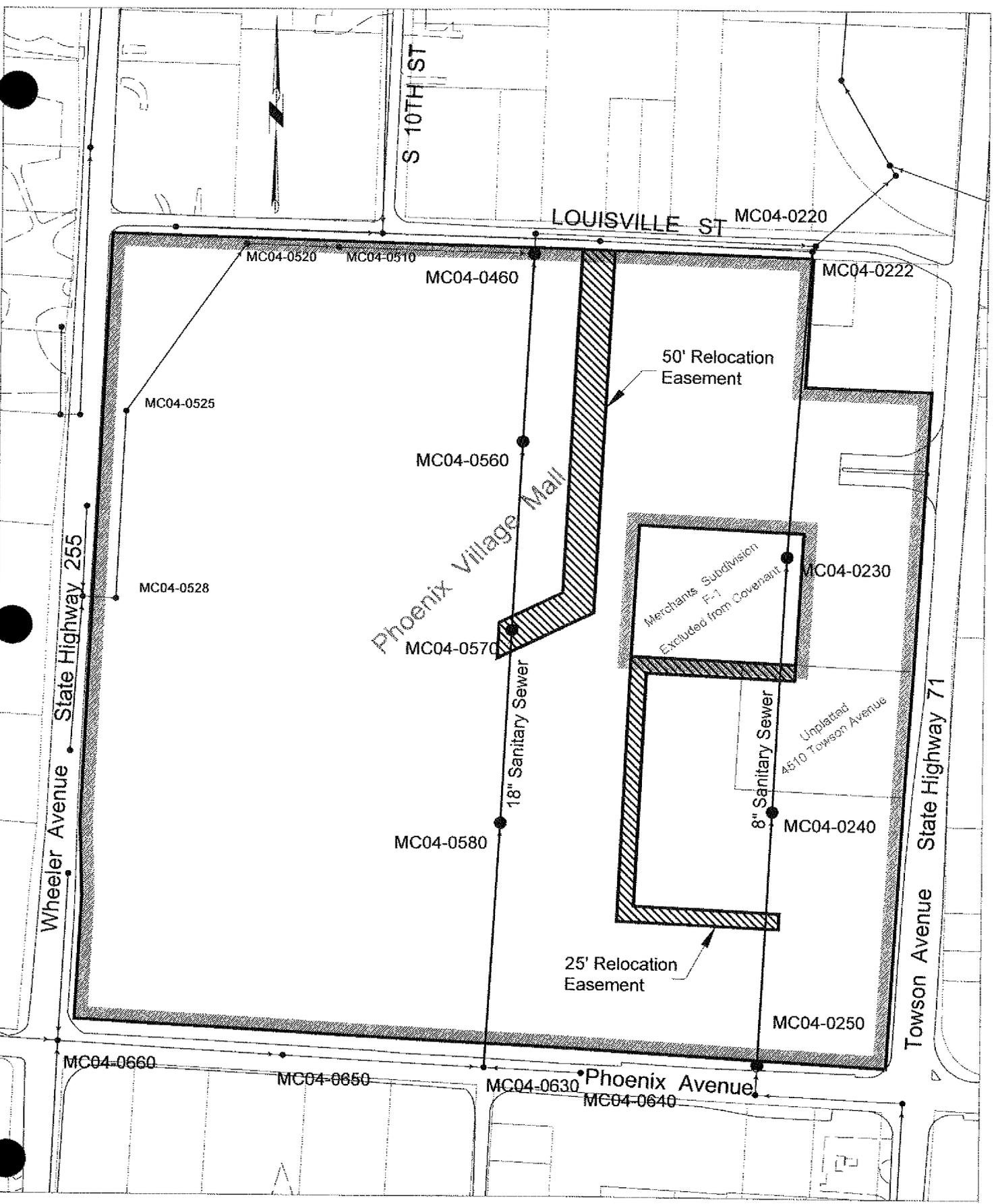


EXHIBIT "A"

## EXHIBIT B

Legal Descriptions for Sanitary Sewer Facilities for use with the Phoenix Village Mall Agreement of September 2010.

A 50 foot wide sanitary sewer easement lying 25 feet either side of a line under and upon the following described land situated in the City of Fort Smith, Sebastian County, Arkansas to wit:

A part of Phoenix Village Mall Subdivision to the City of Fort Smith, Arkansas and a part of the Northeast Quarter of the Northeast Quarter, Section 32, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas more particularly described as follows:

Commencing at a point marking the Northeast Corner of the Northeast Quarter of the Northeast Quarter of said Section 32, thence along the north line of said forty, North 88 degrees 05 minutes 39 seconds West 237.58 feet, thence leaving said north line, South 02 degrees 58 minutes 21 seconds West 25 feet to an existing p/k nail on the south right of way of Louisville Street, thence North 88 degrees 05 minutes 39 seconds West, 336.5 feet to point of beginning and center line of said 50 foot wide sanitary sewer easement, thence South 04 degrees 46 minutes 21 seconds west along said center line 555.20 feet to a point, thence South 77 degrees 57 minutes 21 seconds West along said center line 102.50 feet to the point of terminus.

ALSO,

A 25 foot wide sanitary sewer easement lying 12.5 feet either side of a line under and upon the following described land situated in the City of Fort Smith, Sebastian County, Arkansas, to wit:

A part of Phoenix Village Mall Subdivision to the City of Fort Smith, Arkansas and a part of the Northeast Quarter of the Northeast Quarter, Section 32, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas more particularly described as follows:

Commencing at the Northwest corner of Tract F-1 Merchants Subdivision, a subdivision in the City of Fort Smith, Arkansas, thence South 03 degrees 02 minutes 21 seconds West 208.70 feet, thence South 87 degrees 24 minutes 39 seconds East 256.05 feet to an existing rebar, thence South 02 degrees 43 minutes 09 seconds West, 12.5 feet to the point of beginning and center line of said 25 foot wide sanitary sewer easement, thence North 87 degrees 25 minutes 50 seconds West 243.55 feet to a point, thence South 03 degrees 02 minutes 21 seconds west 410.98 feet to a point, thence South 86 degrees 49 minutes 39 seconds East 243.27 feet to the point of terminus.

**EXHIBIT "C"**

**Cost Estimation for  
Phoenix Village Mall Subdivision Sanitary Sewer Relocations**

**Line One**

<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Description</u>	<u>Total</u>
866	LF	36.00	14-inch PVC Sewer Pipe	31,176.00
866	LF	25.00	Trenching & Backfill	21,650.00
4	EA	2,400.00	Manhole	9,600.00
1	EA	700.00	Remove or Abandon Manhole	700.00
166	CY	23.00	Granular Backfill	3,818.00
320	CY	70.00	Flowable Fill	22,400.00
105	TN	155.00	Asphalt	16,275.00
960	SY	5.00	Remove Asphalt	4,800.00
<hr/> Subtotal				110,419.00
Contingency (10%)				1.10
<hr/> Total				121,460.90

**Line Two**

<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Description</u>	<u>Total</u>
660	LF	44.00	18-inch PVC Sewer Pipe	29,040.00
660	LF	35.00	Trenching & Backfill	23,100.00
4	EA	3,000.00	Manhole	12,000.00
3	EA	700.00	Remove or Abandon Manhole	2,100.00
176	CY	23.00	Granular Backfill	4,048.00
244	CY	70.00	Flowable Fill	17,080.00
80	TN	155.00	Asphalt	12,400.00
740	SY	5.00	Remove Asphalt	3,700.00
<hr/> Subtotal				103,468.00
Contingency (10%)				1.10
<hr/> Total				113,814.80

**Grand Total**

**235,275.70**

**Owner Participation  
City Participation**

**117,637.85  
117,637.85**

# **AGENDA** ~ *Summary*

**FORT SMITH BOARD OF DIRECTORS  
REGULAR MEETING**

**SEPTEMBER 7, 2010 ~ 6:00 P.M.**

**FORT SMITH PUBLIC SCHOOLS  
SERVICE CENTER  
3205 JENNY LIND ROAD**

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

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**ROLL CALL**

*All present, except Director Good (Director Good arrived during discussion of Item No. 1)*

**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)*

*Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website*

**APPROVE MINUTES OF THE AUGUST 3, 2010 REGULAR MEETING**

*Unanimously approved as written*

**ITEMS OF BUSINESS:**

1. Public hearing and ordinance authorizing the issuance of industrial development revenue bonds to finance certain industrial facilities; authorizing the leasing of such facilities to Kraft Foods Global, Inc.; authorizing a trust indenture securing the bonds; authorizing the sale of the bonds; authorizing and prescribing other matters pertaining thereto; and declaring an emergency  
*Approved 7 in favor, 0 opposed / Ordinance No. 42-10*
2. Resolution supporting amendments to the Constitution of the State of Arkansas: (1) to eliminate constitutional limits on interest rates for government bonds and loan, revise interest rate limits on other loans, and authorize the financing of energy savings projects (Issue #2 at November 2010 General Election); and (2) to modify and improve the financing alternatives available to the state in support of major economic development projects in Arkansas (Issue #3 at November 2010 General Election)  
*Approved 7 in favor, 0 opposed / Resolution No. R-158-10*

3. Ordinance rezoning identified property and amending the zoning map (*Commercial Light (C-2) to Commercial Heavy (C-5) by extension located at 7601 Rogers Avenue*) ~ Tabled at the August 3, 2010 regular meeting ~  
*Withdrawn by vote of 7 in favor, 0 opposed (Withdrawal was requested by the applicant via their agent, Alan Lewis)*
4. Ordinance rezoning identified property and amending the zoning map (*Residential Multi-Family Medium Density (RM-3) to Commercial Neighborhood Compatible (C-1) by classification at 4101 Rogers Avenue*)  
*Approved 7 in favor, 0 opposed / Ordinance No. 43-10*
5. Ordinance rezoning identified property and amending the zoning map (*Transitional (T) to Commercial Light (C-2) by classification located at 5801 Jenny Lind*)  
*Approved 7 in favor, 0 opposed / Ordinance No. 44-10*
6. Report from Bennie Westphal regarding Riverfront Development Study (*Cushman-Wakefield*)  
*Withdrawn from agenda for a date yet to be determined.*
7. Consent Agenda
  - A. Resolution to accept the bids and authorize contract for the construction of Sunnymede Tributary Drainage Improvements, Project No. 09-06-A (\$730,538.00)  
*Approved 7 in favor, 0 opposed / Resolution No. R-159-10*
  - B. Resolution accepting a donation of property for the Sunnymede Tributary Drainage Improvements, Project No. 09-06-A  
*Approved 7 in favor, 0 opposed / Resolution No. R-160-10*
  - C. Resolution to accept the bids and authorize contract for the construction of Traffic Signal Improvements, Project No. 10-09-A (\$197,212.30)  
*Approved 7 in favor, 0 opposed / Resolution No. R-161-10*
  - D. Resolution allowing the sale of surplus vehicles and equipment at public auction  
*Approved 7 in favor, 0 opposed / Resolution No. R-162-10*
  - E. Resolution accepting bids for the reroofing of Fire Station No. 3 (\$67,669.00)  
*Approved 7 in favor, 0 opposed / Resolution No. R-163-10*
  - F. Resolution authorizing the execution of Memorandum of Understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas regarding the 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) Program  
*Approved 7 in favor, 0 opposed / Resolution No. R-164-10*

- G. Resolution accepting the project as complete and authorizing final payment to KAJACS Contractors, Inc. For construction of the Neighborhood Water Systems Improvements (\$64,484.60)  
*Approved 7 in favor, 0 opposed / Resolution No. R-165-10*
- H. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Sub-Basin 10-2 West Sanitary Sewer Rehabilitation (\$158,637.32)  
*Approved 7 in favor, 0 opposed / Resolution No. R-166-10*
- I. Resolution authorizing Change Order Number One with Utility Service Company for Fianna Hills elevated storage tank painting (\$41,500.00)  
*Approved 7 in favor, 0 opposed / Resolution No. R-167-10*
- J. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$1,090,461.58)  
*Approved 7 in favor, 0 opposed / Resolution No. R-168-10*
- K. Resolution authorizing the Mayor to execute an agreement with FSM Redevelopment Partners, LLC for the relocation of sanitary sewer lines  
*Approved 7 in favor, 0 opposed / Resolution No. R-169-10*

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

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

*Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website*

**CITIZENS FORUM ~ presentation of information by citizens ~ an opportunity for citizens to present matters to the Mayor and Board of Directors which involve the city government and are not directly related to items considered on the agenda for this meeting. *Presentations are limited to 2 minutes for each citizen***  
**(Section 2-44(b) of Ordinance No. 24-10)**

*Information available by viewing rebroadcast of the meeting on City Access Channel 6 or City website*

**ADJOURN**

## **MINUTES OF BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ SEPTEMBER 7, 2010 ~ 6:00 P.M.**

### **FORT SMITH PUBLIC SCHOOLS SERVICE CENTER**

The meeting was called to order by Vice-Mayor Gary Campbell, presiding in the absence of Mayor Ray Baker. Invocation was given by Director Don Hutchings, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Steve Tyler, Don Hutchings, Bill Maddox, Gary Campbell, Kevin Settle and Cole Goodman. Director Andre' Good arrived during discussion of Item No. 1. The Vice-Mayor declared a quorum present.

Vice-Mayor Campbell inquired if any Board member had an item of business to present that was not already on the agenda. There was none presented.

The minutes of the August 17, 2010 regular meeting were presented for approval. Settle, seconded by Maddox, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

With regard to the time limit policy for persons wishing to address the Board, Mayor Baker communicated that five (5) minutes per side would be extended on controversial items with three (3) minutes for rebuttal per side.

Vice-Mayor Campbell announced this was the time and place set for a public hearing regarding the issuance of industrial development revenue bonds to finance certain industrial facilities; authorizing the leasing of such facilities to Kraft Foods Global, Inc. (Planters); authorizing a trust indenture securing the bonds; authorizing the sale of the bonds; authorizing and prescribing other matters pertaining thereto. Following the public

**September 7, 2010 Regular Meeting**

hearing, consideration of an ordinance authorizing same would be given (Item No. 1)

Deputy Administrator Ray Gosack briefed the Board on the item advising Planters is planning the addition of a new processing operation to its Fort Smith plant. Such is an estimated \$18 to \$20 million investment. Although the expansion will not result in any new jobs, the company feels the investment will bring future investments to the Fort Smith plant which could result in additional employment.

There being no individual present to speak, Vice-Mayor Campbell closed the public hearing.

Hutchings, seconded by Maddox, moved to suspend the rules to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the City Clerk read the ordinance for its readings. Settle, seconded by Hutchings, moved adoption of the ordinance. The members all voting affirmatively, the Vice-Mayor declared the motion carried. Hutchings, seconded by Maddox, moved adoption of Section 12 the emergency clause. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance and emergency clause were adopted and given No. 42-10.

Item No. 2 was a resolution supporting amendments to the Constitution of the State of Arkansas: (1) to eliminate constitutional limits on interest rates for government bonds and loan, revise interest rate limits on other loans, and authorize the financing of energy savings projects (Issue #2 at November 2010 General Election); and (2) to modify and improve the financing alternatives available to the state in support of major economic

### **September 7, 2010 Regular Meeting**

development projects in Arkansas (Issue #3 at November 2010 General Election)

Mr. Gosack briefed the Board on the item advising the Arkansas Municipal League has requested its member cities adopt a resolution of support for two (2) proposed amendments to the state constitution, which Arkansas voters will consider in the November General Election. The first of the amendments, Issue 2, addresses interest rate limits and bond financing limitations, which the three major provisions are as follows:

- Repeal an interest rate cap of 2% above the federal discount rate on bonds issued by governmental units including cities.
- Allow governmental entities to issue bonds to finance energy-efficiency projects and use savings from the projects to repay the loans.
- Remove an interest rate cap of 5% above the federal discount rate on consumer loans.

The second of the amendments, Issue 3, affects “superfund” economic development projects. Amendment 82 of the Arkansas Constitution restricts the issuance of economic development bonds to major projects with at least a \$500 million investment and at least 500 new jobs. The aforementioned requirements has resulted in no use of these bonds in Arkansas; therefore, the amendment authorizes the legislature to set new financial criteria for the bond issues.

Regarding Issue 2, Director Maddox questioned if energy savings would be of a sufficient amount to repay the loans; therefore, he inquired if the City could utilize other sources to repay the loans.

Mr. Gosack noted that state legislation previously allowed governmental entities to utilize “tax” revenue savings from the energy efficiency project to repay the loans; however,

### ***September 7, 2010 Regular Meeting***

the existing language raised some question about its constitutionality. The proposed amendment clears up the legislation thereby allowing the energy efficiency savings to be utilized, even if the savings comes from the tax revenues.

Director Settle questioned the feasibility of refinancing some of the City's existing debt to take advantage of the current low interest rates.

Mr. Gosack noted that several factors exist in order to determine the feasibility, such as current market conditions, limitations of the Internal Revenue Service, or some may require voter approval. Although a lower interest rate may seem cost effective, often times the cost to reissue the bonds supercedes the cost savings from the lower interest rate, thereby resulting in little or no savings at all.

Settle, seconded by Tyler, moved adoption of the resolution. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the resolution was adopted and given No. R-158-10.

Item No. 3 was an ordinance rezoning identified property and amending the zoning map (*Commercial Light (C-2) to Commercial Heavy (C-5) by extension located at 7601 Rogers Avenue*) ~ *Tabled at the August 3, 2010 regular meeting* ~

Director of Development Services Wally Bailey briefed the Board on the item advising Mr. Alan Lewis, agent for DHC Properties of Fort Smith (DHC), requested the item be tabled at the August 3, 2010 regular meeting in order to resolve issues relative to restrictive covenants that limit or restrict land uses for each of the sites. One of the restrictions limits the right of the property owner to serve food or show movies, which is the intended use and purpose of the rezoning. Dollar Tree has a sub-lease on the building

***September 7, 2010 Regular Meeting***

next door to the site and their corporate real estate department refuses to sign a consent permitting DHC to amend the covenants; therefore, the proposed development may not proceed thereby removing the necessity of the rezoning request. Per the UDO, the withdrawal request must be formally accepted by the Board.

Director Goodman conveyed much discontent with the refusal by Dollar Tree and questioned what could be located in the currently vacant sections of the building. He also requested confirmation that Dollar Tree's refusal will be the development will not proceed.

Mr. Lewis advised that the former lease holder was Office Max; therefore, office products or general products may be sold on the site. With regard to the confirmation, he simply stated Director Goodman's comment is a "fairly accurate synopsis".

Maddox, seconded by Hutchings, moved to accept the requested withdrawal of item. The members all voting affirmatively, the Vice-Mayor declared the motion carried.

Item No. 4 was an ordinance rezoning identified property and amending the zoning map (*Residential Multi-Family Medium Density (RM-3) to Commercial Neighborhood Compatible (C-1) by classification at 4101 Rogers Avenue*)

Mr. Bailey briefed the Board on the item advising such is per the request of Damon Wright, agent for the property owner. The purpose of the rezoning is to allow the property to be utilized for commercial use. The applicant originally requested a zone change to Commercial-2; however, as required, a neighborhood meeting was held on July 29, 2010 with several neighbors in attendance and due to their concerns, the applicant agreed to amend the request to Commercial-Neighborhood (C-1). The Planning Commission held a public hearing on August 10, 2010 with Mr. Mike Thames and Ms. Suzie Smith present

**September 7, 2010 Regular Meeting**

to convey noise and odor concerns. The Planning Commission approved the amended request by a vote of six (6) in favor and zero (0) opposed.

Director Tyler noted that the Big Brother Big Sister Foundation is considering the site for a donation drop off location; therefore, he questioned if the proposed rezoning classification would allow such

Mr. Bailey advised that such would require a conditional use permit, which requires Planning Commission approval.

Director Hutchings noted that the previous businesses at the location were allowed as legal non-confirming uses and questioned if the legal non-confirming use expires when the business vacates the property.

Mr. Bailey advised the legal non-confirming use remains in effect for one year after the business vacates; however, he feels certain such has now expired.

Maddox, seconded by Hutchings, moved adoption of the ordinance. The motion included suspending the rules to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given No. 43-10.

Item No. 5 was an ordinance rezoning identified property and amending the zoning map (*Transitional (T) to Commercial Light (C-2) by classification located at 5801 Jenny Lind*)

Mr. Bailey briefed the Board on the item advising such is per the request of Angela Mayfield, agent for Westphal Investment Management Inc. The purpose of the rezoning

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request is to allow for a therapeutic massage business to occupy the existing building. The subject property has previously been used as offices for employment agencies and is already developed with a parking lot. An issue exists whereby acquisition of this property will eventually be required for the future widening of Jenny Lind Road, which is expected in the next 12 to 24 months. The agent and property owner are aware of the taking, but they wish to proceed with the rezoning request. Such would provide Ms. Mayfield said time to establish her therapeutic massage business. Due to concerns with the anticipated appraisal for future acquisition of the property, Mr. Westphal has submitted a letter indicating his acceptance of the appraisal value under the existing Transitional zoning. As required, a neighborhood meeting was held on July 23, 2010 and the Planning Commission held a public hearing on August 10, 2010 with no individual present to speak in opposition. The Planning Commission approved the rezoning by a vote of six (6) in favor and zero (0) opposed.

Hutchings, seconded by Settle, moved adoption of the ordinance. The motion included suspending the rules to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Vice-Mayor declared the motion carried and the ordinance was adopted and given No. 44-10.

Item No. 6 was a report from Bennie Westphal regarding Riverfront Development Study (*Cushman-Wakefield*)

Administrator Kelly advised that Mr. Westphal has requested the consultants also be present for the report; therefore, he requested the matter be postponed to a later date.

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Director Maddox questioned why the item was placed on a regular meeting agenda rather than a study session agenda.

Mr. Kelly advised the project has been completed and advised it was his desire for the report to be presented at the next meeting of the Board, which was the September 7 regular meeting.

The Board concurred to accept the postponement of the item to a later date.

The Consent Agenda (Item No. 7) was introduced for consideration, the items being as follows:

- A. Resolution to accept the bids and authorize contract for the construction of Sunnymede Tributary Drainage Improvements, Project No. 09-06-A (\$730,538.00)
- B. Resolution accepting a donation of property for the Sunnymede Tributary Drainage Improvements, Project No. 09-06-A
- C. Resolution to accept the bids and authorize contract for the construction of Traffic Signal Improvements, Project No. 10-09-A (\$197,212.30)
- D. Resolution allowing the sale of surplus vehicles and equipment at public auction
- E. Resolution accepting bids for the reroofing of Fire Station No. 3 (\$67,669.00)
- F. Resolution authorizing the execution of Memorandum of Understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas regarding the 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) Program
- G. Resolution accepting the project as complete and authorizing final payment to KAJACS Contractors, Inc. For construction of the Neighborhood Water Systems Improvements (\$64,484.60)

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- H. Resolution accepting the project as complete and authorizing final payment to Wilson Brothers Construction Company, Inc. for the Sub-Basin 10-2 West Sanitary Sewer Rehabilitation (\$158,637.32)
- I. Resolution authorizing Change Order Number One with Utility Service Company for Fianna Hills elevated storage tank painting (\$41,500.00)
- J. Resolution authorizing partial payment to Crossland Heavy Contractors, Inc. for construction of the Lake Fort Smith Water Treatment Plant - Contract 3 (\$1,090,461.58)
- K. Resolution authorizing the Mayor to execute an agreement with FSM Redevelopment Partners, LLC for the relocation of sanitary sewer lines

Regarding Item No. 7D, Vice-Mayor Campbell advised of a correction whereby the listed 1997 model Oshkosh Snorkel 65 foot fire & rescue truck should actually be a 1977 model.

Administrator Kelly clarified that the blue van on the auction list is not technically owned by the City; however, such is owned by the Fort Smith Public Library (FSPL). The FSPL has tried to sale the van in the past, but has been unsuccessful; therefore, they have provided the necessary authorizations to the City to include such in the public auction.

With regard to Item No. 7I, Director Settle simply requested the Board be forwarded pictures of the damaged pipe.

Director of Utilities Steve Parke advised that such are on video and he will transfer to a still-picture format and forward as requested.

Regarding Item No. 7K, Director Good requested a brief explanation of the item.

Mr. Parke noted that during the original construction of the buildings within the

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Phoenix Village Mall development, some structures were constructed over and within easement areas held by the City for existing sanitary sewer lines. The City has maintained dominant easement rights related to the sewer lines. The property has historically been owned by one owner; however, the new owner desires to subdivide the property into nine (9) individual lots. The subdivision now requires the City to take additional action to clarify its position related to the easement rights and necessary actions for the sewer line relocations. The proposed agreement has been negotiated and such puts in place the mutually agreed to terms for the resolution of the sanitary sewer line and building conflicts.

Good, seconded by Maddox, moved approval of all consent agenda items. The members all voting affirmatively, the Vice-Mayor declared the motion carried and the resolutions were adopted and numbered R-159-10 through R-169-10 respectively.

Vice-Mayor Campbell opened the Officials Forum with the following comments offered:

▶ Director Good

Re: Regarding the Housing Assistance Board, he recognized the "*great job*" they do for the city. He advised they review numerous applications for CDBG funding to rehabilitate residential structures and even with limited funding, he commented, "*it's amazing what a small group can do.*"

▶ Administrator Kelly

Re: 1. Reminded all of the City's Public Auction scheduled for 10:00 a.m., Thursday, September 9 at the Fort Smith Public Transit facility, 6821 Jenny Lind Road.

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2. Encouraged all to attend the 9-11 Ceremony scheduled for 10:00 a.m., Friday, September 10 at the bell tower on the University of Arkansas Fort Smith campus. Weather permitting, he further noted of the possibility of a fly-over by the 188<sup>th</sup> Fighter Wing.

With regard to the time limit policy for persons wishing to address the Board in Citizens Forum, Vice-Mayor Campbell communicated that two (2) minutes will be allotted to each person wishing to speak.

Vice-Mayor Campbell opened the Citizens Forum with the following individuals present to address the Board:

- John Hamel  
3301 Old Greenwood Road  
  
Re:
  1. Recommended the ward directors hold more meetings with the constituents of their specific wards.
  2. Regarding industrial development revenue bonds, he alleged the tax discount associated with such is not good for the city. He feels the companies should pay the full amount of taxes for the land they utilize.
- Jerry Hamel  
4618 Wheeler Avenue  
  
Re: Alleged the City gives away millions of tax dollars; therefore, he questioned the rational of the impending election for a prepared food tax.
- Paul Speer  
Charleston, Arkansas  
  
Re: Commented that Garrison Avenue once maintained a variety of shopping opportunities; however, he alleged such now only consists of bars, banks or abandoned

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buildings. He noted that drainage is an issue for downtown and encouraged such be addressed citing drainage improvements would bring additional businesses to the area.

- J. R. Vincent  
(No address provided)

Re: Noted that U.S. Senator Blanche Lincoln previously came to Fort Smith to celebrate a new line at Whirlpool; however, he stated that Whirlpool has now laid off multiple people. Due to such, he questioned if the City has contacted Ms. Lincoln to advise her of such.

There being no further business to come before the Board, Maddox moved that the meeting adjourn. The motion was seconded by Tyler and the members all voting aye, the Vice-Mayor declared the motion carried, and the meeting stood adjourned.

**APPROVED:**

  
\_\_\_\_\_  
VICE MAYOR

**ATTEST:**

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