

Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith Lau

Ward 2 – Andre’ Good

Ward 3 – Mike Lorenz

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

AGENDA
Fort Smith Board of Directors
Regular Meeting
April 16, 2013 ~ 6:00 P.M.
Fort Smith Public Schools Service Center
3205 Jenny Lind Road

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

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

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

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

APPROVE MINUTES OF THE APRIL 2, 2013 REGULAR MEETING

ITEMS OF BUSINESS:

1. Ordinance authorizing transfers to the Employee Health and Wellness Fund
~ Weber / Merry placed on agenda at the April 9, 2013 study session ~
2. Consent Agenda
 - A. Resolution authorizing additional work and a time extension for the construction of the May Branch Outfall Culvert Replacement, Project No. 12-06-E (\$361,516.00 / Engineering Department / Budgeted - Sales Tax Program Fund)
 - B. Resolution to accept completion of and authorize final payment for the construction of Street Overlays/Reconstruction, Project 12-03-A (\$59,222.64 / Engineering Department / Budgeted - Sales Tax Program Fund)
 - C. Resolution accepting bid for the purchase of an excavator (\$91,735.00 / Utility Department / Budgeted – Operating Fund / Capital Outlay)

- D. Resolution approving a tolling agreement with the United States Department of Justice relating to wet weather sanitary sewer work
- E. Resolution authorizing the Mayor to execute Authorization No. 4 to the agreement with Hawkins-Weir Engineers, Inc. for engineering services for the Zero Street Pump Station Wet Weather Improvements – Pump Station and EQ Storage (\$1,231,400.00 / Utility Department / Budgeted – 2012 Sales and Use Tax Bonds)
- F. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Archer Western Contractors, LLC for the Zero Street Pump Station Wet Weather Improvements – Pump Station and EQ Storage (\$12,193,000.00 / Utility Department / Budgeted – 2012 Sales and Use Tax Bonds)
- G. Resolution authorizing the Mayor to execute a Restrictive Covenant, Notice of Implementing Agreement and Notice of Property Development Decision Document for the Arkansas Brownsfield Program with the Arkansas Department of Environmental Quality in connection with the Zero Street Pump Station Wet Weather Improvements
- H. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for construction of the River Front Development Water and Sewer Extensions (\$99,526.05 / Utility Department / Budgeted – 2008 Revenue Bonds)

OFFICIALS FORUM ~ presentation of information requiring no official action

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

- Mayor
- Directors
- City Administrator

ADJOURN

1.

ORDINANCE NO.
AN ORDINANCE AUTHORIZING TRANSFERS TO THE EMPLOYEE HEALTH AND
WELLNESS FUND

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

SECTION 1: There is hereby authorized a transfer of \$454,000 from the unobligated balance of the Workers' Compensation Fund to the Employee Health and Wellness Fund to provide additional funding for 2013.

SECTION 2: There is hereby authorized the following transfers from each fund to the Employee Health & Wellness Fund to provide additional funding for 2013:

Street Maintenance Fund	\$ 57,900
Water & Sewer Operating Fund	\$174,500
Sanitation Operating Fund	\$ 76,500
Convention Center Fund	\$ 15,410
Cleanup/Demolition Fund	\$ 7,050
A&P Fund	\$ 5,960
Water & Sewer Construction Fund	\$ 3,310
CDBG Fund	\$ 3,000
Parking Authority Fund	\$ 2,370

THIS ORDINANCE ADOPTED THIS _____ DAY OF _____, 2013

APPROVED:

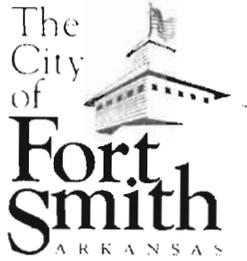
MAYOR

ATTEST:

CITY CLERK

Approved as to form:





April 9, 2013

MEMORANDUM

TO: Ray Gosack, City Administrator

FROM : Kara Bushkuhl, Director of Finance 

SUBJECT: Transfers to the Health & Wellness Fund

As discussed during the April 9, 2013 Study Session, the Employee Health and Wellness Fund requires an additional \$800,000 to meet its estimated claims expenses for 2013. The share of the \$800,000 is based upon the actual funding levels charged for insurance in each program's 2013 budget. It is recommended that the General Fund portion of \$454,000 be funded by a transfer from the Workers' Compensation Fund that has a sufficient balance to handle this transfer. The allocations for the other funds are: \$57,900 from the Street Maintenance Fund; \$174,500 from the Water and Sewer Operating Fund; \$76,500 from the Sanitation Operating Fund; \$15,410 from the Convention Center Fund; \$7,050 from the Cleanup/Demolition Fund; \$5,960 from the A&P Fund; \$3,300 from the Water and Sewer Construction Fund; \$3,000 from the CDBG Fund; and \$2,370 from the Parking Authority Fund.

The attached ordinance provides for the additional funding for the Employee Health and Wellness Fund. I recommend approval of the ordinance.

RESOLUTION _____

**A RESOLUTION AUTHORIZING ADDITIONAL WORK AND
A TIME EXTENSION FOR THE CONSTRUCTION OF THE
MAY BRANCH OUTFALL CULVERT REPLACEMENT
PROJECT NO. 12-06-E**

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

SECTION 1: A contract addition with Mobley Contractors, Inc., for the May Branch Outfall Culvert Replacement, Project 12-06-E, which increases the contract amount by \$361,516.00 to an adjusted contract amount of \$5,851,903.78 and increases the contract time by 30 calendar days is hereby approved.

SECTION 2: Payment for construction authorized by Section 1 is hereby authorized from the Sales Tax Fund (1105).

This resolution adopted this _____ day of April, 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



No Publication Required

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

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

DATE: April 10, 2013

SUBJECT: May Branch Outfall Culvert Replacement
Contract Addition – Flood Slide Gate Replacement
Project No. 12-06-E

The May Branch outfall culvert is a 12 foot diameter concrete culvert that serves as the outfall for the May Branch drainage basin and the P Street wastewater treatment plant. This section of pipe is also known as the North P Street outfall which was constructed approximately 100 years ago. This project is for replacement of approximately 1200 feet of the outfall pipe with a pre-cast 12'x10' concrete box culvert. A project location map is attached.

This pipe connects to the P Street pump station which was constructed in 1948. In the event that the Arkansas River experiences severe flooding the gate is closed and the pumps are operated to remove flood water within this watershed. Replacement of this large flood gate was determined to be necessary as part of the flood protection and levee certification process. This sixty five year old gate and slides are severely rusted and corroded. Pictures of it are attached.

Our 2013 capital improvement program contains another project for various repairs to this pump station including replacement of this floodgate. As we have a contractor mobilized in this area and the site is already dewatered, we believe it would be more efficient and economical to replace the large flood gate at this time through a contract addition. The price for replacement of the gate is \$361,516.00 which is 6.6% of the original contract amount of \$5,490,387.78. An additional 30 days will also be added to the original contract time of 365 days. A project summary sheet is attached.

Attached is a resolution to amend the construction contract as noted above. I recommend that the resolution be accepted by the Board of Directors at the next regular meeting.

Enclosures

G:\DRAWINGS\CIP\00-00 CIPALL\2012\DRAINAGE\2012 Drng.dwg 09/20/11-13:12 RBR Maybranch

ARKANSAS RIVER

RIVERFRONT DRIVE

"P" ST.

MAY BRANCH PUMP STATION

LIMITS OF CULVERT REPLACEMENT

12 FT DIAMETER CONCRETE CULVERT

BRIDGE

"P" ST.

BALLMAN ROAD



2012 CAPITAL IMPROVEMENTS PROGRAM
MAYBRANCH OUTFALL CULVERT REPLACEMENT
DRAINAGE IMPROVEMENTS



Project:			
Date:	SEPT. 2011		
Scale:	NONE		
Drawn By:	RBR	Page:	





PROJECT SUMMARY SHEET

City of Fort Smith

Project Status: Ongoing (26%)

Today's Date: 4/10/2013

Staff contact name: Stan Snodgrass

Staff contact phone: 784-2225

Contract time (no of days): 365

Notice to proceed issued: 1/3/2013

Project Name: Maybranch Outfall Culvert Replacement

Project Number: 12-06-E

Consultant Engineer: Mickle Wagner Coleman

Project Contractor: Mobley Contractors, Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$5,490,387.78	9/25/2012	1/2/2014
Contract Revisions:			
1 Addition of Flood Gate Replacement & 30 day time extension	\$361,516.00		2/1/2014
2			
3			
Adjusted contract amount	<u>\$5,851,903.78</u>		
Payments to date (as negative):	\$1,297,379.67		
Amount of this payment	N/A		
Contract balance remaining	\$4,410,370.81		
Retainage held	\$144,153.30 (10%)		
Final payment	N/A		
Amount under original as a percentage	N/A		

Final Comments:

RESOLUTION _____

**A RESOLUTION TO ACCEPT COMPLETION OF AND
AUTHORIZE FINAL PAYMENT FOR THE CONSTRUCTION OF
STREET OVERLAYS/RECONSTRUCTION
PROJECT NO. 12-03-A**

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

SECTION 1: The City of Fort Smith hereby accepts the construction of the Street Overlays/Reconstruction, Project No. 12-03-A, as complete.

SECTION 2: Final payment is authorized in the amount of \$59,222.64 to the contractor Forsgren, Inc., for the Street Overlays/Reconstruction, Project No. 12-03-A.

This resolution adopted this _____ day of April, 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form



No Publication Required

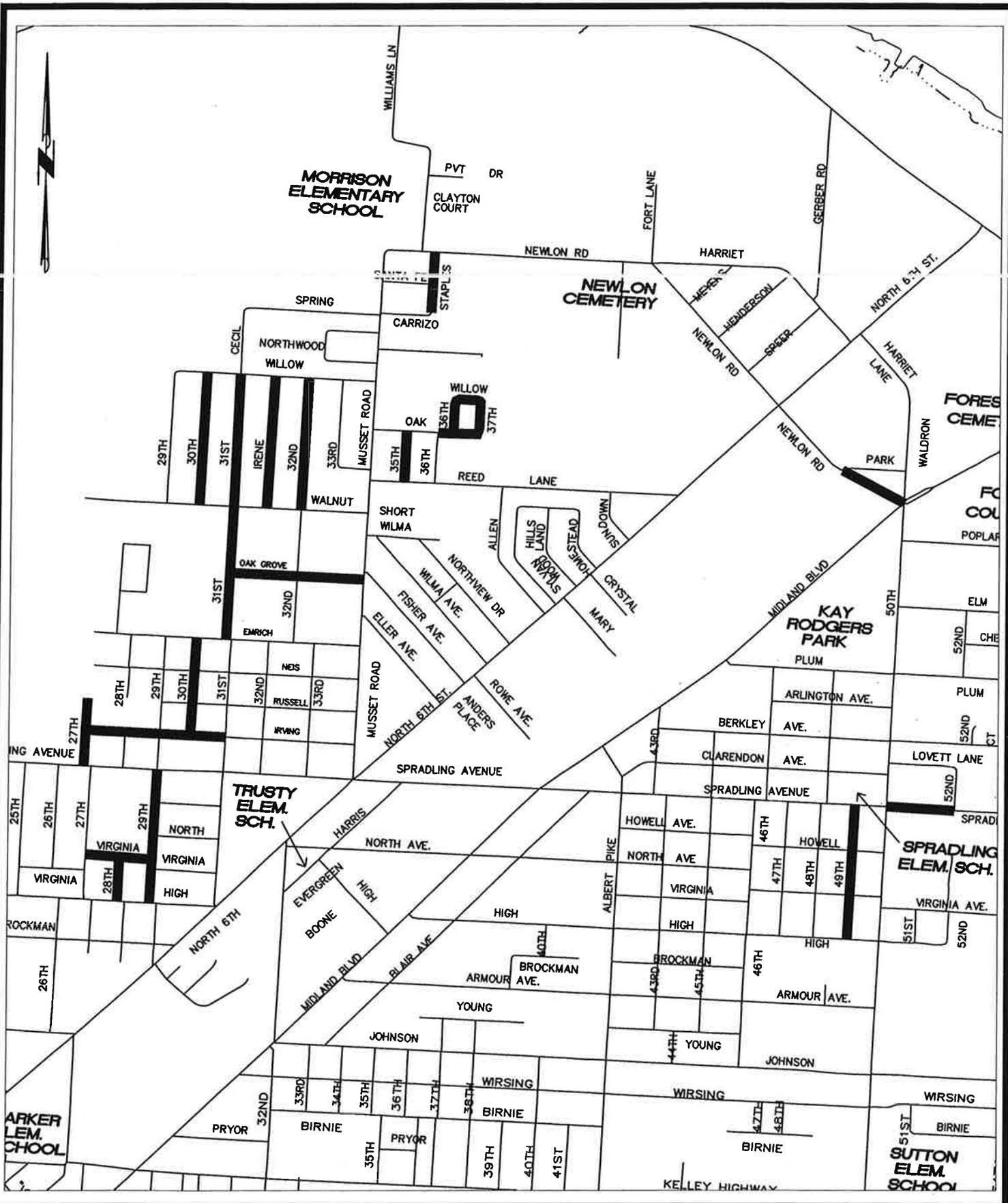
INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator
FROM: Stan Snodgrass, P.E., Director of Engineering
DATE: April 10, 2013
SUBJECT: Street Overlays/Reconstruction
Project No. 12-03-A

The above subject project consisted of asphalt street overlays, reconstruction and minor drainage improvements to the streets listed on the attached sheet and shown on the attached exhibit. The total length of streets improved was approximately 3.4 miles. A project summary sheet is also attached.

Attached is a resolution to accept the project as complete and authorize final payment to the contractor. I recommend that the resolution be accepted by the Board of Directors at the next regular meeting.

Enclosures



2012 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION



Project:	12-03-A
Date:	OCT. 2011
Scale:	NONE
Drawn By:	RBR

**2012 CAPITAL IMPROVEMENTS PROGRAM
STREET OVERLAYS/RECONSTRUCTION
PROJECT NO. 12-03-A**

STREET	FROM	TO	LENGTH
STAPLES ST.	CARRIZO ST.	NEWLON RD.	621
37TH ST.	OAK ST.	WILLOW ST.	331
36TH ST.	OAK ST.	WILLOW ST.	331
WILLOW ST.	36TH ST.	37TH ST.	257
OAK ST.	36TH ST.	37TH ST.	393
35TH ST.	REED LN.	OAK ST.	510
30TH ST.	WALNUT ST.	WILLOW ST.	1,330
31ST ST.	EMRICH ST.	WILLOW ST.	2,654
32ND ST.	WALNUT ST.	WILLOW ST.	1,323
IRENE ST.	WALNUT ST.	WILLOW ST.	1,324
OAKGROVE ST.	31ST ST.	MUSSETT RD.	1,325
27TH ST.	SPRADLING AVE.	END OF ROAD	636
30TH ST.	IRVING ST.	EMRICH ST.	976
IRVING ST.	27TH ST.	31ST ST.	1,379
VIRGINIA AVE.	27TH ST.	29TH ST.	661
28TH ST.	HIGH ST.	VIRGINIA AVE.	447
29TH ST.	HIGH ST.	SPRADLING AVE.	1,330
NEWLON RD.	PARK ST.	MIDLAND BLVD.	691
SPRADLING AVE.	50TH ST.	52ND ST.	300
49TH ST.	HIGH ST.	SPRADLING AVE.	1,344

PROJECT SUMMARY SHEET

City of Fort Smith
 Project Status: Complete
 Today's Date: 4/10/2013
 Staff contact name: Stan Snodgrass
 Staff contact phone: 784-2225
 Contract time (no of days): 270
 Notice to proceed issued: 5/14/2012

Project Name: 2012 Street Overlay/Reconstruction
 Project Number: 12-03-A
 Consultant Engineer: McGuire Engineering
 Project Contractor: Forsgren, Inc.

	Dollar Amount	Bid Date	Contract Completion Date
Original bid award	\$2,770,417.20	4/24/2012	2/7/2013
Contract Revisions:			
1			
2			
3			
Adjusted contract amount	<u>\$2,770,417.20</u>		
Payments to date (as negative):	\$2,646,254.27		
Amount of this payment	\$59,222.64		
Contract balance remaining	\$64,940.29		
Retainage held	0%		
Final payment	\$59,222.64		
Amount under original as a percentage	2.3%		

Final Comments:

2C

RESOLUTION NO. _____

RESOLUTION ACCEPTING BID FOR THE PURCHASE OF AN EXCAVATOR

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

The bid, as indicated by enclosure for the purchase of a hydraulic excavator from J.A. Riggs Tractor Company for \$91,735, is accepted.

This Resolution adopted this _____ day of April, 2013.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:



No Publication Required

2C

Interoffice Memorandum

TO: Ray Gosack, City Administrator
COPY TO: Steve Parke, Director of Utilities
FROM: Alie Bahsoon, Purchasing Manager 
SUBJECT: Excavator Purchase
DATE: April 12, 2013



In December of 2005, the Board of Directors approved Ordinance 93-05, thereby authorizing the city to participate in the State Cooperative Purchasing program. This process has enabled us to take advantage of other negotiated contracts that the State of Arkansas currently participates in.

One of these contracts is the National Joint Powers Alliance (NJPA), a national municipal contracting agency offering national contract purchasing solutions by facilitating and awarding national competitively bid contracts. Because of their contract, local governments nationwide are permitted to purchase through their cooperative purchasing program.

The Sewer Line Construction Department (Program 5612) has budgeted \$100,000 for this purchase for which funding has been appropriated for in the 2013 City Budget as a Capital Outlay line item (5612-301). Because of the NJPA contract (No. 060311), bids were not solicited and we are therefore acquiring this excavator from J.A. Riggs Tractor Company of Fort Smith in the amount of \$91,735. You will find attached a memorandum from the Utilities Department with additional information about this purchase.

Please be advised that this purchase fulfills all of the purchasing obligations as mandated by both state and local purchasing requirements; I am therefore recommending that the enclosed resolution be approved.

Please let me know if should require any additional information.

INTER-OFFICE MEMO

TO: Alie Bahsoon
FROM: Darren Bonds, Program Supervisor
SUBJECT: Replacement of Excavator
DATE: April 12, 2013

Asset # 2007
Daewoo Solar 70 III Year 2000

This unit is in need of replacement due to age and availability of parts needed to keep it in operation. It has hydraulic leaks and loss of power. The unit will be placed in the 2013 auction.



PRODUCTS PURCHASE ORDER

Riggs CAT, 9125 Interstate 30, Little Rock, AR 72203-1399 Phone:501-570-3100

SOLD TO	Buyer	CITY OF FORT SMITH		SHIP TO	
	STREET ADDRESS	3900 KELLEY HWY			<SAME>
	CITY/STATE	FORT, AR	COUNTY		SEBASTIAN (56N)
	POSTAL CODE	72904-5610	PHONE NO.		479 785 2801
	CUSTOMER	EQUIPMENT			
	CONTACT:	PRODUCT SUPPORT			

CUSTOMER NUMBER 060560	Sales Tax Exemption # (if applicable) N/A	CUSTOMER PO NUMBER
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PAYMENT TERMS:			
FINANCIAL SERVICES	<input type="checkbox"/> CSC <input type="checkbox"/> LEASE	FIRST INSTALLMENT DUE DATE	BALANCE OF INSTALLMENTS DUE ON THE day of each month thereafter, until the entire indebtedness has been paid.
CASH WITH ORDER	\$0.00	BALANCE TO FINANCE	\$0.00
CONTRACT INTEREST RATE	0%	PAYMENT PERIOD	PAYMENT AMOUNT \$0.00 NUMBER OF PAYMENTS 0

DESCRIPTION OF EQUIPMENT ORDERED / PURCHASED				
MAKE: CATERPILLAR	MODEL: 308ECR SB	YEAR: 2012	NEW <input checked="" type="checkbox"/> USED <input type="checkbox"/>	
STOCK NUMBER: GBJ996	SERIAL NUMBER: 0GBJ00996	SMU: 2		
308E HYDAULIC EXCAVATOR CR	386-9165	STICK, LONG, W/ THUMB BRACKET	382-1607	LIGHT, BOOM RIGHT SIDE 381-9219
308E CR SB HYDRAULIC EXCAVATOR	378-1280	LINE, AUXILIARY, LONG STICK	377-6601	HEATER, JACKET WATER 382-8739
CAB, ROPS	382-6304	HYDRAULICS, AUXILIARY	377-6545	ROLL ON-ROLL OFF 0P-4811
SEAT, H-BACK, AIR SUSP, HEATED	382-0391	JOYSTICK, W/O 2ND AUX.	382-0388	PROTECTION, SHIP&STORE STANDARD 0P-2266
BELT, SEAT, 3" RETRACTABLE	384-5651	LINKAGE, BUCKET, W/LIFTING BAR	382-1609	BUCKET, HD, 24", 0.30 CYD 295-5952
LIGHTS, CAB	381-9214	TRACK, 18" TG, W/ RUBBER PAD	382-8816	
CONTROL, PATTERN CHANGER	377-6544	COUNTERWEIGHT, EXTRA	367-0947	
COOLING, HIGH AMBIENT	382-5683	DRAIN, ECOLOGY	382-8757	
LINE, BOOM	377-6549	TANK, FUEL	380-1983	
LINE, STICK	377-6551	BLADE, 91", WELD-ON	382-8801	
ACCUMULATOR, FOR CANADA	377-6555	INSTRUCTIONS, ANSI	382-0562	
PLUGS, MIRROR MOUNT	382-1602	INSTRUCTIONS, ENGLISH	0P-3380	
ALARM, TRAVEL	381-9218	HYDRAULICS, QUICK COUPLER	377-6547	
RADIO, AM/FM	389-7121	LINE, QUICK COUPLER, LONG	377-6605	
STICK PACKAGE, LONG W/O 2ND AUX	386-9167	FILM, QUICK COUPLER, ANSI	383-9151	

TRADE-IN EQUIPMENT			Sell Price	\$91,735.00
MODEL: _____	YEAR: _____	SN.: _____	Ext Warranty	Included
PAYOUT TO: _____	AMOUNT: _____	PAID BY: _____	After Tax Balance	\$91,735.00
MODEL: _____	YEAR: _____	SN.: _____	This is a cash transaction. If the Purchaser so requests prior to acceptance, the Cash Due On Delivery may be financed as a time sale transaction, subject to credit approval. If this transaction becomes a time sale, Purchaser agrees (1) to make payments pursuant to the Riggs Cat ISC which is incorporated into this Equipment Purchaser's Order by reference, and (2) that Seller retains security interest in the goods described herein until all obligations of Purchaser are paid in full and discharged.	
PAYOUT TO: _____	AMOUNT: _____	PAID BY: _____		
MODEL: _____	YEAR: _____	SN.: _____		
PAYOUT TO: _____	AMOUNT: _____	PAID BY: _____		

WARRANTY DISCLAIMER: THE BUYER DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, QUALITY, DESIGN, CONDITION, CAPACITY, SUITABILITY, MERCHANTABILITY, OR PERFORMANCE OF THE EQUIPMENT OR OF THE MATERIAL OR WORKMANSHIP THEREOF. IT IS AGREED THAT SELLER SELLS THE EQUIPMENT "AS IS" AND EXTENDS NO WARRANTIES OR REPRESENTATIONS BEYOND THE FACE HEREOF, AND THAT ALL RISKS ARE TO BE BORNE BY THE BUYER AT ITS SOLE COST AND EXPENSE. BUYER WAIVES ANY AND ALL CLAIMS WHATSOEVER AGAINST THE SELLER BASED THEREON INCLUDING BUT NOT LIMITED TO ANY AND ALL CLAIMS FOR LOSS OF ANTICIPATORY PROFITS OR CONSEQUENTIAL DAMAGES.

<input checked="" type="checkbox"/> CATERPILLAR EQUIPMENT WARRANTY <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto; text-align: center;">INITIAL</div> <p>The customer acknowledges that he has received a copy of the Vendor Warranty and has read and understood said warranty. Scheduled oil sampling (S.O.S.) is mandatory with this warranty. The customer is responsible for taking oil samples at designated intervals from all power train components and failure to do so may result in voiding the warranty. Warranty applicable including expiration date where necessary: 12 Month/Unlimited Hours Full Machine</p> <p>24 MO/2000 PREMIER</p>	<input type="checkbox"/> USED EQUIPMENT WARRANTY <div style="border: 1px solid black; width: 100px; height: 20px; margin: 5px auto; text-align: center;">INITIAL</div> <p>ALL USED EQUIPMENT IS SOLD AS IS, WHERE IS, AND NO WARRANTY IS OFFERED OR IMPLIED EXCEPT AS SPECIFIED HERE: Warranty applicable:</p>
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CSA: _____
NOTES: _____

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE REVERSE. PARAGRAPH 7 CONTAINS A SPECIFIC DISCLAIMER OF WARRANTIES. THE ABOVE SHALL NOT CONSTITUTE A CONTRACT UNTIL EXECUTED AND DELIVERED BY AN OFFICER OF THE SELLER AT ITS HOME OFFICE IN LITTLE ROCK, AR.

Executed and Delivered as of _____ CITY OF FORT SMITH, Buyer By: _____ Title: _____	Accepted: Riggs CAT, Seller By: _____ Title: _____
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(If corporation, authorized officer must sign and show corporate title. If Partnership, a general partner must sign. If sole proprietor or partner, show which.)
Payment and Performance absolutely and unconditionally guaranteed by the undersigned:

Witness: _____

TERMS AND CONDITIONS

This order is subject to the following terms and conditions:

1. The seller reserves the right to accept or reject this order and shall not be required to give any reason for non-acceptance.
2. This order when accepted by seller shall become a binding contract but shall be subject to strikes, lockouts, accidents, fire, delays in manufacture or transportation, acts of God, embargoes, or Governmental action or any other causes beyond the control of the seller whether the same as, or different from the matters and things hereinbefore specifically enumerated, and any of said causes shall absolutely absolve the seller from any liability to the purchaser under the terms hereof.
3. Except where title is transferred and the seller takes back a contract, title to and right of possession of said machines shall remain vested in the seller until all indebtedness and all sums due or to become due from the purchaser, whether evidenced by note, book account, judgment, or otherwise, shall have been fully paid, at which time ownership shall pass to the purchaser.
4. The seller's responsibility for shipments ceases upon delivery to transportation company, and any claims for shortages, delays or damages occurring thereafter shall be made by the purchaser direct to the transpo
5. The purchaser agrees that this order shall not be countermanded by him, and that when it is accepted (and until the execution and delivery of the contract or contracts and note or notes required to consummate the sale as above specified) it will cover all agreements between the parties relative to this transaction, and that the seller is not bound by any representations or terms made by any agent relative to this transaction which are not embodied herein.
6. When the machines necessary to fill this order are available, the buyer agrees on demand to execute and deliver to the seller such notes and contracts as may be required by the seller to evidence the transaction. In the event that the buyer fails to execute and deliver said notes and contracts to the seller, the entire balance of the purchase price shall at the seller's option become immediately due and payable.
7. The seller shall not be held liable or responsible for any damages, whether on account of personal injuries or otherwise suffered or sustained in the operation of said machine, nor for any damages resulting to the purchaser by reason of any delays or any alleged failure of said machine to operate, nor for any implied warranties. Any used or second-hand equipment included in this order is sold without any warranty whatsoever, express or implied (except that the seller warrants title), unless said warranty is set forth in full in the section on page 1 of this document entitled WARRANTY ON EQUIPMENT EXTENDED BY SELLER, USED EQUIPMENT and is initialed by both of the parties hereto.
8. The liability of said seller insofar as new Caterpillar Products (to include Machines, engines, Attachments and Parts manufactured by Caterpillar Tractor Co.), are concerned, shall be limited to the warranty which the buyer accepts in lieu of any and all warranties by the seller whether express or implied as set forth on Caterpillar Warranty Forms.
9. The liability of the seller insofar as all other new products (other than Caterpillar products), machines, engines, attachments and parts are concerned, shall be limited to the Manufacturer's warranty thereof, if any, and which the buyer accepts in lieu of any and all warranties by the seller, whether express or implied.
10. In the event this machine is equipped with Product Link, I understand data concerning this machine, its condition, and its operation is being transmitted by Product Link to Caterpillar and/or its dealers to better serve me and to improve upon Caterpillar products and services. The information transmitted may include: machine serial number, machine location, and operational data, including but not limited to: fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar will not sell or rent collected information to any other third party and will exercise reasonable efforts to keep the information secure. Caterpillar Inc. recognizes and respects customer privacy. I agree to allow this data to be accessed by Caterpillar and/or its dealers.

BILL OF SALE FOR PROPERTY TAKEN IN TRADE

For value received, I/we hereby grant, sell, transfer and deliver unto _____

I/we hereby certify that there is no lien, claim, debt, mortgage or encumbrance of any kind, nature or description against this property now existing, of record or otherwise, and that same is free and clear and is my/our sole and absolute property. I/we agree to assume all risk of loss and/or damage to above described equipment, beyond normal wear, until delivery is promptly effected.

 by _____
 (Title)

RESOLUTION NO. R-_____

A RESOLUTION APPROVING A TOLLING AGREEMENT
WITH THE UNITED STATES DEPARTMENT OF JUSTICE
RELATING TO WET WEATHER SANITARY SEWER WORK

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

The tolling agreement with the United States Department of Justice for claims under the
Clean Water Act relating to wet weather sanitary sewer work attached hereto as Exhibit "A" and
ending on December 31, 2013 is hereby approved. The Mayor is hereby authorized to execute
said agreement on behalf of the City.

This Resolution adopted this ____ day of April, 2013.

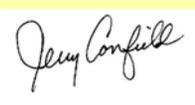
APPROVED:

Mayor

ATTEST:

City Clerk

Approved as to Form:



City Attorney
No Publication Required

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 9, 2013

FROM: Steve Parke, Director of Utilities

SUBJECT: Wet Weather Sanitary Sewer Improvements
Proposed Consent Decree Tolling Agreement

The U. S. Department of Justice (DOJ) informed staff in January 2006 of its intent to place the city under a consent decree for wet weather sanitary sewer improvements. The condition of the city's collection system allows wet weather events to cause overflows from the system which is a violation of the Clean Water Act. A consent decree is a federal court order mandating specific improvements and actions within specified time frames, and includes monetary penalties for noncompliance. Fort Smith has been subject to administrative orders from the Environmental Protection Agency (EPA) related to needed wet weather improvements since the late 1980s.

Staff, legal counsel and our consulting engineers are scheduled to participate in a video conference with representatives of the DOJ and EPA on Monday, April 15 to discuss additional questions they have presented to help them better understand our wet weather program. It is anticipated that an additional meeting between the parties in EPA's Dallas office will be requested and a revised draft of the consent decree may be presented for the city's consideration.

DOJ has asked the city to approve an extension of a tolling agreement through the end of 2013 while they continue to review our progress and their decision making related to a proposed consent decree. The tolling agreement prevents the city from raising a statute of limitations defense while the discussions are underway. In the absence of a tolling agreement, DOJ would likely file its lawsuit against the city.

Staff recommends the approval of the attached tolling agreement, which will be effective through December 31, 2013. If you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman



U.S. Department of Justice

Environment and Natural Resources Division

LAC
DJ 90--1-1-08677

*Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044*

*Telephone (202) 514-2802
Facsimile (202) 616-6583*

February 21, 2013

By Email

Jerry L. Canfield
Daily & Woods
KMS Building
58 South Sixth Street
P.O. Box 1446
Fort Smith, AR 72092

Re: Tolling Agreement Extension for the City of Ft. Smith, AR
Clean Water Act/Sanitary Sewer Overflow Matter

Dear Mr. Canfield:

In putting the letter that I just sent you today in my correspondence file, I just noticed that the last letter that I sent you related to the Tolling Agreement Extension that the United States asked Ft. Smith to sign, in July 2012. The extension ran through December 31, 2012. Therefore, the Tolling Agreement needs to be renewed.

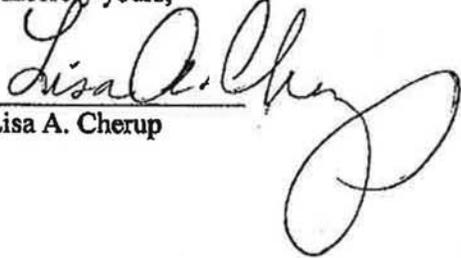
Attached to this letter is another Tolling Agreement Extension, which changes the last agreement only by revising the end date to December 31, 2013. Hopefully, with some concentrated effort, we can achieve closure on the consent decree terms by that date. I will do what I can to make that a high priority for the United States.

I apologize for the delay in getting this extension request to you and the City. A case in which I was in depositions in California, (which has settled), occupied much of my time over the past few months.

Let me know when you anticipate the Tolling Agreement Extension being signed by the City.

Thank you.

Sincerely yours,


Lisa A. Cherup

Lisa A. Cherup

bcc : David Gillespie
Carol Peters
Ted Palit
EPA Region 6

Carol DeMarco
James Zimny
EPA HQ

**TOLLING AGREEMENT FOR CLAIMS UNDER THE CLEAN WATER ACT
RELATING TO THE CITY OF FORT SMITH, ARKANSAS**

The United States, on behalf of the United States Environmental Protection Agency, contends that it has a cause of action pursuant to Sections 301, 309 and 402 of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1311, 1319, 1342., against the Defendant City of Fort Smith ("City") for, *inter alia*, civil penalties and injunctive relief relating to the bypasses and discharges of pollutants from the City's two publicly owned wastewater treatment works and sanitary sewer collection systems in violation of CWA National Pollutant Discharge Elimination System ("NPDES") permits (the "Tolled Claims").

The United States and the City ("Parties") enter into this Tolling Agreement to facilitate settlement negotiations within the time period provided by this Agreement, without thereby altering the claims or defenses available to any Party hereto, except as specifically provided herein.

The Parties, in consideration of the covenants set out herein, agree as follows:

1. Notwithstanding any other provision of this Tolling Agreement, the period commencing on August 26, 2009 and ending on December 31, 2013, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States on the Tolled Claims.
2. Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.
3. The City shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
4. This Tolling Agreement does not constitute any admission or acknowledgment of any fact, conclusion of law, or liability by any Party to this Tolling Agreement. Nor does this Tolling Agreement constitute any admission or acknowledgment on the part of the United States that any statute of limitations, or similar defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States reserves the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable.
5. This Tolling Agreement may not be modified except in a writing signed by the Parties. The Parties acknowledge that this Tolling Agreement may be extended for such period of time as the Parties agree to in writing.
6. It is understood that the United States may terminate settlement negotiations and commence suit at any time, upon provision of written notice by mail to the City. Where the

United States elects to terminate negotiations under this Paragraph, the Tolling Period shall continue for the duration set forth in Paragraph 1. Nothing herein shall preclude the commencement of any action by the United States to protect the public health, welfare, or the environment without provision of advance notice

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States in a complaint against the City or the date on which the United States may file such a complaint, except as expressly stated herein.

8. This Agreement is not intended to affect any claims by or against third parties.

9. The City shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of 90 days after termination of the Tolling Period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to the Tolloed Claims, regardless of any corporate or document retention policy to the contrary.

10. This Tolling Agreement is effective upon execution by the City, and without the requirement of filing with the Court, and may be signed in counterparts.

11. This Tolling Agreement contains the entire agreement between the Parties, and no statement, promise, or inducement made by any Party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

12. The undersigned representative of each of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Agreement shall be binding upon the United States, acting on behalf of the United States Environmental Protection Agency, and upon the City.

The United States of America, on behalf of the United States Environmental Protection Agency, consents to the terms and conditions of this Tolling Agreement by its duly authorized representatives on this ___ day of February, 2013.

NATHANIEL DOUGLAS
Acting Assistant Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

LISA A. CHERUP
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
PO Box 7611
Washington, D.C. 20044-7611
Telephone: 202-514-2802
Fax: 202-514-2802
Email: lisa.cherup@usdoj.gov

The City consents to the terms and conditions of this Tolling Agreement by its duly authorized representative on this ____ day of April, 2013.

Signature:

Title:

Company/Municipality:

Signature: _____

Printed Name: _____

Title: _____

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AUTHORIZATION NUMBER FOUR TO THE AGREEMENT WITH HAWKINS-WEIR ENGINEERS, INC., FOR ENGINEERING SERVICES FOR THE ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS - PUMP STATION AND EQ STORAGE

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

SECTION 1: Authorization Number Four with Hawkins-Weir Engineers, Inc., for engineering construction phase services associated with the Zero Street Pump Station Wet Weather Improvements - Pump Station and EQ Storage, Project Number 09-17-EC2, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute Authorization Number Four in the amount of \$1,231,400.00, for performance of said services.

This Resolution adopted this _____ day of April 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



_____npr

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ARCHER WESTERN CONTRACTORS, LLC FOR THE ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS - PUMP STATION AND EQ STORAGE

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

SECTION 1: The bid of Archer Western Contractors, LLC, for the construction of the Zero Street Pump Station Wet Weather Improvements - Pump Station and EQ Storage, Project Number 09-17-C2, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with Archer Western Contractors, LLC for an amount of \$12,193,000.00, for performing said construction.

This Resolution adopted this _____ day of April 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 9, 2013

FROM: Steve Parko, Director of Utilities

SUBJECT: Zero Street Pump Station Wet Weather Improvements -
Pump Station and EQ Storage, Project Number 09-17

The Board of Directors approved the Zero Street Pump Station Wet Weather Improvements - Site Remediation project at its September 13, 2012 meeting. The site acquired for the new pump station and equalization storage was the old smelter site at 5100 Jenny Lind Road. The site is registered under the Arkansas Brownsfield Program with the Arkansas Department of Environmental Quality and contains approximately 14.59 acres.

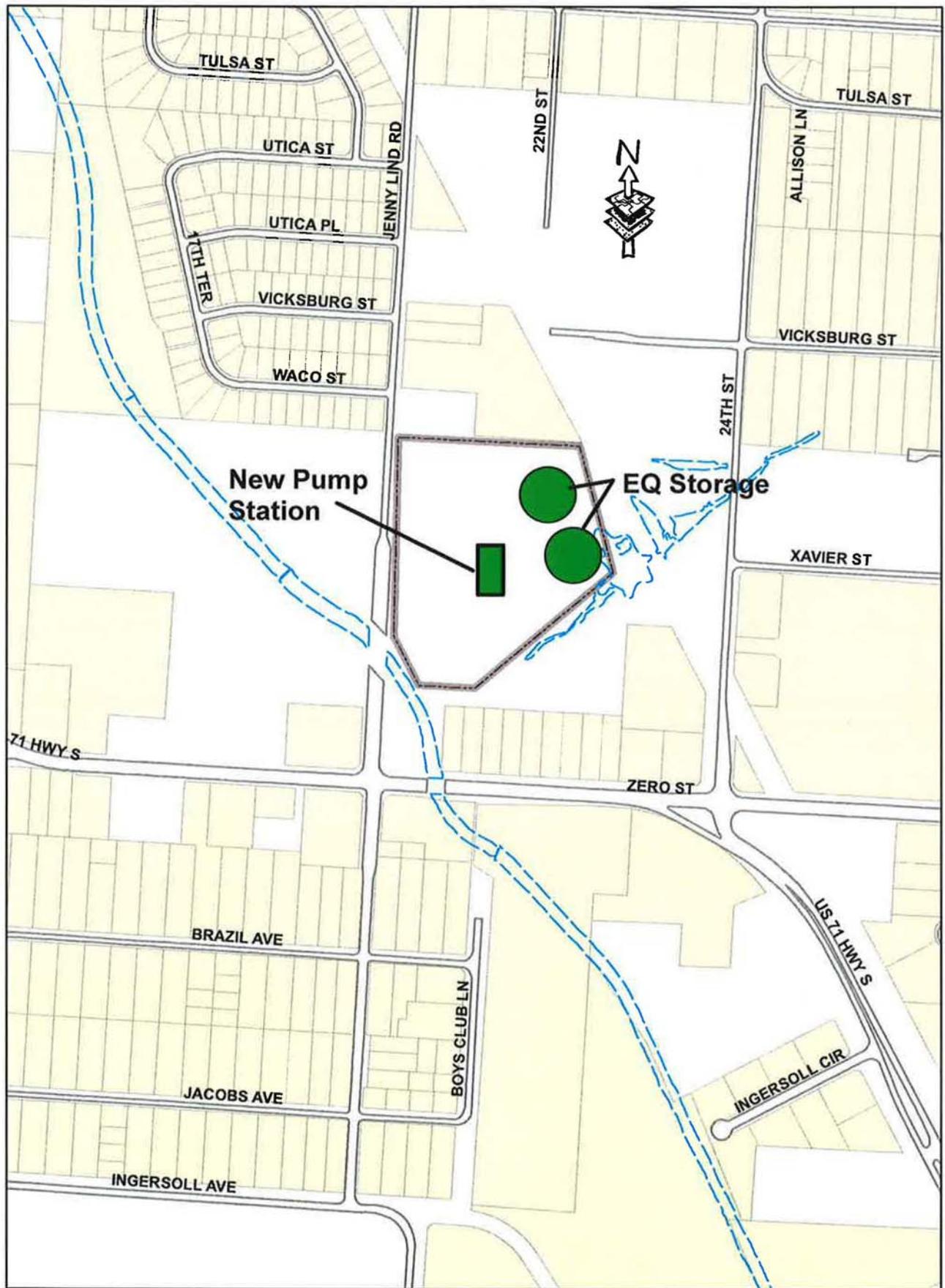
Having remeditated the site, the Zero Street Pump Station Wet Weather Improvements - Pump Station and EQ Storage project objective is to accomplish the construction of the new pump station and two 5 million gallon flow equalization tanks as well as the demolition of the existing pump station. An exhibit showing the remediated area and second contract improvements is attached.

The low bid for the Zero Street Pump Station Wet Weather Improvements - Pump Station and EQ Storage was submitted by Archer Western Contractors, LLC, in the amount of \$12,193,000.00. A bid tabulation sheet showing the bidders and their bid amounts is attached. Also attached are Resolutions authorizing a contract with Archer Western Contractors, LLC in the amount of their bid and authorizing Authorization Number Four with Hawkins-Weir Engineering, Inc., for engineering construction phase services in the amount of \$1,231,400.00. Funding for this work is available from the 2012 sales tax and use tax bonds issued for continuation of wet weather sewer improvements.

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

attachment

pc: Jeff Dingman



Zero Street Pump Station Wet Weather Improvements
Pump Station & EQ Storage
Project No. 09-17-C2

Bid Tabulation Sheet

Project Name

Zero Street Pump Station Wet Weather Improvements -
Pump Station and EQ Storage
Project Number 09-17-C2

Bid Opening

April 2 ,2013
10:00 A. M.

Bids Received

Archer Western Contractors Arlington, Texas	<u>\$ 12,193,000.00</u>
Van Horn Construction, Co. Russellville, Arkansas	<u>\$ 12,400,000.00</u>
Layne Heavy Civil Fairburn, Georgia	<u>\$ 12,446,000.00</u>
BRB Contractors, Inc. Topeka, Kansas	<u>\$ 12,560,000.00</u>
VEI General Contractors Russellville, Arkansas	<u>\$ 12,600,000.00</u>
Crossland Heavy Contractors Columbus, Kansas	<u>\$ 12,943,975.00</u>
Goodwin & Goodwin, Inc. Fort Smith, Arkansas	<u>\$ 13,486,900.00</u>
Branco Enterprises, Inc. Neosho, Missouri	<u>\$ 13,580,000.00</u>
Kraus Construction Co. LLC Fort Smith, Arkansas	<u>\$ 14,990,000.00</u>
Mobley Contractors, Inc. Morrilton, Arkansas	<u>\$ 15,538,000.00</u>

RESOLUTION NO. _____

2 G

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A RESTRICTIVE COVENANT, NOTICE OF IMPLEMENTING AGREEMENT AND NOTICE OF PROPERTY DEVELOPMENT DECISION DOCUMENT FOR THE ARKANSAS BROWNSFIELDS PROGRAM WITH THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY IN CONNECTION WITH THE ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS

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

SECTION 1: The Mayor is hereby authorized to execute a Restrictive Covenant, a Notice of Implementing Agreement and a Notice of Property Development Decision Document for participation in the Arkansas Brownsfields Program with the Arkansas Department of Environmental Quality for the city property located at 5501 Jenny Lind Road, Fort Smith, Arkansas, for the Zero Street Pump Station Wet Weather Improvements, Project 09-17-E1.

This Resolution adopted this _____ day of April 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 9, 2013

FROM: Steve Parke, Director of Utilities

SUBJECT: Zero Street Pump Station Wet Weather Improvements
Project Number 09-17-E1

The city is nearing completion of the remediation phase of the Zero Street pump station wet weather improvements site. This site was used as a former zinc smelter operation until the mid-1940s. The city entered into an Implementing Agreement with the Arkansas Department of Environmental Quality where the city would remediate the site as specified under the Arkansas Brownsfields Program. When successfully completed, the program allows the city to take title to the property and not be liable for any past contamination of the site.

The Implementing Agreement requires the city to execute a Restrictive Covenant to the property, a Notice of the Implementing Agreement and a Notice of Property Decision Development Document. Copies of each of the three documents are attached for your review. Staff recommends that the Board approve this Resolution authorizing the Mayor to execute the Restrictive covenant, Notice of the Implementing Agreement and Notice of Property Decision Development document at their next regular scheduled meeting.

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

attachment

pc: Jeff Dingman

RESTRICTIVE COVENANT

The Arkansas Department of Environmental Quality (the “Department”) has requested, and the below listed titleholder has agreed, that a restriction be placed on the property described herein restricting the use, current or future, of groundwater underlying the real property described below. This restrictive covenant is filed with the Clerk and Recorder of Sebastian County, Arkansas and covers the land described as follows (the “Property”):

Part of the Southwest 1/4 of the Southeast 1/4 of Section 33, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, lying east of Jenny Lind Road, west of the Union Pacific Railroad and north of a floodway running in a northeasterly and a southwesterly direction, less and except a parcel lying in the Northwest corner of the said Southwest 1/4 of the Southeast 1/4, running 105 feet north and south and 200 feet east and west, containing 15 acres, more or less.

SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY FOR ROADWAYS AND UTILITIES.

NOW, THEREFORE, the City of Fort Smith (“the Titleholder”), hereby imposes the following restriction on the Property and covenants and agrees that:

- (1) Any and all current or future use of groundwater underlying the Property is prohibited.
- (2) The Department’s personnel and contractors shall have access at all times to the Property, and in particular for conducting Five-Year Reviews which may include sampling.

The restrictions and other requirements described in the Restrictive Covenant shall run with the land and be binding upon the Titleholder’s successors, assigns, and lessees or their authorized agents, employees or persons acting under their direction or control. The restrictions shall apply until the Department determines that said restrictions are no longer required. This Restrictive Covenant shall not be amended, modified, or terminated except by a written instrument executed by and between the Titleholder at the time of the proposed amendment, modification, or termination and the Department. Within fifteen (15) days of executing an amendment, modification or termination of the Restrictive Covenant, the Titleholder shall record such amendment, modification or termination with the County Register of Deeds, previously named, and within fifteen (15) days thereafter, the Titleholder shall provide a true copy of the recorded

amendment, modification or termination to the Department. If any provision of this Restrictive Covenant is also the subject of any laws or regulations established by any federal, state or local government, the stricter of the two standards shall prevail.

IN WITNESS WHEREOF, the above-named Titleholder has caused this Restrictive Covenant to be executed on the ____ day of _____ 2013.

CITY OF FORT SMITH

By: Sandy Sanders

ACKNOWLEDGMENT

STATE OF ARKANSAS)

COUNTY OF SEBASTIAN)

BE IT REMEMBERED, that on this day before me, the undersigned Notary Public within and for the county and state aforesaid came, **Sandy Sanders Mayor of City of Fort Smith**, and stated that he had executed the foregoing document for the consideration and purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal on this ____ day of _____ 2013.

Notary Public

My Commission Expires:

Document Prepared By:

Daily & Woods, P.L.L.C.
P.O. Box 1446
Fort Smith, AR 72902-1446

NOTICE

Notice is hereby given that the following described property in Sebastian County, Arkansas,

Part of the Southwest 1/4 of the Southeast 1/4 of Section 33, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, lying east of Jenny Lind Road, west of the Union Pacific Railroad and north of a floodway running in a northeasterly and a southwesterly direction, less and except a parcel lying in the Northwest corner of the said Southwest 1/4 of the Southeast 1/4, running 105 feet north and south and 200 feet east and west, containing 15 acres, more or less

is subject to an Implementing Agreement in the matter before the Arkansas Department of Environmental Quality styled Zero Street Pump Station Wet Weather Improvements Project, LIS-12-084, dated May 1, 2012, which allows unrestricted use for the property in the future. A copy of the Implementing Agreement is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the above-named Titleholder has caused this Notice to be executed on the ____ day of _____ 2013.

CITY OF FORT SMITH

By: Sandy Sanders

ACKNOWLEDGMENT

STATE OF ARKANSAS)§

COUNTY OF SEBASTIAN)§

BE IT REMEMBERED, that on this day before me, the undersigned Notary Public within and for the county and state aforesaid came, **Sandy Sanders Mayor of City of Fort Smith**, and stated that he had executed the foregoing document for the consideration and purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal on this ____ day of _____ 2013.

Notary Public

My Commission Expires:

Document Prepared By:

Daily & Woods, P.L.L.C.
P.O. Box 1446
Fort Smith, AR 72902-1446

R-93-12

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CITY OF FORT SMITH

PARTICIPANT

REGARDING:

**THE JENNY LIND EQUALIZATION BASIN
FORT SMITH, SEBASTIAN COUNTY, ARKANSAS
AFIN: 66-01555**

LIS No. - 12-084

IMPLEMENTING AGREEMENT

This Implementing Agreement (hereinafter "IA") shall establish remedial requirements and financial liabilities of the City of Fort Smith (hereinafter the "PARTICIPANT") associated with the Jenny Lind Equalization Basin Property (the former zinc smelter site), Fort Smith, Sebastian County, Arkansas (hereinafter the "Property"). This IA is entered into by the PARTICIPANT and the Arkansas Department of Environmental Quality (hereinafter "ADEQ") pursuant to the authority of the Hazardous Waste Management Act (Act 406 of 1979, as amended; A.C.A. §§ 8-7-201 et. seq.), the Arkansas Remedial Action Trust Fund Act (Act 479 of 1985, as amended; A.C.A. §§ 8-7-501 et. seq.), the Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation Number 23, Hazardous Waste Management, (hereinafter "Regulation 23"), the Arkansas Voluntary Cleanup Act (Act 1042 of 1997) (as amended), (A.C.A. §§ 8-7-1101 et. seq.) (hereinafter the "Arkansas Brownfields Program"), and the APC&EC Regulation Number 29, Brownfields Redevelopment.

FINDINGS OF FACT

1. The Property is located at 5501 Jenny Lind Road, Fort Smith, Sebastian County, Arkansas. The legal description of which is:

Part of the Southwest ¼ of the Southeast ¼ of Section 33, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, lying east of Jenny Lind Road, west of the Union Pacific Railroad and north of a floodway running in a northeasterly and a southwesterly direction, less and except a parcel lying in the Northwest corner of the said Southwest ¼ of the Southeast ¼, running 105 feet north and south and 200 feet east and west, containing 15 acres, more or less.
2. PARTICIPANT is a municipality endowed with the rights and obligations described at Ark. Code Ann. §14-54-101 and is competent and authorized to execute this IA.

3. The Property is approximately 15 acres, which consists of open land with remnants of concrete footings and rubble remaining from demolished buildings that were part of the former Fort Smith Zinc Smelter.
4. The site was formerly used for operations associated with a zinc smelter.
5. The Property is an abandoned site as defined at Ark. Code Ann. §8-7-1102 (a)(1) and § 29.301 of Regulation 29.
6. On November 9, 2007, the PARTICIPANT submitted a letter of intent, which set forth the Participant's desire to take title to the Property and retain eligibility for participation in the Brownfields Program as described in A.C.A. § 8-7-1101 (8).
7. On December 7, 2007, ADEQ sent a letter declaring the PARTICIPANT's eligibility for participation in the Arkansas Brownfields Program as described in A.C.A. § 8-7-1104 (a), therefore authorizing the PARTICIPANT to acquire title to the Property and still retain its eligibility for the Arkansas Brownfields Program.
8. The PARTICIPANT warrants it is not responsible for any preexisting pollution at or contamination on any of the Property. Additionally, the PARTICIPANT did not, by act or omission, cause or contribute to any release or threatened release of hazardous substance on or from the Property or is not otherwise considered to be a responsible party pursuant to A.C.A. § 8-7-512(a)(2)-(4).
9. The PARTICIPANT agrees the Property will not, at any time, be transferred to any party responsible for such pollution or contamination on the Property. If such transfer is made, the IA and any certificate of completion issued hereunder shall be null and void.
10. In July 1997 Bentley Environmental Engineering, Inc. performed a Phase II Site Assessment as part of a potential real estate transaction at the property. In September 2008 EnSafe, Inc., on behalf of the ADEQ, conducted a Comprehensive Site Assessment (CSA) as part of the requirements of the Arkansas Brownfields Program.

The CSA indicated elevated levels of metals are present in the surface soil, subsurface soil, sediment and groundwater on the property. Smelter ash and slag is at the surface or buried to depths up to approximately three (3) feet, extending to the western edges of the property and to the south of the property. Continuous potential threats for present and future releases associated with the waste on site exist for both human health and the environment.

11. The ADEQ Hazardous Waste Division personnel reviewed the CSA, dated September 15, 2008, and the findings and report were approved January 6, 2009.
12. Consequently, the PARTICIPANT has committed to a particular future land use of the Property, specifically intending to develop the Property for use as an equalization basin and other wet weather improvements for the City's wastewater system.

AGREEMENT

The issues herein, as they pertain to the Property, having been settled by the agreement of the PARTICIPANT and ADEQ, it is hereby agreed and stipulated by all Parties the IA be entered herein and that the PARTICIPANT comply with the following provisions.

1. The PARTICIPANT, within ten (10) days of the effective date of this IA, shall public notice this IA in a newspaper of general circulation that serves the City of Fort Smith area. The notice shall identify the Property, the intended future land use, and the nature of the activities to be conducted on the Property. The PARTICIPANT shall provide proof of this publication to ADEQ within thirty (30) days of the effective date of this IA.
2. The PARTICIPANT shall submit a Property Development Plan to ADEQ within forty-five (45) days of the effective date of the IA for review and approval. The approved Property Development Plan shall become an amendment to this IA.
3. ADEQ shall issue a Property Development Decision Document (PDDD), as necessary, to address any contamination identified in the CSA. Pursuant to Ark. Code Ann. §8-4-1104(h)(1), ADEQ shall provide public notice and opportunity for hearing on the PDDD.

4. ADEQ shall issue a final PDDD, considering all comments submitted, pursuant to the public notice discussed in paragraph 3 above. The approved final PDDD shall become an amendment to this IA.
5. The PARTICIPANT shall complete remedial action activities, as addressed in the final PDDD.
6. The PARTICIPANT shall place a notice on the deed for the Property, within thirty (30) business days of acquiring legal title to the site, in a manner deemed suitable by ADEQ, which alerts future Property owners of this IA and that the Property shall not be subsequently redeveloped without consultation with ADEQ. Any subsequent redevelopment will be in accordance with local zoning requirements and will be in a manner which is protective of human health and the environment.
7. The PARTICIPANT shall file, within thirty (30) days of the effective date of this IA, or within thirty (30) days of acquiring legal title to the site, a notice of the IA with the clerk of the Circuit Court in Sebastian County, Real Estate Section. Notice of any amendments to this IA also shall be filed by PARTICIPANT with the clerk of the Circuit Court in Sebastian County within thirty (30) days after their effective dates. The clerk of the Circuit Court shall docket and record the notices so they appear in the purchaser's chain of title. A file marked copy shall be submitted to ADEQ, within forty-five (45) days of this IA.
8. The PARTICIPANT shall submit a completion report to ADEQ within forty-five (45) days of completing the remediation work associated with the Property Development Plan and the PDDD. The completion report should include information to document the site has been redeveloped according to the provisions mutually agreed upon in the IA and the approved Property Development Plan and the PDDD. After ADEQ receives this information and verifies the work has been completed, a Certificate of Completion will be issued.
9. The PARTICIPANT shall file a deed restriction for the Property, if necessary, as determined by ADEQ, to restrict the use of the Property to activities and compatible uses which will protect the integrity of any remedial action measures implemented on the Property.
10. The PARTICIPANT shall provide a copy of this IA to all prospective owners or successors before the Property is transferred to the prospective owner or successor.

11. The PARTICIPANT shall take all steps necessary to prevent aggravating or contributing to the contamination of the air, land or water, including downward migration of contamination, from any existing contamination on the site. The term existing contamination shall include any contamination set forth in the CSA approved by ADEQ.
12. The PARTICIPANT shall not use or redevelop the site in a manner that differs from the terms or procedures established under this IA.
13. The PARTICIPANT shall not be responsible for paying any fines or penalties related to the past contamination of the Property. The term "past contamination" shall include any contamination set forth in the CSA approved by ADEQ.
14. Nothing in this IA shall be construed as a waiver of liability for future contamination of the Property by PARTICIPANT, subsequent owners, or third-parties.
15. This IA, including all rights and clean-up liabilities, is transferable, with written approval by ADEQ, to any and all subsequent owners of the Property who did not, by act or omission, cause or contribute to any release or threatened release of hazardous substances on the Property.
16. Subsequent owners shall receive a copy of the IA from the Property owner and shall not develop or use the Property in a manner which is inconsistent with the terms or procedures contained herein unless agreed to by all Parties to this IA, including ADEQ. In the event the intended use of the Property is to be altered from the use described herein, ADEQ will evaluate the protectiveness of the remedial action to determine if the proposed use would be protective of human health and the environment.

Absent such a determination by ADEQ, any liability assurances contained in this IA, and amendments thereto or certificates of completion issued hereunder, shall be null and void.

17. Participation in the Arkansas Brownfields Program can be withdrawn by the PARTICIPANT at any time upon written notification to ADEQ. In turn, if the PARTICIPANT fails to complete the terms and conditions set forth in this IA, and at the time of withdrawal has acquired the property and is considered to be the legal owner of the property, the ADEQ reserves the right to deem the PARTICIPANT in

violation of this IA and PARTICIPANT will be notified in writing that their enrollment in the Arkansas Brownfields Program is no longer valid and the PARTICIPANT will be liable for any past contamination found on the site.

18. This IA shall become effective upon the signature of the Director of ADEQ.

IT IS SO AGREED.

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 

Date: 5/11/12

Director
Teresa Marks

PARTICIPANT
CITY OF FORT SMITH

By: 

Date: 4-18-2012

NOTICE

Notice is hereby given that the following described property in Sebastian County, Arkansas,

Part of the Southwest 1/4 of the Southeast 1/4 of Section 33, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, lying east of Jenny Lind Road, west of the Union Pacific Railroad and north of a floodway running in a northeasterly and a southwesterly direction, less and except a parcel lying in the Northwest corner of the said Southwest 1/4 of the Southeast 1/4, running 105 feet north and south and 200 feet east and west, containing 15 acres, more or less

is subject to a Property Development Decision Document issued by the Arkansas Department of Environmental Quality dated May 2012, which allows unrestricted use for the property in the future, except for the restriction on groundwater for any purpose without prior written consent of the Arkansas Department of Environmental Quality and restricts the drilling or installation of any groundwater wells other than monitoring wells. A copy of the Property Development Decision Document is attached hereto as Exhibit A.

IN WITNESS WHEREOF, the above-named Titleholder has caused this Notice to be executed on the ____ day of _____ 2013.

CITY OF FORT SMITH

By: Sandy Sanders

ACKNOWLEDGMENT

STATE OF ARKANSAS)§

COUNTY OF SEBASTIAN)§

BE IT REMEMBERED, that on this day before me, the undersigned Notary Public within and for the county and state aforesaid came, **Sandy Sanders Mayor of City of Fort Smith**, and stated that he had executed the foregoing document for the consideration and purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal on this ____ day of _____ 2013.

Notary Public

My Commission Expires:

Document Prepared By:

Daily & Woods, P.L.L.C.
P.O. Box 1446
Fort Smith, AR 72902-1446

STATE OF ARKANSAS
DEPARTMENT OF ENVIRONMENTAL QUALITY



**PROPERTY DEVELOPMENT DECISION DOCUMENT
(PDDD)**

JENNY LIND EQUALIZATION BASIN

(Zero Street Pump Station Wet Weather Improvements Project)

Fort Smith; Sebastian County, Arkansas

Arkansas Facility Identification Number: 66-01555

May 2012

Exhibit A

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ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS PROJECT

PROPERTY DEVELOPMENT DECISION DOCUMENT

1.0 INTRODUCTION

On September 14, 2007, the Arkansas Department of Environmental Quality (hereafter ADEQ) received a Notice of Intent from Mr. Larry Guthrie, City of Fort Smith, to participate in the Arkansas Brownfields Program. The property was accepted into the Brownfields Program on December 7, 2007. The City of Fort Smith is proposing the acquisition of the property located at 5501 Jenny Lind Road, Fort Smith, Arkansas for the development of a wet weather improvements project. A Phase I Environmental Site Assessment (ESA) was completed on the site in 2007. On behalf of ADEQ, Ensaf prepared a Comprehensive Site Assessment (CSA) in the fall of 2008. The CSA was reviewed and approved by the ADEQ on January 6, 2009. The Phase I ESA was updated and received by the ADEQ in January of 2012.

This Property Development Decision Document (PDDD) will be promulgated as part of the final Implementing Agreement (IA) LIS No. 12-084 executed between the City of Fort Smith and ADEQ on May 1, 2012. The PDDD outlines the proposed remedy for the property based upon the City of Fort Smith's declared redevelopment and proposed future use of the property.

In this PDDD, ADEQ describes the proposed remedy for the property and provides the reasoning for this selection. In addition, this PDDD includes a summary of a No Action alternative evaluated for this property. The Final CSA Report (dated November 15, 2008) and the Property Development Plan (PDP) (dated February 28, 2012) for the property contains additional detailed information on these alternatives and are available in the administrative record for this PDDD.

1.1 Location and Property Description

The property is located at 5501 Jenny Lind Road, Fort Smith, Sebastian County, Arkansas. The property consists of an approximately 15-acre irregular-shaped tract of land. The property is within a highly developed area of the City of Fort Smith. The property boundary is defined on the north side by fencing, the east side by the Union Pacific Railroad, the west side by Jenny Lind Road, and the south side by an unnamed tributary of Mill Creek.

The legal description of the 15-acre tract is as follows:

Part of the Southwest ¼ of the Southeast ¼ of Section 33, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, lying east of Jenny Lind Road, west of the Union Pacific Railroad and north of a floodway running in a northeasterly and a southwesterly direction, less and except a parcel lying in the Northwest corner of the said Southwest ¼ of the Southeast ¼, running 105 feet north and south and 200 feet east and west, containing 15 acres, more or less.

1.2 Past Use of the Property

The property was formerly occupied by a zinc smelting operation. The smelting operation is believed to have operated from the early 1900's to the 1940's. Ash, slag and other debris associated with the smelting process as well as remnants of concrete foundations and masonry structures have been documented to be present at the site. Please note that the zinc smelting operation also occupied the 10 acres south of the unnamed tributary of Mill Creek. However, the City of Fort Smith is only considering acquiring and developing the 15 acres north of the unnamed tributary.

1.3 Intended Use of the Property

The City of Fort Smith submitted a Notice of Intent to ADEQ prior to purchase of the property to retain the site's eligibility for participation in the Brownfields Program. The City of Fort Smith proposes to construct equalization tanks, pump station, and associated underground piping to temporarily retain excess domestic wastewater during periods of high flow, and return the stored water to the collection and treatment system during non-peak flow periods.

1.4 Contaminants and Waste Types of Concern

The CSA performed by EnSafe Inc. indicates metals are present in site surface soils, subsurface soils, sediment and groundwater. Methyl tertiary butyl ether (MTBE) was detected in one groundwater sample on the site. The adjoining 10 acres south of the unnamed tributary includes a former leaking underground storage tank (LUST) site which represents a possible source for the MTBE. The presence of ash, slag and fire bricks at the site are consistent with previous smelting operations. The metals detected at the site are likely the result of these smelting operations.

Section 4.0, Summary of Site Risks, contains further discussions of these contaminants and associated potential risks.

1.5 Remedy Selection

The proposed remedy includes excavation and off-site disposal of all ash/slag present at the site, including areas not proposed for construction. The site may be developed for

residential, recreational, or industrial uses. However, use of the groundwater will need to be restricted.

1.6 Proposed Completion Date

The participant plans to start the project in June 2012, with the goal of completing the remediation by the end of the year.

2.0 OWNERSHIP HISTORY

The Athletic Mining and Smelting Company was owned by the Charles Orr family of Joplin, Missouri and run by various family members during the period of operation. The smelter was believed to have operated under the Athletic Mining and Smelting Company banner from the early 1900s to the 1940s. The current owner of the property, as found in the Chain of Ownership report, is Aaron F. Barling and co-trustees of the Barling family trust.

3.0 SITE BACKGROUND AND PREVIOUS INVESTIGATIONS

3.1 Site Background

The site consists of open land and bare soil with trees and grasses, and the concrete footings and rubble remaining from demolished buildings that once housed the Fort Smith Zinc Smelter. The site is adjacent to industrial buildings and an apartment building to the north and northeast and commercial retail buildings to the south. Railroad tracks border the east side of the property, and Jenny Lind Road borders the west. Site drainage is to Beaver Pond and a perennial creek that forms the southern boundary of the property and flows into Mill Creek.

3.1.1 Site Physical Characteristics

The site is open land of low relief, with areas of exposed bare soil, some grassed areas, a few trees, and the remnants of rubble from demolished buildings that once housed the zinc smelter. The land surface is relatively flat across the north-eastern crest of the property, then slopes down to the west, southwest and south, into Beaver Pond and to an unnamed intermittently flowing watercourse that forms the southern boundary of the site.

3.1.1.1 Soils

Surface soil materials (including fill, smelter ash, and slag) overlie natural clay and silty clay soils. The smelter ash and slag is located either at the surface, or buried to depths of up to approximately 3 feet below the ground surface. The slag ranges in particle size from gravel to cobbles. The texture of the black ash varies from sand to silt fractions.

The natural soils overlying the parent shale rock comprise the silty clay soils of the Leadvale Series and the Wrightsville Series.

Where fill and smelter residues are not present, the in-situ soils grade into brown and yellowish tan, friable clay and silty clay formed in the upper weathered shale layer. With depth, the weathered shale becomes increasingly dense, grey to orange, and eventually hard, grey shale rock.

Soils overlying the bedrock also contain discontinuous sand lenses and beds at depths ranging from 2.25 to 20.5 feet as stated in the CSA report. The macroporosity of these sandy layers may form preferential flow paths, with the potential to transmit contaminants more rapidly through the soil profile.

3.1.1.2 Surface Water

Beaver Pond collects runoff from adjacent land and appears to receive flow from an open channel that extends in a south-westerly direction and beneath the Burlington Northern Railroad. Overflow from Beaver Pond discharges to the intermittently flowing watercourse before converging with Mill Creek at the south-western corner of the property. Mill Creek converges with the Poteau River, which in turn discharges to the Arkansas River.

The CSA reports that runoff was observed during a rain event during site work. Surface water moved rapidly off the crown of the site to the southwest and south. No flow data is available in relation to surface water at or adjacent to the site. It is therefore not possible to estimate the volume of contaminants that are or have been discharged to surface water from the site.

3.1.1.3 Sediment

Sediment is confined to the beds of the watercourse within the site and Beaver Pond. There is no sediment near the confluence of the intermittently flowing stream and Mill Creek due to the steep slope of the Mill Creek channel.

3.1.2 Geology/Hydrogeology

Weathered and indurated shale bedrock underlies the unconsolidated overburden evident at the site. The depth to bedrock ranges from 7 feet to more than 25 feet below the ground surface. The underlying Pennsylvanian McAlester Formation bedrock is not exposed on the site but does outcrop in Mill Creek to the south-west.

Groundwater is present in a poorly permeable groundwater zone that varies from unconfined to semi-confined, and produces little water in the wells drilled on site. The depth to groundwater in site wells varies from approximately 2 feet to 12 feet below the ground surface. There is currently no use of on-site groundwater.

Groundwater flow across the site is to the west-southwest. Recharge to this zone is from surface water migrating through discontinuous sand lenses, more permeable fill material, ash beds, and macropores in the natural soils. In a wider context, groundwater in the area is typically encountered in alluvium and terrace deposits associated with the Arkansas River and its various tributaries, as well as underlying unconsolidated and consolidated water bearing aquifers.

Acidic, infiltrating surface water would tend to leach metals from buried ash and slag. Surface to groundwater flow paths in the vadose zone are expected along the slag and ash beds, sand lenses, and any more porous features within the less permeable clay and silty clay matrix.

Once in groundwater, a portion of the metals would tend to sorb to soil particles in the groundwater zone matrix, while a dissolved portion would migrate with groundwater flow.

3.2 Phase I Environmental Site Assessment and Phase II Site Characterization

In December 2011, on behalf of the City of Fort Smith, GBM^c and Associates conducted a Phase I Environmental Site Assessment. The purpose of performing the Phase I was for a real estate transaction and to determine if there are any recognized environmental conditions (RECs) at the site. The Phase I findings indicate former zinc smelting operations on the site have affected the environmental quality of the subject property. In addition, illegal dumping has occurred on the subject property.

In July 1997 Bentley Environmental Engineering, Inc. performed a Phase II Site Characterization. The purpose of the Phase II was to qualify and quantify the environmental impacts from the zinc smelter materials. Twenty one soil borings were advanced and sampled across the site. Smelter material was observed at the surface to a maximum depth of 5 feet. The Phase II concluded the presence of metals in soil and groundwater above regulatory levels. Volatile organic compounds (VOCs) and total petroleum hydrocarbons were not detected above the detection limit in any of the samples analyzed. Recommendations from the Phase II included further soil and groundwater delineation and collecting surface water samples upstream and downstream to determine migration into the creek.

3.3 Comprehensive Site Assessment Information

In September 2008 EnSafe, Inc., on behalf of the ADEQ, conducted a Comprehensive Site Assessment (CSA) for two parcels as part of the requirements of the Arkansas Brownfields Program. Only the northern 15 acres is considered in this PDDD. The CSA indicated elevated levels of metals are present in the surface soil, subsurface soil, sediment and groundwater on the property. Smelter ash and slag is at the surface or buried to depths up to approximately three (3) feet, extending to the western edges of the property and to the south of the property. Continuous potential threats for present and future releases associated with the waste on site exist for both human health and the environment.

The analytical data set for the CSA was derived from 44 soil, 6 sediment, and 5 groundwater samples collected from 14 boreholes and 5 wells during sampling events in April and May 2008. The nature of contamination was determined in relation to each of the samples tested. The maximum chemical concentrations detected in the samples were compared to applicable US EPA human health screening values and ecological screening values.

4.0 SUMMARY OF SITE RISKS

4.1 Contaminants and Waste Types of Concern and Site Risks

The smelter wastes generated and released on site include discharges of solid, liquid and vapor materials. The primary solid wastes were ash, slag, and dust. They were deposited both on the ground surface and/or released to air. These wastes contain appreciable amounts of metals, including arsenic, cadmium, chromium, lead, manganese, and zinc. Along with the solid wastes, fugitive liquid and vapor emissions occurred and were released to the air. They contained metals, sulphur dioxide and sulphuric acid. Following release, much of the ash and slag was buried to depths of approximately 3 feet, together with other fill material.

Investigative samples were analyzed for Total Metals, Volatile Organic Compounds (VOCs), Semi-Volatile Organic Compounds (SVOCs), Gasoline Range Organics, and Diesel Range Organics.

A screening level risk evaluation was performed at the site to identify contaminants of concern (COCs) in surface soils, subsurface soils, sediment, surface water, and groundwater. The screening evaluation indicated that metals are the predominant contaminants present at the site above residential and industrial human health screening levels and ecological screening levels. Methyl tertiary butyl ether was also detected in one groundwater sample, but at approximately the same concentration as the tap water screening level. No other chemicals were detected above screening levels.

Residential and industrial screening levels were both used in the soil screening evaluation; however, based on the planned reuse of the site, residential screening levels are used to determine COCs in surface and subsurface soils. The screening evaluation also included comparison of maximum concentrations of contaminants in groundwater to Maximum Contaminant Levels (MCLs), tap water screening levels, and ecological screening levels. In general, the metals were associated with the samples from slag and soil layers. Rapid decreases in inorganic constituents were noted with increasing depth in underlying natural soils. Some acidic soil and groundwater samples were measured. Lower pH values in groundwater and migrating surface water serve to mobilize metals in the low permeability soil.

There are continuing potential risks from contaminants at this site. Potential risks at the site involve the ingestion, inhalation, and dermal contact of these chemicals. The COCs are associated with smelter ash on the site. Therefore the smelter ash should be removed. Site investigations have determined that previous site activities have resulted in the mixing of slag and ash with soil materials in some areas. The investigations have estimated that approximately 20,500 cubic yards of wastes will need to be removed. The following tables summarize COCs in each media at the site:

Human Health Contaminants of Concern

Surface and Subsurface Soils

Chemical	Maximum Concentration (mg/kg)	*Residential Screening Level (mg/kg)
Arsenic	65.2	0.39
Cadmium	302	39
Iron	94,500	54,750
Lead	4,290	400
Manganese	5,080	3,465
Zinc	30,500	23,464

*2008 Screening Tables

Sediment

Chemical	Maximum Concentration (mg/kg)	*Residential Screening Level (mg/kg)
Arsenic	34.3	0.39
Cadmium	76.9	39

*2008 Screening Tables

Groundwater

Chemical	Maximum Concentration (mg/L)	*Drinking Water Standard (mg/L)
Cadmium	0.166	0.005
Lead	0.027	0.015
Zinc	90.1	4.7

*2008 Screening Tables

Ecological Contaminants of Concern

Surface Soils

Chemical	Maximum Concentration (mg/kg)	Ecological Screening Level (mg/kg)
Aluminum	17,700	50
Arsenic	65.2	10
Barium	827	165
Beryllium	3	1.1
Cadmium	302	1.6

Chemical	Maximum Concentration (mg/kg)	Ecological Screening Level (mg/kg)
Chromium	122	0.4
Cobalt	74.8	20
Copper	760	40
Iron	94,500	200
Lead	4,290	50
Manganese	5,080	100
Mercury	0.14	0.1
Nickel	88.7	30
Selenium	3.6	0.81
Silver	10.3	2
Vanadium	61.4	2
Zinc	30,500	50

Sediment

Chemical	Maximum Concentration (mg/kg)	Ecological Screening Level (mg/kg)
Aluminum	11,300	25.2
Arsenic	34.3	7.24
Iron	53,000	40
Lead	162	30
Manganese	838	630
Nickel	65.7	15.9
Cadmium	76.9	1
Chromium	106	52.3
Copper	55.6	18.7
Zinc	5,640	124

Surface Water

Chemical	Maximum Concentration (ug/L)	Ecological Screening Level (ug/L)
Aluminum	994	87
Barium	100	3.9
Cadmium	5.6	0.66
Cobalt	4.1	3
Iron	2,220	1,000
Lead	9.81	1.32
Manganese	844	80
Zinc	181	59

4.2 Human Health Exposure

4.2.1 Surface Soils and Subsurface Soils

A total of 6 metals were detected at concentrations above residential soil screening levels in surface and subsurface soils. These metals are typically associated with smelter wastes and occur at the surface and to depths of approximately 3 feet. In general, the highest constituent concentrations were associated with samples from zones with smelter waste. There is a noticeable rate of attenuation of these concentrations associated with increasing depth below the waste. Given the proximity of residential land use to the north, exposures to COCs in soil could occur directly through dermal contact, incidental ingestion, or inhalation of dust. Consequently, these same exposure pathways apply to trespassers and future industrial and construction workers.

4.2.2 Sediment

Because some sediment locations at the site are dry during periods of extended dry weather, exposures to sediment concentrations were compared to residential soil screening levels assuming that sediment exposure will occur as if the sediment were soil. Two metals were detected at concentrations above residential soil screening levels and are associated with COCs in surface and subsurface soils. As with the soils, exposures to COCs in sediment could occur directly through dermal contact, incidental ingestion, or inhalation of dust.

4.2.3 Groundwater

Three metals were detected in on-site groundwater at concentrations exceeding either the MCL or tap water screening level. These COCs are associated with those metals identified as COCs in the surface and subsurface soils. Exposures to COC's in groundwater could occur directly through dermal contact and incidental ingestion from potable groundwater use or encountering groundwater during construction activities.

A deed restriction will be placed on the property prohibiting any current or future use of groundwater at the site.

4.2.4 Surface Water

The majority of the chemicals present at the site (heavy metals) are most likely to settle to the sediment in surface water bodies and human exposure to any of these chemicals in surface water would be de minimis when compared to exposures in soil, sediment and groundwater. For these reasons, no COCs were identified for human contact in surface water at the site.

4.3 Ecological Exposure

4.3.1 Surface and Subsurface Soils

Terrestrial receptors may be exposed to soil contaminants through direct contact or indirectly via the food chain. Terrestrial receptors were evaluated by comparing soil concentrations to ecological soil screening levels. A total of 17 metals were detected at concentrations exceeding the ecological soil screening levels.

Removal of the surface and subsurface soils, together with residual industrial waste, will effectively remove the principal source of contamination from the site.

4.3.2 Sediment

Aquatic receptors may be exposed to sediment contaminants through direct contact or indirectly via the food chain. Aquatic receptors were evaluated by comparing sediment concentrations to ecological sediment screening levels. A total of 10 metals were detected at concentrations exceeding the ecological soil screening levels. These COCs are associated with those metals identified as COCs in the soil.

Removal of the surface and subsurface soils, together with residual industrial waste, will effectively remove the principal source of contamination for the COCs in the sediment.

4.3.3 Surface Water

Aquatic receptors may be exposed to surface water contaminants through direct contact or indirectly via the food chain. Samples were collected from the intermittently flowing stream and Mill Creek. Results indicated 8 metals were detected at concentrations exceeding ecological surface water screening values. The results indicated that the site is having an adverse impact on water quality in Mill Creek.

There are no erosion controls in place to keep surface soil runoff from discharging to drains, the intermittent stream or to Mill Creek. It is expected that the removal of contaminated soils and a permanent vegetative cover would significantly reduce the potential for runoff of contaminants to surface water.

4.3.4 Groundwater

Groundwater data were not screened for ecological impact because ecological receptors are not expected to be exposed to groundwater,

4.4 Threatened and Endangered Species / Protected Waterways

Records indicate there are no rare, threatened, or endangered species occurring on or in the vicinity of the property.

4.5 Clean-Up Levels

Clean-up levels for the site adhere to Risk-Based Concentrations (RBCs). The RBCs for COCs in soil are based on a future child resident scenario, which is the most sensitive receptor. Therefore, clean-up levels will be protective for any person anticipated to be at

the site. Groundwater clean-up levels are based on MCLs, when available. For chemicals without MCLs, clean-up levels are based on risk-based tap water screening levels. Removal of the surface and subsurface soils, together with residual industrial waste, is expected to remove the principal source of contamination from the site. In turn, the removal of source contamination is expected to reduce contaminant concentrations in surface water, sediment, and groundwater. However, since contaminant concentrations in groundwater exceed MCLs, groundwater use at the site needs to be prohibited. Therefore, clean-up levels for groundwater have been established.

Soil Clean-Up Levels

Chemical	Clean-Up Level (mg/kg)
Arsenic	20*
Cadmium	70
Iron	55,000
Lead	400
Manganese	1,800
Zinc	23,000

* Clean-up level for arsenic is considered background in Arkansas

Groundwater Clean-Up Levels

Chemical	Clean-Up Level (ug/L)
Cadmium	5
Lead	15
Zinc	4,700

Note: The cleanup levels for both soil and groundwater have been calculated using the most current health based number provided by USEPA.

5.0 SUMMARY OF ALTERNATIVES CONSIDERED

Constituents of Potential Concern (COCs) on the property are primarily metals from previous smelter operations.

Alternative 1: No Action

The Federal National Contingency Plan, 40 CFR § 300.430(e)(6) requires that the “No Action” alternative be evaluated at every site to establish a baseline for comparison. Under this alternative, the City of Fort Smith would take No Action at the property to prevent potential exposure to contaminants at the site.

Alternative 2: Fixation with lime kiln dust and remain in place

This alternative involves treatment of the material to elevate the pH so that precipitation of metals from the material would be eliminated or significantly reduced. Following fixation of the ash, the area would be capped with an impermeable layer.

Alternative 3: In-situ stabilization/isolation

This alternative utilizes a proprietary silicate gel-forming compound mixed with the ash material to create an impermeable matrix that stabilizes and prevents water infiltration of the mixed material.

Alternative 4: Excavation and disposal

The remedial alternative recommended by the City of Fort Smith is excavation and off-site disposal of all ash/slag for the entire purchased site, including areas not proposed for additional waste water treatment component construction.

This option seeks to limit the continued contamination (and use of) groundwater through a combination of removing the contaminated soils and materials from the site, rehabilitation by replacing the soils, and imposing institutional controls to prevent the use of groundwater at the property.

Institutional controls require long-term management and oversight and may also potentially encompass physical limitations on operational use of the site. Institutional control objectives include:

- Restricted use of groundwater;
- Erosion control;
- Continual maintenance; and
- Continual site use supervision.

Table 1. Summary of Alternatives

Remedy Alternatives	Protection of Human Health and the Environment	Short Term Effectiveness	Long Term Effectiveness	Implementability	Costs
Alternative 1: No Action	Unacceptable.	Not effective. Potential health risks will hinder re-use.	Not effective. Potential health risks will continue to hinder re-use.	NA	0.00
Alternative 2: Fixation with lime kiln dust and remain in place	Acceptable.	Not effective. Would restrict future development for recreational use.	Not effective. Would restrict future development for recreational use.	Yes	NA
Alternative 3: In-situ stabilization/isolation	Acceptable.	Not effective. Would restrict future development for recreational use.	Not effective. Would restrict future development for recreational use.	Yes	NA
Alternative 4: Excavation and disposal	Acceptable	Effective. Future development of the site would have no restrictions.	Effective. Future development of the site would have no restrictions (for soil use).	Yes, subject to careful management of the bulk earthworks & effective sediment	3.4 million

Remedy Alternatives	Protection of Human Health and the Environment	Short Term Effectiveness	Long Term Effectiveness	Implementability	Costs
				erosion controls.	

6.0 SELECTION AND RATIONALE FOR THE PREFERRED REMEDIAL ACTION

Alternative 1 is not acceptable because the property poses a potential risk due to the presence of contaminants in the soil and groundwater. The No Action alternative would leave the property in its present condition would prevent the planned reuse by the owners.

Alternatives 2 and 3 are not acceptable because institutional controls would likely restrict future development of the site for the City's recreational plans. It was determined any alternative that allows materials to remain in-place is not preferred.

Alternative 4 is the selected remedial alternative proposed by the City of Fort Smith. Excavation and off-site disposal of all ash/slag for the entire purchased site, including areas not proposed for additional waste water treatment component construction will be accomplished. All materials inside the ash/ slag deposit limits north of the unnamed tributary will be removed and properly disposed. The area closest to Jenny Lind Road not used for water treatment component construction will be reshaped and graded to restore surface drainage following excavation of all subsurface deposits of ash/slag; no backfill beyond that required to establish permanent vegetation will be placed.

7.0 INTERIM MEASURES

Erosion and sediment controls (i.e. construction entrances and perimeter control) will be installed in accordance with the Storm Water Pollution Prevention Plan. The property is covered under the Construction Storm Water General Permit ARR150000. The site's permit tracking number is ARR153811. Any other appropriate interim measures will be implemented should the need arise.

8.0 REDEVELOPMENT AND/OR CONSTRUCTION PLANS

After site remediation is completed, the City of Fort Smith proposes to construct equalization tanks, pump station, and associated underground piping to temporarily retain excess domestic wastewater during periods of high flow. The stored water will be returned to the collection and treatment system during non-peak flow periods.

Construction plans are contained in the Property Development Plan (PDP) and will be managed in accordance with the Construction Storm Water General Permit and the Storm Water Pollution Prevention Plan as approved by the ADEQ.

9.0 PROJECT SCHEDULE

The planned project start date is June 2012, with the expected remediation phase completion date of October 2012.

10.0 OPERATIONS AND MAINTENANCE AND LONG TERM OVERSIGHT PLANS

The planned remedial alternative will remove ash, slag and contaminated overburden from the site. Contaminated materials will be disposed of in the Fort Smith Solid Waste Landfill. All existing concrete and masonry structures will be demolished, rubblized, and then used as fill on-site. An Effectiveness Monitoring Plan will be submitted to include monitoring in Mill Creek during site redevelopment and following the completion of the planned redevelopment. The monitoring should include all COCs identified in soil, sediment and surface water. An evaluation should be made relative to human and environmental receptors.

Institutional Controls to be Implemented:

In conjunction with ADEQ, the City of Fort Smith will establish institutional controls on the property through deed recordation of the following property restrictions and requirements which will run with the land:

1. Implement a deed restriction prohibiting the use of groundwater beneath the property;
2. Provide access to ADEQ personnel and contractors at all times for the term of the deed, and in particular for conducting Five-Year Reviews which may include sampling.

11.0 COORDINATION WITH OTHER DIVISION/AGENCIES

It is important in the development of a PDDD to involve/inform other ADEQ Divisions and external agencies as applicable. To keep USEPA informed of all remedial action work, USEPA Region 6 was provided a copy of the Public Notice and PDDD for review and comment. Table 2 lists the ADEQ Divisions involved with the development of this PDDD, and Table 3 lists the state and federal agencies to receive the Notice of Decision for the property.

Table 2. Internal Coordination

ADEQ Divisions	Consulted/ Informed	Sent Notice of Decision
Water	Yes	Yes
Air	No	No
Solid Waste	Yes	Yes
Regulated Storage Tanks	Yes	Yes
Mining	No	No
Environmental Preservation and Technical Services	Yes	Yes

Table 3. External Coordination

Other State and Federal Agencies	Consulted/Informed	Sent Notice of Decision
U.S. EPA, Region 6	No	Yes
AR Office of Emergency Services	No	No
AR Department of Health	No	Yes
AR State Clearinghouse	No	No
AR State Historic Preservation	No	No
AR Natural Heritage Commission	No	No
AR Game & Fish Commission	No	Yes
U.S. Army Corps of Engineers	No	Yes

The PDDD has been sent to all applicable branches of the Hazardous Waste Division, and to all relevant divisions and agencies listed above.

----- **End of PDDD** -----

**RESPONSE TO COMMENTS
&
FINAL DECISION
on the
PROPERTY DEVELOPMENT DECISION DOCUMENT
JENNY LIND EQUALIZATION BASIN
(Zero Street Pump Station Wet Weather Improvements Project)
Fort Smith, Sebastian County, Arkansas
Arkansas Facility Identification Number: 66-01555**

A. INTRODUCTION

On June 11, 2012 the Arkansas Department of Environmental Quality (ADEQ) proposed a Property Development Decision Document (PDDD) as part of a Brownfields Implementing Agreement (IA), Legal Information System (LIS) No. 12-084, executed between the City of Fort Smith (Participant) and the ADEQ for the Proposed Jenny Lind Equalization Basin (Zero Street Pump Station Wet Weather Improvements Project) Brownfields site (Property) located at 5501 Jenny Lind Road, Fort Smith, Arkansas. The PDDD outlines the remedy for the Property based upon the Participant's declared redevelopment and future use of the Property.

This Response to Comments and Final Decision addresses and documents for the public record the comments and issues raised concerning the proposed property development decision; provides the ADEQ's response to the issues raised during the public participation process, if any; and sets forth the final decision detailed in the final PDDD attached herein.

B. SELECTED REMEDY

The selected remedy for the Property is set forth in the attached final PDDD.

Within 30 days of completing all activities outlined in the PDDD, the Participant shall submit to the ADEQ for review and approval a completion report. The completion report shall include information to document that no potential unacceptable risks, as described in A.C.A§ 8-7-1104(h), remain on-site as a result of the release of hazardous substances, and the site has been

remediated in accordance with the provisions set forth in the IA and the PDDD. The completion report will be reviewed by the ADEQ and, upon written approval by ADEQ, a Brownfields Certificate of Completion will be issued.

C. PUBLIC PARTICIPATION ACTIVITIES

The ADEQ issued a public notice of the PDDD on June 11, 2012. The notice was published in the Times Record and comments were accepted for a 30-day period. The public comment period closed on July 12, 2012. A public hearing was not requested during the comment period.

D. PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSE

No comments were received during the 30-day public comment period.

E. FUTURE ACTIONS.

Effective with this Decision, the PDDD is incorporated into and becomes a condition of the Brownfields IA between the City of Fort Smith and the ADEQ, LIS # 12-084, as though set forth therein line for line and word for word.

F. DECLARATIONS.

The ADEQ believes that the remedy proposed in the PDP and set forth in this PDDD is appropriate, technically feasible, reliable, and cost effective. With respect to risk management decisions made by the ADEQ, this remedy is deemed acceptable, and to be protective of human health and the environment.



J. RYAN BENEFIELD
Acting Chief, Hazardous Waste Division
Arkansas Department of Environmental Quality

7/30/12
(Date)

Enclosure:
PDDD

RESOLUTION NO. _____

2 H

RESOLUTION ACCEPTING THE PROJECT AS COMPLETE AND AUTHORIZING
FINAL PAYMENT TO FORSGREN, INC., FOR CONSTRUCTION OF THE
RIVER FRONT DEVELOPMENT WATER AND SEWER EXTENSIONS

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

SECTION 1: The construction of the River Front Development Water and Sewer
Extensions, Project Number 11-08-C1, is accepted as complete.

SECTION 2: Final payment to Forsgren, Inc., in the amount of \$99,526.05, is
hereby approved.

This Resolution adopted this _____ day of April 2013.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:



npr

INTER-OFFICE MEMO

TO: Ray Gosack, City Administrator

DATE: April 9, 2013

FROM: Steve Parke,  Director of Utilities

SUBJECT: River Front Development Water & Sewer Extensions
Project Number 11-08-C1

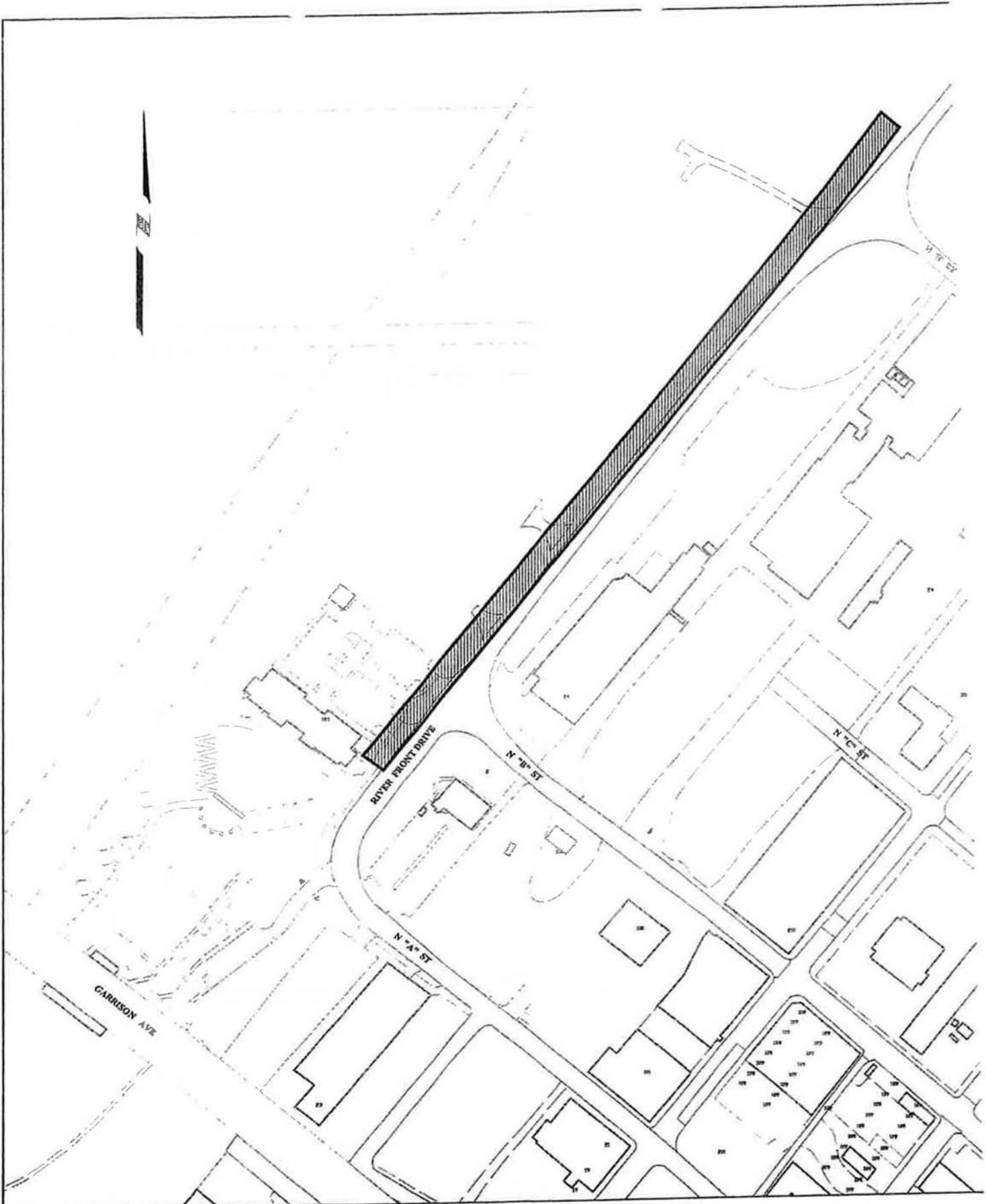
The water and sewer lines being constructed to stimulate development along the city's downtown river frontage are being accomplished in two phases. Phase I, this project, is from North "A" Street to North "H" Street and designed to provide water and sewer services to the Marshalls Museum site. Phase II covers the remainder of the identified development area from North "H" to North "P" Street and is still under construction through a separate contract. The attached exhibit shows the project area for Phase I.

Forsgren, Inc., has completed Phase I and is now ready for the final payment in the amount of \$99,526.05. The final contract cost is \$436,721.55 of which \$250,000.00 was provided by a CDBG Grant from a congressional appropriation. A project summary sheet is attached for your information. A Resolution is also attached which accepts the project as complete and authorizes final payment. It is my recommendation that the Resolution be approved.

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

attachment

pc: Jeff Dingman



**RIVER FRONT DEVELOPMENT
WATER AND SEWER EXTENSIONS
11-08-C1**

Project Summary

Project status: Complete

Project name: River Front Development Water
& Sewer Extensions

Today's date: April 9, 2013

Project number: **11-08-C1**

Staff contact name: Steve Parke

Project engineer: EDM Consultants, Inc.

Staff contact phone: 784-2231

Project contractor: Forsgren, Inc.

Notice to proceed issued: July 9, 2012

Completion date: March 14, 2013

	Dollar Amount	Contract Time (Days)
Original contract	\$364,615.85	100
Change orders: Number One	\$73,600.00	108
Total change orders	\$73,600.00	<u>108</u>
Adjusted contract	<u>\$438,215.85</u>	<u>208</u>
Payments to date (as negative):	\$-337,195.50	76.9%
Amount of this payment (as negative)	\$-99,526.05	22.7%
Retainage held	\$0.00	
Contract balance remaining	\$1,494.30	0.3%
Amount over (under) as a percentage	19.8%	

Final comments:



April 5, 2013

TO: Members of the Board of Directors
Members of Western Arkansas Planning & Development District

RE: Appointments:

There are two vacancies in the Western Arkansas Planning & Development District. In accordance with Ordinance No. 2926 applications for these prospective vacancies are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

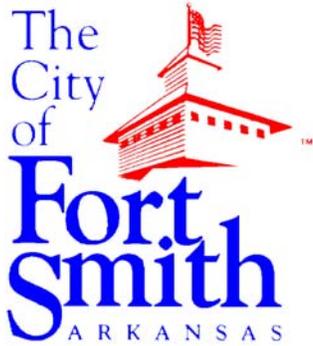
Please submit applications to the city administrator's office no later than the close of business on April 30, 2013. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in blue ink that reads "Ray Gosack".

Ray Gosack
City Administrator

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



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith Lau

Ward 2 – Andre' Good

Ward 3 – Mike Lorenz

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

AGENDA ~ Summary

Fort Smith Board of Directors

Regular Meeting

April 16, 2013 ~ 6:00 P.M.

Fort Smith Public Schools Service Center

3205 Jenny Lind Road

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

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

All present

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)

None presented

APPROVE MINUTES OF THE APRIL 2, 2013 REGULAR MEETING

Unanimously approved as written

ITEMS OF BUSINESS:

1. Ordinance authorizing transfers to the Employee Health and Wellness Fund
~ Weber / Merry placed on agenda at the April 9, 2013 study session ~
Approved 7 in favor, 0 opposed / Ordinance No. 18-13

2. Consent Agenda

- A. Resolution authorizing additional work and a time extension for the construction of the May Branch Outfall Culvert Replacement, Project No. 12-06-E (\$361,516.00 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
Approved 7 in favor, 0 opposed / Resolution No. R-55-13
- B. Resolution to accept completion of and authorize final payment for the construction of Street Overlays/Reconstruction, Project 12-03-A (\$59,222.64 / *Engineering Department / Budgeted - Sales Tax Program Fund*)
Approved 7 in favor, 0 opposed / Resolution No. R-56-13
- C. Resolution accepting bid for the purchase of an excavator (\$91,735.00 / *Utility Department / Budgeted – Operating Fund / Capital Outlay*)
Approved 7 in favor, 0 opposed / Resolution No. R-57-13
- D. Resolution approving a tolling agreement with the United States Department of Justice relating to wet weather sanitary sewer work
Approved 7 in favor, 0 opposed / Resolution No. R-58-13
- E. Resolution authorizing the Mayor to execute Authorization No. 4 to the agreement with Hawkins-Weir Engineers, Inc. for engineering services for the Zero Street Pump Station Wet Weather Improvements – Pump Station and EQ Storage (\$1,231,400.00 / *Utility Department / Budgeted – 2012 Sales and Use Tax Bonds*)
Approved 7 in favor, 0 opposed / Resolution No. R-59-13
- F. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Archer Western Contractors, LLC for the Zero Street Pump Station Wet Weather Improvements – Pump Station and EQ Storage (\$12,193,000.00 / *Utility Department / Budgeted – 2012 Sales and Use Tax Bonds*)
Approved 7 in favor, 0 opposed / Resolution No. R-60-13
- G. Resolution authorizing the Mayor to execute a Restrictive Covenant, Notice of Implementing Agreement and Notice of Property Development Decision Document for the Arkansas Brownsfield Program with the Arkansas Department of Environmental Quality in connection with the Zero Street Pump Station Wet Weather Improvements
Approved 7 in favor, 0 opposed / Resolution No. R-61-13

- H. Resolution accepting the project as complete and authorizing final payment to Forsgren, Inc. for construction of the River Front Development Water and Sewer Extensions (\$99,526.05 / Utility Department / Budgeted – 2008 Revenue Bonds)

Approved 7 in favor, 0 opposed / Resolution No. R-62-13

OFFICIALS FORUM ~ presentation of information requiring no official action

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

- Mayor
- Directors
- City Administrator

Information available by viewing rebroadcast of the meeting on the City Access Channel 6 or City website

ADJOURN

6:13 p.m.