

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 – Tracy Pennartz  
At Large Position 6 – Kevin Settle  
At Large Position 7 – Don Hutchings

**AGENDA**  
**Fort Smith Board of Directors**  
**REGULAR MEETING**  
**February 3, 2015 ~ 6:00 p.m.**  
**Fort Smith Public Schools Service Center**  
**3205 Jenny Lind Road**

**THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT ACCESS CHANNEL 214 AND ONLINE AT <http://www.ustream.tv/channel/city-of-fort-smith-board-of-directors-meetings>**

**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 JANUARY 20, 2015 REGULAR MEETING**

**ITEMS OF BUSINESS:**

1. Items regarding the Steel Horse Rally:
  - A. Consideration of Mayor’s veto of Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund *(Steel Horse Rally scheduled for May 1 & 2, 2015)*
  - B. Ordinance authorizing the Mayor to execute an agreement with the Steel Horse Rally, Inc. for certain services for inhabitants of the City of Fort Smith ~ *Settle/Catsavis placed on agenda at the January 13, 2015 study session ~*

2. Items regarding property located at 8225 and 8227 Texas Road:
  - A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (8225 & 8227 Texas Road)
  - B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Extra-Territorial Jurisdiction Low Density Residential to Residential Attached / Rezoning: from Extra-Territorial Jurisdiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by classification located at 8225 and 8227 Texas Road*)
3. Ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*Setback exceptions for corner lots*)
4. Consent Agenda
  - A. Resolution authorizing the installation of speed tables on Cliff Drive (\$30,000.00 / Engineering Department / Not Budgeted – Sales Tax Program) ~ Settle/Lorenz placed on agenda at the January 27, 2015 study session ~
  - B. Resolution authorizing acquisition of real property interests for Town Branch Drainage Improvements, Phase III, Project No. 11-06-B (\$7,500.00 / Engineering Department / Budgeted – Street Sales Tax Fund)
  - C. Ordinance to abandon a public utility easement located in Commercial Park South, Phase II, an addition to the City of Fort Smith, Sebastian County, Arkansas
  - D. Resolution authorizing agreements for easements for the Greg Smith Riverwalk
  - E. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas, concerning administration and funding for the Homeland Security Grant Program (\$125,590.00 Grant Revenue / Police Department / Not Budgeted – Homeland Security)
  - F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the rehabilitation of the Lee Creek facility's horizontal Kaplan s-turbine (\$343,764.00 / Utility Department / 2014-2015 Budgeted – Operating Budget)
  - G. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with Year 2015 sewer system assessments (\$1,028,990.48 / Utility Department / Budgeted – 2014 Sales and Use Tax Bonds)

- H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Dale Crampton Company for the 3900 Kelly Highway roof renovation (\$297,983.00 / Utility Department / Budgeted – Operating Budget)
5. Ordinance specifying the personnel authority of the City Administrator  
~ Directors Settle, Lau, Good, Lorenz & Catsavis placed on agenda 1/30/2015 ~

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

- Mayor
- Directors
- City Administrator

**ADJOURN**

**MEMORANDUM**

January 30, 2015

To: Ray Gosack, City Administrator  
From: Sherri Gard, City Clerk  
Re: Mayor's Veto of Ordinance No. 9-15

Mayor Sandy Sanders vetoed Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund for the Steel Horse Rally scheduled for May 1 & 2, 2015. The ordinance was adopted by the Board of Directors at January 20, 2015 regular meeting.

A copy of the ordinance and the mayor's veto statement is attached. Per Section 2-34(a) of the Fort Smith Municipal Code, *"... a veto by the mayor may be overridden by the affirmative vote of five (5) or more members of the board of directors."*

ORDINANCE NO. 9-15

AN ORDINANCE AUTHORIZING THE APPROPRIATION OF FUNDS FROM THE GENERAL FUND

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

There is hereby authorized an appropriation in the amount of \$84,000 from the unobligated balance of the General Fund (0101) to provide funding for the 2015 Steel Horse Rally, subject to execution of a services agreement containing the City's standard provisions.

THIS ORDINANCE ADOPTED THIS 20th DAY OF January, 2015.

APPROVED:

~~VETO~~  
MAYOR *Sam Sanchez*

ATTEST:

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

APPROVED AS TO FORM:

*Janey Corfield*  
\_\_\_\_\_  
No Publication Required

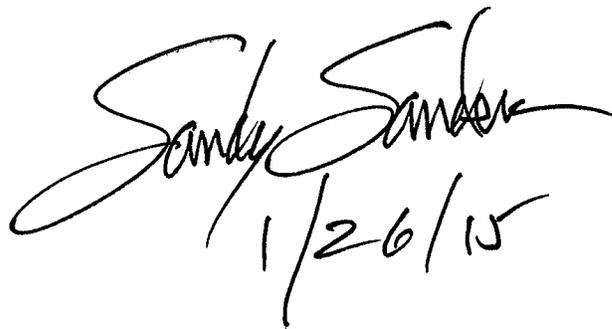
While supporting the concept of the Steel Horse Rally, I cannot justify the use of tax dollars for what I believe should be a private sector effort, just as Bikes, Blues and Barbecue is in Fayetteville.

The Board of Directors and staff devoted a great amount of time and effort to establish the 2015 budget. Every single department had funding requests reduced.

Additionally, the City has a system for organizations to complete an extensive application process to contract services for the City. The 2015 City budget for more than 20 organizations is \$145,800, a reduction of \$16,200 from last year. How can we allocate \$4,950 for the Crisis Center for Women or \$4,500 for the Children's Emergency Shelter, which went through the extensive review process by a panel of City residents, and then suddenly find an additional \$84,000 in the budget for a brand new start-up effort which is almost 60 percent of the budget for those organizations with performance histories.

Passing this ordinance also sets an unhealthy precedent, which has already manifested itself in notification by another new organization informing the City that substantial funds to support that event will be requested from the City.

I have vetoed this ordinance in the overall best interests of the City.



Sandy Sanders  
1/26/15

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

**AN ORDINANCE AUTHORIZING THE MAYOR  
TO EXECUTE AN AGREEMENT WITH THE STEEL HORSE RALLY, INC.,  
FOR CERTAIN SERVICES FOR INHABITANTS OF THE CITY OF FORT SMITH**

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

SECTION 1: The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, that certain agreement with the Steel Horse Rally, Inc., providing for the payment by the City to the Steel Horse Rally, Inc., up to a maximum of \$84,000 for services provided to the City that shall consist of providing a motorcycle rally in downtown Fort Smith.

SECTION 2: It is hereby declared and determined by the Board of Directors that the agreement authorized by Section 1 above deals with providing services in an exceptional situation where competitive bidding procedures are not feasible so that such competitive bidding procedures are hereby waived with reference to such agreement.

PASSED and APPROVED this \_\_\_\_\_ day of February, 2015.

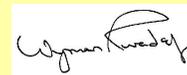
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM



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



# *MEMORANDUM*

January 30, 2015

**TO:** Mayor and Board of Directors

**FROM:** Ray Gosack, City Administrator

**SUBJECT:** Steel Horse Rally

The February 3<sup>rd</sup> agenda has two items pertaining to the Steel Horse Rally. The first item is the appropriation of funds, and the second item is a services agreement with the organization.

## ***APPROPRIATION ORDINANCE***

At the January 20<sup>th</sup> meeting, the board passed an ordinance appropriating \$84,000 for the Steel Horse Rally. The Mayor has vetoed the ordinance. As provided by state law and the city's municipal code, the board will consider override of the Mayor's veto at the February 3<sup>rd</sup> meeting. A motion to override the veto will require 5 votes to pass.

## ***SERVICES AGREEMENT***

If the veto is overridden and funds are appropriated, the board will need to approve a services agreement with the Steel Horse Rally. If the veto isn't overridden, then the services agreement will be moot since no funding is available.

The agreement specifies the services to be provided by the organization and the payment to be made by the city for those services. The services are enumerated in the proposal made by Steel Horse Rally to the board, which is part of the services

agreement. The agreement further provides that:

- ▶ The city's funds will be used to pay deposits for entertainment acts. The payments would be made jointly to the performer and to Steel Horse Rally. (Paragraph 2(a))
- ▶ Any profits generated by the event would first be used to pay the city up to the amount it provided for the event. No funds could be paid to other organizations until the city had received its payment. (Paragraph 2(b))

There's a possibility the city's funds could be spent and the event doesn't occur. Inclement weather or other reasons could cause the event to be cancelled after the city's funds have been expended. If this were to occur, the city would neither have the expectation of recovering any of its funds nor realizing the benefits of the event.

The Steel Horse Rally implements the following policy in the comprehensive plan:

*Support festivals and special events that highlight what makes Fort Smith unique (Natural and Cultural Resources - 3.3)*



- Ray

Attachments

cc: Dennis Snow, Steel Horse Rally Inc.

## AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of February, 2015, by and between the City of Fort Smith, Arkansas (“City”), and the Steel Horse Rally Inc. a national, non-sectarian, incorporated, organization with the local social, cultural, and economic development benefits to the city, state, and region.

### WITNESSETH:

WHEREAS, the Steel Horse Rally Inc. has proposed to provide to the City’s residents certain services, as enumerated in paragraph one (1) below, which services fulfill a governmental function to provide for the health, safety, and welfare of the City’s inhabitants; and

WHEREAS, the parties desire to provide a program of such services and facilities for the City’s inhabitants;

NOW, THEREFORE, it is agreed by the parties that in exchange for the mutual covenants and agreements set forth below;

1. The Steel Horse Rally Inc. will provide to the City and its inhabitants, on May 1-2 2015, services which will enhance the health and welfare of the City and its inhabitants. The service shall consist of a motorcycle rally in downtown Fort Smith as described in the proposal made by Steel Horse Rally Inc. to the City’s Board of Directors and attached hereto as Exhibit “A”.

2. (a) In consideration for the providing of the services described in the preceding paragraph, the City agrees to pay the Steel Horse Rally Inc. the total sum of \$84,000. The City’s funds shall be used to pay deposits for musical entertainment acts. Payments from the City shall be made jointly to the musical entertainment act and Steel Horse Rally, Inc. upon presentation of a fully-executed contract between the musical entertainment act and Steel Horse Rally, Inc. The City shall issue such payments within 14 days of the requirements of the preceding sentence being satisfied.

(b) In the event the total revenues and any other income of Steel Horse Rally Inc. exceed the total expenses of providing the services required in paragraph 1 (the net event proceeds), Steel Horse Rally Inc. shall pay to the City all net event proceeds up to but not to exceed an amount equal to the sum of funds provided by City to Steel Horse Rally Inc. under this Agreement. Payments by Steel Horse Rally Inc. to other non-profit or charitable organizations shall not be made until the obligation of the preceding sentence has been fulfilled. Any payment to the City shall be made by Steel Horse Rally Inc. by July 15, 2015.

3. It is agreed by the Steel Horse Rally Inc. that the City shall have the right, at all reasonable times, to inspect the facilities and programs being provided by the Steel Horse Rally Inc. under this Agreement, and shall have the right, at all reasonable times, to inspect the financial and other records of the Steel Horse Rally Inc. After inspection or investigation, the City shall have the right to notify the Steel Horse Rally Inc., in writing, of any deficiencies in the program and/or facilities provided under this Agreement, and, if such deficiencies are not cured within thirty (30) calendar days from the date of such written notice, the City shall have the absolute right to terminate this Agreement and not make any further payment. To assist the City in monitoring its activities, the Steel Horse Rally Inc. shall provide to the City Administrator, or

his/her designated agent, a report of the Steel Horse Rally Inc. financial and service activities by June 30, 2015.

4. Furthermore, the City shall have the right to cancel this Agreement and not make any further payment upon the happening of any of the following:

- a. Any substantial damage to or destruction of the event facilities to be used by Steel Horse Rally Inc. by fire, wind, or other casualty; or
- b. A determination by the Board of Directors that the services provided hereunder are no longer needed as a governmental function, or, otherwise, a determination by the Board of Directors that the City, for whatever reason, no longer desires to have such services provided by the Steel Horse Rally Inc.; or
- c. A determination by the Board of Directors that the Steel Horse Rally Inc. its employees, or agents, in the providing of the services hereunder, have violated the City's policy against discrimination on the basis of age, sex, religion, race, color, national origin, political affiliation, handicap, veteran status, or have violated the City's policy in favor of a drug-free work place.

In addition to any of the other rights of cancellation stated herein, either party shall have the right to cancel this Agreement because of the breach by the other party of that party's obligations hereunder, such cancellation to be effective as of the date of the breach. Failure by either party immediately to declare the contract canceled by reason of a particular breach shall not preclude a party from raising that breach subsequently as a reason for cancellation. Should the Agreement be canceled, for any reason, the Steel Horse Rally Inc. understands and agrees that the City shall immediately cease paying any further monies under this Agreement, and agrees additionally the Steel Horse Rally Inc. will refund to the City, on a pro-rated basis, monies paid by the City for services not rendered by the Steel Horse Rally Inc.

5. The Steel Horse Rally Inc. shall indemnify and hold harmless the City, its officers, boards, commissions, employees, and agents, against and from any and all claims (including, but not limited to, any based on 42 U.S.C. section 1983), demands, causes of action, actions, suits, proceedings, damages (including, but not limited to, damages to City property), cost of liabilities (including the City's cost with respect to its employees and cost of defending any and all such actions and proceedings described herein), arising out of or pertaining to the providing of services hereunder by the Steel Horse Rally Inc.

6. It is agreed by the parties that there will be no assignment or transfer of this Agreement, nor of any interest in this Agreement.

7. The parties to this Agreement agree that it is not a contract of employment, but is, instead, a contract to fulfill a specific governmental purpose. Accordingly, in the performance of this Agreement, the Steel Horse Rally Inc. shall be considered an independent agent, and neither it nor its employees or agents shall be considered employees or agents of the City.

8. Because the Steel Horse Rally Inc. will be receiving monies from the City under this Agreement, the Steel Horse Rally Inc. understands that its records and meetings may become subject to the provisions of the Arkansas Freedom of Information Act.

9. It is understood and agreed by the parties that, if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of Arkansas, the entire Agreement shall be null and void.

10. This Agreement shall not be specifically enforceable in equity, by either party; nor shall any injunction be applied for or issued at the instigation of either party in case of dispute or alleged breach of this Agreement.

11. This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.

12. This Agreement is executed on the City's behalf by its officials as set forth below pursuant to Ordinance No. \_\_\_\_\_ adopted on February \_\_, 2015.

13. This Agreement is executed on behalf of the Steel Horse Rally Inc. by its authorized representative set forth below who represents that he has full legal authority to bind the Steel Horse Rally Inc.

IN WITNESS WHEREOF, the parties have set their hands and seals this \_\_\_\_ day of February, 2015.

City of Fort Smith

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

Attest:

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

Steel Horse Rally Inc.

By: \_\_\_\_\_  
President and CEO

Attest: \_\_\_\_\_  
Secretary

## EXHIBIT "A"

### **The Steel Horse Rally Inc. Request for Funding from the Fort Smith City Board of Directors**

Tuesday, Jan. 6, 2015

**The Steel Horse Rally** is a premier motorcycle event that will have activities centered in downtown Fort Smith, Arkansas. The inaugural Steel Horse Rally is slated for Friday, May 1<sup>st</sup> and Saturday, May 2<sup>nd</sup>, 2015 and will become an annual event that will take place the first weekend of May each year. The Steel Horse Rally will be dedicated to military, veterans and law enforcement.

The Steel Horse Rally (which will be referred to as "SHR") will feature entertainment for the entire family. The Steel Horse Rally Inc. is a 501 (c) 3 non-profit charity. Money raised by the charity will be disseminated to local and regional charities that specialize in helping children, veterans and the betterment of the downtown Fort Smith area.

The Steel Horse Rally Inc., its officers, and board of directors respectfully request funds in the amount of \$84,000. This money will ensure that the SHR will become a premier event. Your investment in the SHR will have an annual return on investment in the form of new tax dollars generated by the event. A conservative estimate is that each tax dollar that is generated will be reinvested in our community 3 to 5 times.

Your investment will also show how you support restoring civic pride to the community. Your support will generate a positive image for the Fort Smith Board of Directors and the City of Fort Smith by showing that you are proactive in creating an event that all of our citizens can be proud of and take part in.

These are some of the projected costs of The Steel Horse Rally:

#### **1. Advertising**

Because this is the inaugural year of the SHR, it is imperative that we advertise throughout the state of Arkansas and in all contiguous states. This will be accomplished through intensive advertising on radio, television, and print publications.

Here is an example of the advertising strategy that will be implemented:

- A) The Director of the SHR will personally travel to Little Rock, Ark. to do live interviews and feature stories on radio, TV and in newspapers.
- B) Because the entertainment will be nationally-known country music and rock music, in each market we will target a country radio station, a rock radio station and two of the dominant television stations. We will also place a small buy in the area's largest daily newspaper.
- C) The director of the SHR will place SHR posters in all motorcycle-related businesses, travel agencies, Chamber of Commerce, etc.

A breakdown for the Little Rock market would look like this:

- A) KSSN – (Country Radio station): Schedule interviews on morning show; Place buy to run the 6 weeks leading up to the SHR. Cost: \$1,000 - \$1,500
- B) The Point 94.1 – (Classic Rock Station): Schedule interviews on afternoon show; Place buy to run the 6 weeks leading up to the SHR. Cost: \$1,000 - \$1,500
- C) Interview with the *Arkansas Democrat-Gazette* and place buy for a print ad to run weekly for the month leading up to the SHR. Cost: \$1,000 - \$2,000
- D) Channel 7 – Schedule interview on morning show and during community calendar slot. Schedule an ad to run the month leading up to the SHR. Cost: \$2,000 - \$3,000
- E) Arkansas Times – Schedule Interview with their statewide publication. Place an ad in the 2 months leading up to the SHR. Cost: \$2,000

Estimated Cost for Media Saturation in the Little Rock marketplace: \$7,000 - \$10,000

This same marketing strategy will be implemented the first year in the following markets:

| <i>City/Regional Area</i> | <i>Estimated Cost</i> |
|---------------------------|-----------------------|
|---------------------------|-----------------------|

|  |                     |
|--|---------------------|
| Fort Smith, AR   | \$3,000 - \$5,000   |
| Fayetteville, AR (Radio only)  | \$2,000 - \$3,000   |
| Little Rock, AR  | \$7,000 - \$10,000  |
| Hot Springs, AR  | \$5,000 - \$8,000   |
| Texarkana, AR  | \$5,000 - \$8,000   |
| Shreveport, LA   | \$7,000 - \$10,000  |
| Dallas, TX   | \$10,000 - \$15,000 |
| Tulsa, OK  | \$10,000 - \$15,000 |
| Oklahoma City, OK  | \$10,000 - \$15,000 |
| Springfield, MO  | \$5,000 - \$8,000   |
| Memphis, TN  | \$10,000 - \$15,000 |
| Jackson, MS  | \$5,000 - \$8,000   |
| Wichita, KS  | \$5,000 - \$8,000   |
| <b>Total Estimated Media Budget for AR and contiguous states: \$84,000 - \$128,000</b> |                     |

Although the main media message will be about the SHR, we will also be advertising the city of Fort Smith. The advertising schedules will be implemented around March, 20<sup>th</sup>, 2015, the first Day of Spring.

2) **Production Costs**

30-second Television Spot – (5-Star Productions, Fort Smith, Ark.) – Cost: \$5,000

Radio Spots – Cost: No Charge; Will be handled by Director of SHR

Print Layout (Newspaper, posters, etc.) – Cost: No Charge; Will be handled by Sec/Treasurer of SHR **Total**

**Estimated Production Cost: \$5,000**

3) **Motorcycle-Oriented Entertainment**

Motorcycle-entertainment showcasing incredible riding talents and tricks of some of the nation’s top rider’s is a fun event that riders and non-riders can appreciate. It is also a fun event for the whole family.

A) Bubba Blackwell – This Harley-Davidson-riding daredevil has broken all of Evel Knievel’s records and is currently working on a new reality show. He does a stunt show and then attempts a motorcycle ramp-to-ramp jump. Cost: 1-Day Show: \$15,000

2-Day Show: \$20,000

B) MX Motorcycle Show – Sport bike riders who have toured all over the world; they do a show showcasing their riding skills and then have an autograph and picture session:

Cost: 2-Day Event: \$16,000 - \$20,000

**Total Estimated Motorcycle-Oriented Entertainment: \$31,000 - \$40,000**

4) **Musical Entertainment**

This will be a huge draw for not only the motorcycle community, but for the local population as well. There will be two full days of musical entertainment each day!

A) Each night will culminate with a national-level opening act and headliner. Additionally, the music will be supplemented with local and regional entertainment on the Harry E. Kelley Stage. We will feature “country formatted” music on Friday and “rock formatted” music on Saturday. We have talked with several headlining and opening acts to date and want to bring the very best music to the stage.

Friday Night (Opening Act + Headliner) Music: \$75,000

Saturday Night (Opening Act + Headliner) Music: \$75,000

**Night Musical Entertainment Total: \$150,000**

B) Sound, Security and Lighting:

A premier sound system will have to be brought in to be used at Harry E. Kelley Stage. We have secured JT Audio out of Fayetteville at this time. We will also need to secure an adequate sound engineer. Additionally, we will need to provide security, especially overnight both nights at the back stage area.

Sound \$30,000

Lights \$5,000-\$10,000

Paid Security \$2,500

**Sound, Lighting & Security Total: \$37,500-\$42,000**

**5. Construction/Rentals/Clean-up**

There will be various construction costs accrued before the rally to build T-shirt and merchandise stands, some barricades for backstage areas, etc. Plus rentals of porta potties, tent, other staging materials and clean-up.

**Construction/ Rentals/ Cleanup Total: \$10,000**

**6. Merchandise**

Cost to locally produce T-shirts, hats, patches, koozies, magnets, etc.:

|                                 |          |
|---------------------------------|----------|
| T-Shirts (3,000 men’s @ \$10)   | \$30,000 |
| T-Shirts (1,500 women’s @ \$10) | \$15,000 |
| Hats (500 @ \$10)               | \$5,000  |
| Patches (550 @ \$3)             | \$1,500  |
| Keychains (100 @ 4)             | \$400    |
| Magnets (1,000 @ 3)             | \$3,000  |

**Total Cost for Merchandise: \$54,900**

**7. Beer and Wine Coolers**

|   |            |
|---|------------|
| Beer (\$19.25 Case – Burford Distrib./500 Cases)    | \$9,625    |
| Beer (\$21.25 Case- Belle Point Distrib./400 Cases) | \$8,500    |
| Mike’s Hard Lemonade (\$27.25 per Case/50 Cases)    | \$1,362.50 |
| Water (@ \$3 per Case/500 Cases)                    | \$1,500    |
| Refrigeration Truck (rented from Carco)             | \$500      |
| Ice   | \$2,000    |

**Total Cost for Beer & Wine: \$23,487.50**

**8. Travel, Travel Expenses, Operating Costs, Mileage, etc.**

The media strategy will involve extensive travel throughout several states. Costs will include hotel, food, mileage, etc. There are also operational costs that include ticket printing, armbands, signage, maps, etc. Additionally, to protect your interest and to ensure the continued growth and success of the Steel Horse Rally, it is imperative to pay the director a salary. In this case, you are receiving a director and assistant whose talents and abilities will save the rally money.

**Travel Expenses, Operating Costs, Mileage: \$90,000**

Plus, the director, Dennis Snow, will be available to the board of directors and city agencies to consult, offer advice and suggestions to help future events become successful. Dennis Snow will help the board and the CBID improve the Harry E. Kelly facility through consulting.

**Estimated Total Costs**

|  |                      |
|--|----------------------|
| Total Estimated Media Budget:              | \$84,000 - \$128,000 |
| Total Estimated Production Cost:           | \$5,000              |
| Total Motorcycle Entertainment:            | \$31,000 - \$40,000  |
| Night Musical Entertainment Total:         | \$150,000            |
| Sound, Lighting & Security Total:          | \$37,500-\$42,000    |
| Construction/Rentals Total:                | \$10,000             |
| Total Cost for Merchandise:                | \$54,900             |
| Total Cost for Beer & Wine:                | \$23,487.50          |
| Travel Expenses, Operating Costs, Mileage: | \$90,000             |
| <hr/>                                      |                      |
| Total <b>\$476,887.50 - \$543,387.50</b>   |                      |

**The Steel Horse Rally: Making a Positive Impact**

· Your Investment of \$84,000 will ensure that the inaugural Steel Horse Rally will be a premier event that is geared toward the entire family. This money will ensure that the event is advertised in all contiguous states.

- Your Investment will have a strong return on investment of 3 to 5 times on the first rally alone. The tax dollars will grow exponentially in the coming years.
- Dennis Snow, the director of the SHR, will offer his expertise and consultations on upcoming events like the Blues Festival to help them to continue to reach maximum potential. He will also help the board to make the Harry E. Kelley Park Stage become a viable venue that can be used more effectively and create more tax revenue.
- The director and members of the board have already donated time, effort and personal money including 501(c) 3 application cost, website costs, online/social media promotion, printing costs, application filing fees and more. The Steel Horse Rally director, board members and volunteers are already committed to making the inaugural Steel Horse Rally a success.
- Products and services from the rally will be purchased from locally-owned businesses, helping to stimulate the local economy. Proceeds from the rally stay in the area to help local charities and our city.
- Your Investment and the City of Fort Smith will be acknowledged in all advertising efforts.
- Your Investment in the Steel Horse Rally will show your commitment to doing positive things that will improve our city. You are helping create a unique, premier event that will generate tourism and tax dollars and reinvigorating civic pride in Fort Smith.

**The Steel Horse Rally 2015  
Projected Income**

The most important revenue total generated by the Steel Horse Rally for the City of Fort Smith is the tax revenue that is generated from hotels, bars, restaurants, motorcycle dealerships, T-shirts, etc. The exciting news about this number is that it will grow each year after 2015. The estimated tax revenue that will be generated by the SHR is based on a conservative estimate of 5,000 attendees, each spending the industry average of \$300 per attendee. This will generate \$1.5 million in taxable revenue in the city of Fort Smith. This revenue will recirculate through the community 3 to 5 times in the form of tax dollars. A conservative estimate of \$450,000 to \$750,000 in newly-generated tax dollars is also based on the conservative estimate of only 5,000 attendees. This is a low estimate based on an averaged 10% sales tax. This is a conservative estimate based on motorcycle rallies throughout the United States over the last ten years.

The projected numbers to be generated at the SHR are as follows:

Concert Entertainment Tickets:

|  |           |
|--|-----------|
| Friday: 6,000 people for concert @ \$20/ticket   | \$120,000 |
| Saturday: 7,000 people for concert @ \$20/ticket | \$140,000 |
| <hr/>  |           |
| Entertainment Total: \$260,000                   |           |

**Total Income projections:**

|  |                  |
|--|------------------|
| Concert Entertainment Total                  | \$260,000        |
| Sponsorships of the rally from               |                  |
| local, regional & national sponsors          | \$50,000         |
| T-Shirt & Merchandise Sales                  | \$60,000         |
| Beer and Wine Cooler Sales                   | \$80,000         |
| Vendor Fees                                  | \$15,000         |
| Poker Runs, VIP Packages, Fundraising Events | \$25,000         |
| Rally Program Sales                          | \$20,000         |
| <hr/>  |                  |
| <b>Total SHR Project Revenue</b>             | <b>\$510,000</b> |

From these projected numbers it is apparent that the City of Fort Smith's investment in this rally is imperative to ensure the success of the Steel Horse Rally. All of these numbers are just projections because we do not know what the first rally will be. However, to ensure a premier event, the city's funding is necessary in order to pay advance deposits and reserve premier entertainment for the rally. If these numbers hold true, it will allow the Steel Horse Rally to apply money towards next year's rally as well as disseminating donations to local charities for children, veterans and downtown Fort Smith.

Again, the most significantly number from the Steel Horse Rally will be the tax dollars generated that will turn over three to five times for Fort Smith. The bottom line is that the Steel Horse Rally will stimulate growth, increase morale, and reawaken civic pride in city of Fort Smith.

**2A.**

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

**AN ORDINANCE ACCEPTING CERTAIN TERRITORY INTO  
THE CITY OF FORT SMITH, ARKANSAS**

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

**WHEREAS**, on the 11<sup>th</sup> day of December, 2014, before the County Court of Sebastian County, Arkansas, Greenwood District, there came to be heard a Petition, in proper form and substance, executed by all of the real estate owners in the territory to be annexed;

**WHEREAS**, the property desired to be annexed was described accurately as follows:

A tract of land lying in the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of Section 8, Township 7 North, Range 32 West, Fifth PM, in the Greenwood District, Sebastian County, AR described as beginning at a point 403.5 feet North and 969.55 feet West of the Southeast Corner of said Northeast Quarter; thence S 89°4'00"W, a distance of 1075.47 feet; thence N 30°14'11"E, along the easterly boundary line of Texas Road, a distance of 254.53 feet; thence N 89°52'54"E a distance of 949.9 feet; thence S 04°1'41" W a distance of 215.94 feet to the point of beginning.

**WHEREAS**, the County Court for Sebastian County, Arkansas, Greenwood District approved the Petition and ordered the annexation of the described property.

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

The territory above described be accepted into the City of Fort Smith, Arkansas, annexed to the City of Fort Smith, Arkansas, and made a part thereof for all purposes as provided by law.

**PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2015.**

**APPROVED:**

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

**ATTEST:**

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

Approved as to form:



\_\_\_\_\_  
Publish One Time

# MEMORANDUM

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**To:** Ray Gosack, City Administrator  
**From:** Wally Bailey, Director of Development Services  
**Date:** January 28, 2015  
**Subject:** Texas Road Annexation Request

Billy M. and Aretta Browder, have requested the City of Fort Smith consider annexation of their property located at 8225 and 8227 Texas Road. The property is currently developed as a single family home and a duplex.

The Browders have indicated the purpose for the annexation is to have access to the City of Fort Smith sewer system.

The proposed annexation is 4.8 acres on the east side of Texas Road. The property is contiguous to the current city limits along the south boundary and at the center line of Texas Road.

In accordance with Arkansas law, a petition for the annexation was filed at the County Court of Sebastian County. The Court found that the petition had been properly prepared and filed. The Sebastian County Court issued an Order for Annexation on December 11, 2014. I have enclosed a copy of the Order for Annexation signed by Judge David Hudson and a copy of the original petition submitted to the County Court.

The next step in the annexation process is for the Board of Directors to consider the annexation request. An ordinance has been prepared and is scheduled to be presented to the Board of Directors for consideration at the February 3, 2015 meeting.

In addition to the ordinance annexing the property, a separate agenda item is an ordinance that establishes a master land use map and zoning map classifications for the property. The master land use map and zoning map recommendations have been reviewed and approved by the Planning Commission.

Please contact me if you have any questions.

**FILED**

DEC 11 2014

SHARON BROOKS  
County Clerk & Recorder  
BY 135

**IN THE COUNTY COURT OF SEBASTIAN COUNTY, ARKANSAS  
GREENWOOD DISTRICT**

**IN THE MATTER OF THE ANNEXATION  
OF REAL PROPERTY INTO THE CITY OF  
FORT SMITH, ARKANSAS**

CCD-2014-182

**CASE NO. CC-2014-3-G**

**BILLY M. BROWDER AND  
ARETTA BROWDER**

**PETITIONERS**

**ORDER FOR ANNEXATION INTO THE CITY OF FORT SMITH**

NOW, on this 11th day of December, 2014, comes on for hearing the Petitioners' Petition for Annexation into the City of Fort Smith, the Petitioners appearing in person and by their attorney, Troy Gaston, the proof of publication duly filed herein showing publication of said notice in a newspaper of county-wide circulation in this county for the time and in the manner prescribed by law, and other evidence before the Court, from all of which the Court finds:

1. The Petitioners to this action are the only owners of the real property which is described on the attached Exhibit A. The real property described on the attached Exhibit A is entirely contiguous to the City of Fort Smith, Arkansas.

2. The Court finds that it is in the best interest of the real property and also the best interest of the county and the City of Fort Smith that this property be annexed into the City of Fort Smith, Arkansas. The court finds that the limits of the territory have been accurately described and that an map of the territory has been filed herewith. All real property owners within the territory have approved the Petition.

3. The Court finds that such property shall be and is annexed into the City of Fort Smith, Arkansas, upon the Petitioner obtaining acceptance via ordinance from the City of Fort Smith as set out in Arkansas Statute Annotated 14-40-601 et. al.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read "David Hudson", written over a horizontal line.

Honorable David Hudson  
County Judge

TG:dd

## EXHIBIT "A"

Property Description; Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR (4.3 acres)

Beginning at a point 403.5 feet North and 1020 feet West of the SE corner of the NE/4 of Section 8, Township 7 North, Range 32 West; thence West 1079 feet, more or less, to a point on the East line of Texas Road; thence Northeasterly along said Texas Road 240 feet; thence East 957 feet; thence South 207.5 feet to the point of beginning. LESS AND EXCEPT Part of the SW/4 of the NE/4 of Section 8, Township 7 North, Range 32 West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 NE/4 of Section 8, S03°20'21"W, a distance of 2052.96 feet; thence leaving said East line, N86°39'39"W a distance of 970.37 feet; thence N86°35'06"W a distance of 934.64 feet to the point of beginning; thence S36°14'09"W a distance of 144.57 feet; thence S37°30'52"W a distance of 4.32 feet; to the South property line; thence N77°14'51"W a distance of 11.95 feet along said South line to the East right of way line of Texas Road; thence leaving South Property line, N36°32'29" E a distance of 147.03 feet along said East right of way line to the North Property line; thence leaving East right of way line, S86°35'06"E a distance of 12.22 feet along said North line to the point of beginning. LESS AND EXCEPT Part of the NE/4 of Section 8 Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.5 feet thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing S89°41'00"W 548.03 feet to a set ½" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set ½" rebar on the Easterly right of way line of Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set rebar, thence S80°58'45"E, 131 feet to a set ½" rebar; thence N89°41'00"E, 156.00 feet to a set ½" rebar; thence S00°19'00"E, 64.00 feet to the point of beginning.

AND

PROPERTY DESCRIPTION; Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR. 0.5 acres

Part of the NE/4 of Section 8, Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.50 feet; thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing N89°41'00"W, 548.03 feet to a set ½" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set ½" rebar on the easterly right of way line Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set ½" rebar; thence S80°58'45"E, 131.00 feet to a set ½" rebar; thence N89°41'00"E, 156.00 feet to a set ½" rebar; thence S0°19'00"E, 64.00 feet to the POB. LESS AND EXCEPT part of the SW/4 NE/4 of Section 8, Township 7 North, Range 32

West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 of the NE/4 of Section 8; thence along the east line of Section 8, S03°20'21"W a distance of 2260.46 feet; thence leaving said East Section line, N86°39'39"W a distance of 970.64 feet; thence N86°35'06"W a distance of 1072.55 feet to the point of beginning; thence N86°35'06"W a distance of 6.45 feet to the East right of way line of Texas Road; thence N34°57'33"E a distance of 99.00 feet along said East right of way line to the North property line; thence leaving said East right of way line, S77°14'51"E a distance of 11.95 feet along said North line; thence leaving said North line, S37°30.52"W a distance of 58.56 feet; thence S39°01'30"W a distance of 41.75 feet to the point of beginning.

## EXHIBIT "A"

Property Description; Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR (4.3 acres)

Beginning at a point 403.5 feet North and 1020 feet West of the SE corner of the NE/4 of Section 8, Township 7 North, Range 32 West; thence West 1079 feet, more or less, to a point on the East line of Texas Road; thence Northeasterly along said Texas Road 240 feet; thence East 957 feet; thence South 207.5 feet to the point of beginning. LESS AND EXCEPT Part of the SW/4 of the NE/4 of Section 8, Township 7 North, Range 32 West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 NE/4 of Section 8, S03°20'21"W, a distance of 2052.96 feet; thence leaving said East line, N86°39'39"W a distance of 970.37 feet; thence N86°35'06"W a distance of 934.64 feet to the point of beginning; thence S36°14'09"W a distance of 144.57 feet; thence S37°30'52"W a distance of 4.32 feet; to the South property line; thence N77°14'51"W a distance of 11.95 feet along said South line to the East right of way line of Texas Road; thence leaving South Property line, N36°32'29" E a distance of 147.03 feet along said East right of way line to the North Property line; thence leaving East right of way line, S86°35'06"E a distance of 12.22 feet along said North line to the point of beginning. LESS AND EXCEPT Part of the NE/4 of Section 8 Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.5 feet thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing S89°41'00"W 548.03 feet to a set ½" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set ½" rebar on the Easterly right of way line of Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set rebar, thence S80°58'45"E, 131 feet to a set ½" rebar; thence N89°41'00"E, 156.00 feet to a set ½" rebar; thence S00°19'00"E, 64.00 feet to the point of beginning.

AND

PROPERTY DESCRIPTION; Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR. 0.5 acres

Part of the NE/4 of Section 8, Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.50 feet; thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing N89°41'00"W, 548.03 feet to a set ½" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set ½" rebar on the easterly right of way line Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set ½" rebar; thence S80°58'45"E, 131.00 feet to a set ½" rebar; thence N89°41'00"E, 156.00 feet to a set ½" rebar; thence S0°19'00"E, 64.00 feet to the POB. LESS AND EXCEPT part of the SW/4 NE/4 of Section 8, Township 7 North, Range 32

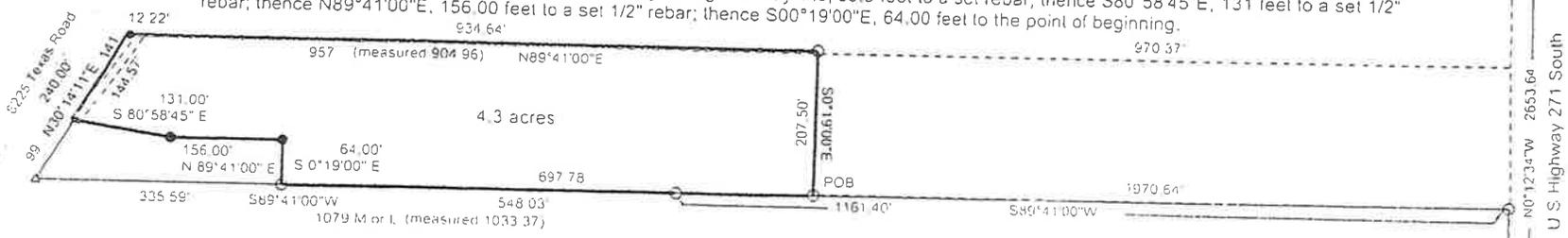
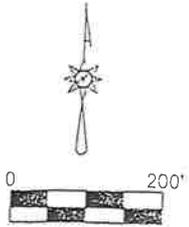
West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 of the NE/4 of Section 8; thence along the east line of Section 8, S03°20'21"W a distance of 2260.46 feet; thence leaving said East Section line, N86°39'39"W a distance of 970.64 feet; thence N86°35'06"W a distance of 1072.55 feet to the point of beginning; thence N86°35'06"W a distance of 6.45 feet to the East right of way line of Texas Road; thence N34°57'33"E a distance of 99.00 feet along said East right of way line to the North property line; thence leaving said East right of way line, S77°14'51"E a distance of 11.95 feet along said North line; thence leaving said North line, S37°30.52"W a distance of 58.56 feet; thence S39°01'30"W a distance of 41.75 feet to the point of beginning.

# PLAT OF SURVEY

Part of NE/4 Sec 8 T7N R32W, Sebastian County, AR

PROPERTY DESCRIPTION: Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR (4.3 acres)  
 Beginning at a point 403.5 feet North and 1020 feet West of the SE corner of the NE/4 of Section 8, Township 7 North, Range 32 West; thence West 1079 feet, more or less, to a point on the East line of Texas Road; thence Northeasterly along said Texas Road 240 feet; thence East 957 feet; thence South 207.5 feet to the point of beginning. LESS AND EXCEPT Part of the SW/4 of the NE/4 of Section 8, Township 7 North, Range 32 West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 NE/4 of Section 8, S03°20'21"W, a distance of 2052.96 feet; thence leaving said East line, N86°39'39"W a distance of 970.37 feet; thence N86°35'06"W a distance of 934.64 feet to the point of beginning; thence S36°14'09"W a distance of 144.57 feet; thence S37°30'52"W a distance of 4.32 feet; to the South property line; thence N77°14'51"W a distance of 11.95 feet along said South line to the East right of way line of Texas Road; thence leaving South Property line, N36°32'29"E a distance of 147.03 feet along said East right of way line to the North Property line; thence leaving East right of way line, S86°35'06"E a distance of 12.22 feet along said North line to the point of beginning. LESS AND EXCEPT Part of the NE/4 of Section 8 Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.5 feet; thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing S89°41'00"W 335.59 feet to a set 1/2" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set 1/2" rebar on the Easterly right of way line of Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set rebar, thence S80°58'45"E, 131 feet to a set 1/2" rebar; thence N89°41'00"E, 156.00 feet to a set 1/2" rebar; thence S00°19'00"E, 64.00 feet to the point of beginning.

Existing Spike  
NEC NE/4



**SURVEYORS CERTIFICATION**, to Bill or Aretta Browder  
 This is to certify that this PLAT OF SURVEY represents a careful survey, made by the undersigned, of the property described herein.

*Billy R. Wilson* 10/27/2013  
 Billy R Wilson LS 811 (original signed in blue ink)



BILLY R WILSON LLS  
 P O Box 208  
 Kinta, OK 74552  
 (918) 768 3542

- LEGEND**
- Found Rebar
  - Set Rebar
  - ⊙ Existing Spike
  - ⊠ Quarter Corner
  - △ Punch Mark on Metal Storm Drain Grate
  - ✱ Chis "X" on Concrete Driveway

**FLOOD ZONE.**  
 The described property is not in 100 year flood zone. Zone Panel NO 055013 0015 Dated July 16, 1991

**BASIS OF BEARINGS**  
 Bearings are based on record documents on file at the Recorder's Office, Sebastian County, Greenwood District, Arkansas

State Plat Coding  
 00-07N-32W-0-08-100-65-0811

|                     |            |             |
|---------------------|------------|-------------|
| FILE NAME           |            |             |
| 8-7N32W-BROWDER.TRV |            |             |
| SCALE               | DATE       | DRAWN BY    |
| 200 FUI/n           | 10-27-2013 | Bill Wilson |
| JOB                 | REVISION   | SHEET       |
| 13021               | 1/1        | 1/1         |

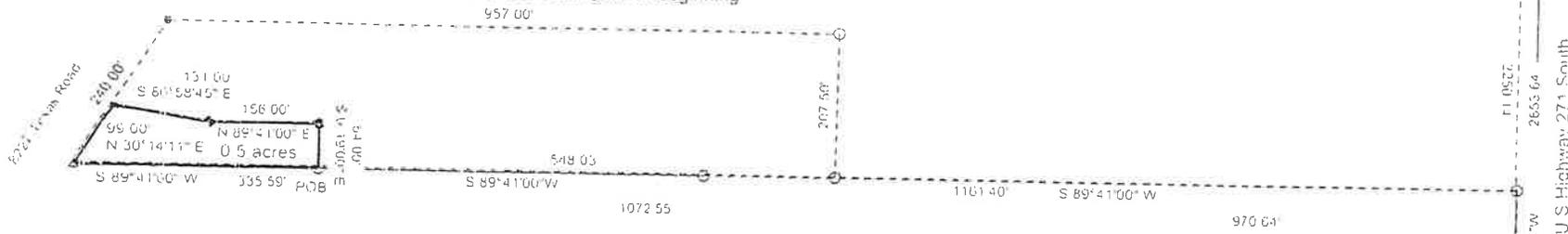
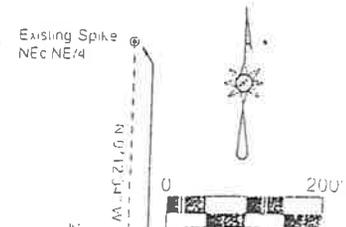
This map drawn with TRAVERSE PC Software

Traverse PC

# PLAT OF SURVEY

Part of SW/4 NE/4 Sec 8 T7N R32W, Sebastian County, AR

**PROPERTY DESCRIPTION:** Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR, 0.5 acres  
 Part of the NE/4 of Section 8, Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.50 feet; thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing N89°41'00"W, 548.03 feet to a set 1/2" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set 1/2" rebar on the easterly right of way line Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set 1/2" rebar; thence S80°58'45"E, 131.00 feet to a set 1/2" rebar; thence N89°41'00"E, 156.00 feet to a set 1/2" rebar; thence S0°19'00"E, 64.00 feet to the POB. LESS AND EXCEPT part of the SW/4 NE/4 of Section 8, Township 7 North, Range 32 West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 of the NE/4 of Section 8; thence along the east line of Section 8, S03°20'21"W a distance of 2260.46 feet, thence leaving said East Section line, N86°39'39"W a distance of 970.64 feet, thence N86°35'06"W a distance of 6.45 feet to the East right of way line of Texas Road; thence N34°57'33"E a distance of 99.00 feet along said East right of way line to the North property line; thence leaving said East right of way line, S77°14'51"E a distance of 11.95 feet along said North line; thence leaving said North line, S37°30'52"W a distance of 58.56 feet; thence S39°01'30"W a distance of 41.75 feet to the point of beginning.



| LEGEND |                                       |
|--------|---------------------------------------|
|        | Punch Mark on Metal Storm Drain Grate |
|        | Found Rebar                           |
|        | Quarter Corner                        |
|        | Set Rebar                             |
|        | Chis "X" on Concrete Driveway         |
|        | Existing Spike                        |

**SURVEYORS CERTIFICATION**, to Bill or Aretta Browder  
 This is to certify that this PLAT OF SURVEY represents a careful survey, made by the undersigned, of the property described herein.

*Billy R Wilson* 10/27/2013  
 Billy R Wilson, LS 811 (original signed in blue ink)



**FLOOD ZONE**  
 The described property is not in 100 year flood zone. Zone Panel, NO 055013 0015  
 Dated July 16, 1991

**BASIS OF BEARINGS:**  
 Bearings are based on record documents on file at the Recorder's Office, Sebastian County, Greenwood District, Arkansas.

BILLY R WILSON LLS  
 P O Box 208  
 Kinta, OK 74552  
 (918) 768 3542

| FILE NAME           |            |             |
|---------------------|------------|-------------|
| 8-7N32W-BROWDER,TRV |            |             |
| SCALE               | DATE       | DRAWN BY    |
| 200 FvIn            | 10-27-2013 | Bill Wilson |
| JOB                 | REVISION   | SHEET       |
| 13021               | 1/1        | 1/1         |

This map drawn with TRAVERSE PC Software

State Plat Coding  
 509-07N-32W-0-08-130-65-0811

**FILED**

**IN THE COUNTY COURT OF SEBASTIAN COUNTY, ARKANSAS  
GREENWOOD DISTRICT**

NOV 05 2014

SHARON BROOKS  
County Clerk & Recorder

BY SS

**IN THE MATTER OF THE ANNEXATION  
OF REAL PROPERTY INTO THE CITY OF  
FORT SMITH, ARKANSAS**

CASE NO. <sup>CC</sup> ~~CV~~-2014-36

**BILLY M. BROWDER AND  
ARETTA BROWDER**

**PETITIONERS**

**PETITION FOR ANNEXATION INTO THE CITY OF FORT SMITH**

COME NOW the Petitioners, Billy M. Browder and Aretta Browder, by and through their attorney, Troy Gaston, and for their Petition for Annexation into the City of Fort Smith do state and allege as follows:

1. The Petitioners to this action are the only owners of the real property which is described on the attached Exhibit A. The real property described on the attached Exhibit A is entirely contiguous to the City of Fort Smith, Arkansas.

2. The Petitioners act on their own behalf and authorize Troy Gaston as their counsel to act on their behalf. The Petitioners shall cause a notice to be published in the newspaper as to the hearing date between the time of filing and the date of the hearing. The notice will be published one time a week for three consecutive weeks.

3. It is in the best interest of the real property and also the best interest of the county and City of Fort Smith that this Petition be granted. Upon this Petition being granted and an Order being entered the Petitioners shall make application with the City of Fort Smith for the adoption of an ordinance approving the annexation requested herein.

WHEREFORE, the Petitioners pray that this Court enter an Order granting the Petition and annexing the above described real property into the City of Fort Smith, Arkansas; that upon the filing of this Petition, the Court set a date for a hearing on the Petition, with the same not being less than 30 days after the filing of the Petition; that Notice of such hearing be given as required by law; and that at such hearing, the Court enter an Order granting the Petition and allowing the annexation of the above property in the City of Fort Smith, Arkansas.

RESPECTFULLY SUBMITTED,  
BILLY M. BROWDER AND ARETTA BROWDER, PETITIONERS

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



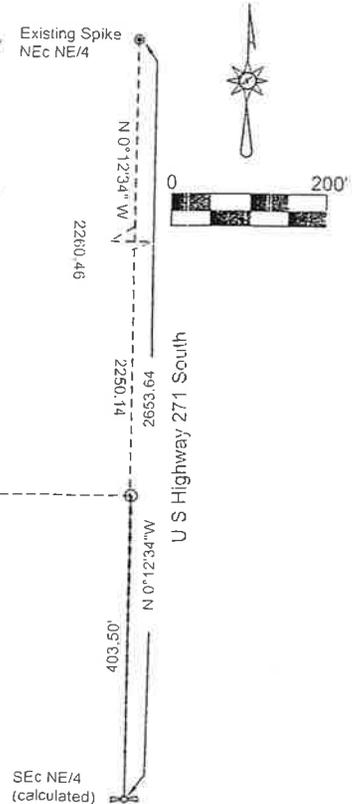
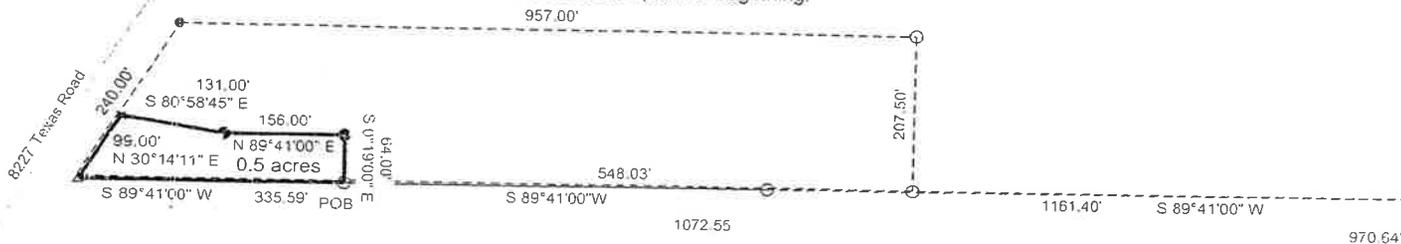
TROY GASTON  
2003011  
WALTERS & GASTON  
1405 W. CENTER, 3RD FLOOR  
GREENWOOD, AR 72936  
(479) 996-2100

TG/am

# PLAT OF SURVEY

Part of SW/4 NE/4 Sec 8 T7N R32W, Sebastian County, AR

PROPERTY DESCRIPTION; Warranty Deed, Document S15461, Greenwood District, Sebastian County, AR. 0.5 acres  
 Part of the NE/4 of Section 8, Township 7 North, Range 32 West, being more particularly described as follows: Commencing at the SE corner of said NE/4; thence N0°12'34"W along the East line of said NE/4, 403.50 feet; thence S89°41'00"W, 1161.40 feet to a found iron pin; thence continuing N89°41'00"W, 548.03 feet to a set 1/2" rebar and the point of beginning; thence continuing S89°41'00"W, 335.59 feet to a set 1/2" rebar on the easterly right of way line Texas Road; thence N30°14'11"E along the right of way line, 99.0 feet to a set 1/2" rebar; thence S80°58'45"E, 131.00 feet to a set 1/2" rebar; thence N89°41'00"E, 156.00 feet to a set 1/2" rebar; thence S0°19'00"E, 64.00 feet to the POB. LESS AND EXCEPT part of the SW/4 NE/4 of Section 8, Township 7 North, Range 32 West, and being more particularly described as follows: Commencing at an existing spike marking the NE corner of the NE/4 of Section 8; thence along the east line of Section 8, S03°20'21"W a distance of 2260.46 feet; thence leaving said East Section line, N86°39'39"W a distance of 970.64 feet; thence N86°35'06"W a distance of 1072.55 feet to the point of beginning; thence N86°35'06"W a distance of 6.45 feet to the East right of way line of Texas Road; thence N34°57'33"E a distance of 99.00 feet along said East right of way line to the North property line; thence leaving said East right of way line, S77°14'51"E a distance of 11.95 feet along said North line; thence leaving said North line, S37°30.52"W a distance of 58.56 feet; thence S39°01'30"W a distance of 41.75 feet to the point of beginning.



**SURVEYORS CERTIFICATION**, to Bill or Aretta Browder  
 This is to certify that this PLAT OF SURVEY represents a careful survey, made by the undersigned, of the property described herein.

*Billy R. Wilson* 10/27/2013  
 Billy R Wilson LS 811 (original signed in blue ink)



BILLY R WILSON LLS  
 P O Box 208  
 Kinta, OK 74552  
 (918) 768 3542

**FLOOD ZONE:**  
 The described property is not in 100 year flood zone. Zone Panel, NO 055013 0015 Dated July 16, 1991

**BASIS OF BEARINGS:**  
 Bearings are based on record documents on file at the Recorders Office, Sebastian County, Greenwood District, Arkansas

**LEGEND**

- △ Punch Mark on Metal Storm Drain Grate
- Found Rebar
- ⊕ Quarter Corner
- Set Rebar
- ✕ Chis "X" on Concrete Driveway
- ⊙ Existing Spike

State Plat Coding

500-07N-32W-0-08-130-65-0811

|                     |            |             |
|---------------------|------------|-------------|
| FILE NAME           |            |             |
| 8-7N32W-BROWDER.TRV |            |             |
| SCALE               | DATE       | DRAWN BY    |
| 200 F/In            | 10-27-2013 | Bill Wilson |
| JOB                 | REVISION   | SHEET       |
| 13021               | 1/1        | 1/1         |

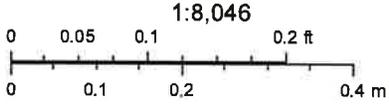
This map drawn with TRAVERSE PC, Software

# 8225 & 8227 Texas Road Annexation



January 27, 2015

-  Fort Smith City Limits
-  Subdivisions
-  Parcels



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

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

---

**WHEREAS**, the City Planning Commission has held a public hearing to consider a request to amend the Master Land Use Plan Map relative to property described in Section 1 of this ordinance, and, having considered the request, recommended on January 13, 2015, that said change be made; and,

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

**WHEREAS**, the City Planning Commission has heretofore held a public hearing to consider request No. 23-12-14 to rezone certain properties hereinafter described, and, having considered said request, recommended on January 13, 2015, that said change be made;

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

**SECTION 1:** The hereinafter described property is hereby reclassified on the Master Land Use Plan Map from Extra Territorial Jurisdiction Low Density Residential to Residential Attached and the Master Land Use Plan Map is hereby amended to reflect said amendment to-wit:

A tract of land lying in the Southwest Quarter (SW ¼) of the Northeast Quarter (NE ¼) of Section 8, Township 7 North, Range 32 West, Fifth PM, in the Greenwood District, Sebastian County, AR described as beginning at a point 403.5 feet North and 969.55 feet West of the Southeast Corner of said Northeast Quarter; thence S 89°4'00"W, a distance of 1075.47 feet; thence N 30°14'11"E, along the easterly boundary line of Texas Road, a distance of 254.53 feet; thence N 89°52'54"E a distance of 949.9 feet; thence S 04°1'41" W a distance of 215.94 feet to the point of beginning.

**SECTION 2:** The real property described in Section 1 above is hereby rezoned from Extraterritorial

Jursidiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by Classification, subject to annexation approval by the City of Fort Smith Board of Directors.

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

**PASSED AND APPROVED THIS \_\_\_ DAY OF \_\_\_\_\_, 2015.**

**APPROVED:**

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

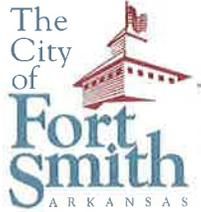
**ATTEST:**

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

**Approved as to form:**



\_\_\_\_\_  
**Publish One Time**



January 26, 2015

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

Re: A request by Bill Browder for Planning Commission consideration of a Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Attached and a zone change from Extra Territorial Jurisdiction Open-1 to Residential Single Family Duplex Medium/High Density (RSD-3) by Classification located at 8225 and 8227 Texas Road.

On January 13, 2015, the City Planning Commission held a public hearing to consider the above requests.

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to facilitate a request by the property owner to annex the property into the City of Fort Smith.

Mr. Bill Browder was present to speak on behalf of these requests.

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

Following a discussion by the Commission, motion was made by Commissioner Spearman, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the Board of Director's approval of the petition to annex this property.

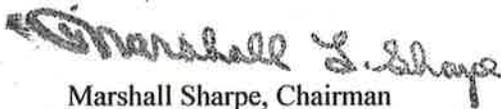
Chairman Sharpe then called for the vote on the Master Land Use Plan Amendment. The vote was 8 in favor and 0 opposed.

Chairman Sharpe then called for the vote on the rezoning request. The vote was 8 in favor and 0 opposed.

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

Respectfully Submitted,

CITY PLANNING COMMISSION

  
Marshall Sharpe, Chairman

MS/lp

cc: File  
City Administrator

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

## Master Land Use Plan Amendment

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** December 16, 2014

**Re:** Proposed Master Land Use Plan Amendment by Bill Browder, owner, at 8225 and 8227 Texas Road from ETJ Low Density Residential to Residential Attached (Companion to item #2)

The Planning Department is in receipt of an application from Bill Browder, owner, to amend the Master Land Use Plan Map from ETJ Low Density Residential to Residential Attached to accommodate the proposed annexation and zoning request. The subject property is on the east side of Texas Road between Apple Valley Drive and Harvard Way. The tract contains an area of 4.50 acres with approximately 135 feet of street frontage along Texas Road.

The Master Land Use Plan amendment and rezoning requests are being made in conjunction with a petition to annex this property.

The property is currently zoned as ETJ Open-1. A companion zoning application requests a zoning district of Residential Single Family Duplex Medium/High Density (RSD-3). The Master Land use Plan is a guide to zoning and development and must be considered with the companion application.

### **ADJACENT LAND USE CLASSIFICATIONS AND USES**

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

The area to the north is classified as ETJ Industry and is developed as a single family residence.

The area to the east and parts of the area to the north are classified as ETJ Industry and ETJ Low Density Residential and are developed as Weatherford Industry oil and gas drilling company.

The areas to the south and west are classified as Residential Detached and are developed as single family residences.

**THE PROPOSED LAND USE CLASSIFICATION OF RESIDENTIAL ATTACHED IS DESCRIBED AS FOLLOWS:** The purpose of the Residential Attached Land Use is to provide for diverse populations and households, by supporting variety and options in living environments, and housing, while protecting and improving property values.

2A

**Characteristics and Use:**

Duplex, triplex, four-plex, town-house, single and multiple story apartments and condominiums.

**Criteria for Designation:**

**Compliance Noted**

- |   |            |
|---|------------|
| • Land adjacent to/or within regional center.   | <b>No</b>  |
| • Land within walking distance to commercial, office, low impact industry, regional institutions or parks | <b>Yes</b> |
| • Located on a high volume road way.  | <b>Yes</b> |
| • Planned as part of a mixed-use development .  | <b>No</b>  |

**MASTER LAND USE PLAN COMPLIANCE**

The existing Master Land Use Plan classifies the site as ETJ Low Density Residential. This classification is established to be consistent with the comprehensive plan and consistent with adjacent/surrounding uses. It shall be located where public utilities exist or expect to be expanded over the next twenty (20) years. Development of specific sites will depend upon the availability of utilities and the maintenance of an acceptable level of service of roads and other public facilities and services.

**MASTER STREET PLAN CLASSIFICATION**

The Master Street Plan classifies Texas Road as a Major Collector.

**STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held Friday, January 2<sup>nd</sup> at 4:00 P.M. on site. Four surrounding property owners were present at the neighborhood meeting. There were no objections to the proposed project. A copy of the attendance record is enclosed.

Based on compatibility with surrounding land use classifications and land uses, staff recommends approval of the application contingent upon approval of the companion zoning application and the Board of Director’s approval of the petition to annex.

2B

ATTENDANCE LIST FOR NEIGHBORHOOD MEETING

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

Meeting Location 2225 Texas Rd.

Meeting Time & Date 4:00 ~~12:00~~ 1-2-15

Meeting Purpose REZ 3 MLUPA

|     | <u>NAME</u>         | <u>ADDRESS</u>            | <u>PHONE #</u>      |
|-----|---------------------|---------------------------|---------------------|
| 1.  | <u>Tyler Miller</u> | <u>city of Fort Smith</u> | <u>479-784-2241</u> |
| 2.  | <u>VANU JUNE</u>    | <u>611 WINDPARK L</u>     | <u>531-9306</u>     |
| 3.  | <u>Brian Brown</u>  | <u>2225 TEXAS RD.</u>     | <u>479-221-3602</u> |
| 4.  | <u>Steve Fox</u>    | <u>716 Woodhollow Ct.</u> | <u>83-521-7708</u>  |
| 5.  | <u>Alex Lynch</u>   | <u>705 Woodhollow Ct.</u> | <u>501-920-0967</u> |
| 6.  |                     |                           |                     |
| 7.  |                     |                           |                     |
| 8.  |                     |                           |                     |
| 9.  |                     |                           |                     |
| 10. |                     |                           |                     |
| 11. |                     |                           |                     |

THERE WAS FIVE NEIGHBORS ATTENDED THE NEIGHBORHOOD MEETING WITH NO OBJECTIONS

**Application Type**

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

Request to Amend Map   
  Request to Amend Text

|                                      |                                |                           |  |
|--------------------------------------|--------------------------------|---------------------------|--|
| Applicant Name:                      | Bill Browder                   |                           |  |
| Firm Name:                           |                                |                           |  |
| Address:                             | 8225 TEXAS ROAD                |                           |  |
| Phone # (day):                       | Phone # (cell):                | Fax #:                    |  |
| Owner Name:                          | Bill Browder                   |                           |  |
| Owner Address:                       | 404 JANET LANE POCOZA OK 74902 |                           |  |
| Phone # (day):                       | Phone # (cell):                | Fax #:                    |  |
| Property Address (subject property): | 8225 TEXAS ROAD                |                           |  |
| <b>Subject Property</b>              |                                |                           |  |
| Current Land Use:                    | Residential                    |                           |  |
| Existing MLUP Classification:        | ETJ LOW DENSITY Residential    |                           |  |
| Proposed MLUP Classification:        | Residential Attached           |                           |  |
| Existing Zoning Classification:      | ETJ 0-1                        |                           |  |
| Proposed Zoning Classification:      | RSD-3                          |                           |  |
| <b>Surrounding Property</b>          |                                |                           |  |
| Current Land Use:                    | north-                         | Weatherford & Residential |  |
|                                      | south-                         | Single Family             |  |
|                                      | east-                          | Weatherford               |  |
|                                      | west-                          | Residential               |  |
| Existing MLUP Classification:        | north:                         | ETJ Industrial            |  |
|                                      | south:                         | Residential Detached      |  |
|                                      | east:                          | ETJ Industrial & ETJ LDR  |  |
|                                      | west:                          | Residential Detached      |  |
| Existing Zoning Classification:      | north:                         | ETJ 1-2 SPL & ETJ 0-1     |  |
|                                      | south:                         | RS-3                      |  |
|                                      | east:                          | ETJ 1-2 SPL               |  |
|                                      | west:                          | RS-3                      |  |
| Pre-Application Meeting Date:        |                                |                           |  |

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

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

*PRIVATE DRIVE*

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

*ALL UTILITIES ON SITE*

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

*NO CHANGE REZONING FOR UTILITIES*

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7. Identify any known or anticipated environmental concerns:

*N-A*

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

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

*2E*

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

NONE

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

SAME

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

UTILITIES

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

STAY THE SAME

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

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

**AUTHORIZATION OF AGENT**

Certification

Once an application has been deemed complete, the applicant shall not modify it unless requested or agreed upon by the Planning Department. Should the applicant request a modification to the application after it has been advertised for public hearing, it shall be at the discretion of the Planning Commission to review or continue the application. A re-advertising fee may be required.

I, the undersigned applicant, hereby certify that the information contained in this application is true and correct to the best of my knowledge and belief. I grant the appropriate City personnel permission to enter the subject property during reasonable hours so that they may investigate and review this application.



12-11-14

Signature (Agent/Owner)

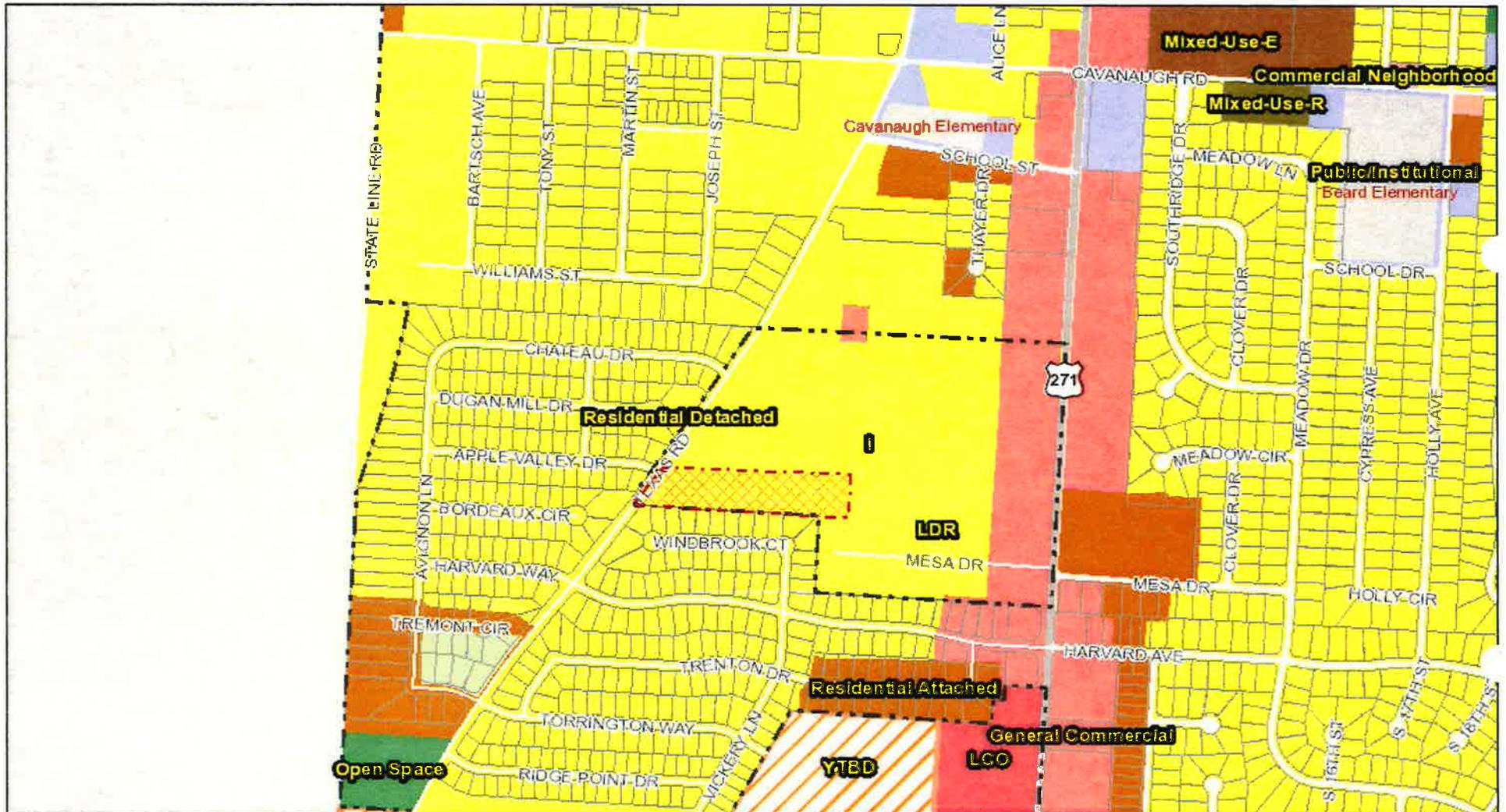
Date

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The City of Fort Smith requires complete applications. If your application does not include all of the information required for submission, it will not be processed.

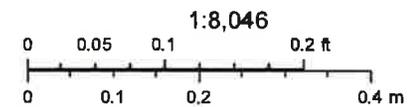
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# Master Land Use Amendment: From ETJ Low Density Residential to Residential Attached 8225 & 8227 Texas Road



December 16, 2014

-  Fort Smith City Limits
-  Subdivisions
-  Commercial



City of Fort Smith GIS  
Copyright 2013, City of Fort Smith

HC  
#2

# Memo

**To:** City Planning Commission

**From:** Planning Staff

**Date:** December 16, 2014

**Re:** Rezoning #1-1-15 - A request by Bill Browder, owner, for Planning Commission consideration of a zone request from ETJ Open-1 to Residential Single Family Duplex Medium/High Density (RSD-3) by classification at 8225 Texas Road (Companion to item #2)

## PROPOSED ZONING

The requested zoning will facilitate a request by the property owner to annex the property into the City of Fort Smith.

## LOT LOCATION AND SIZE

The subject property is on the east side of Texas Road between Apple Valley Drive and Harvard Way. The tract contains an area of 4.50 acres with approximately 135 feet of street frontage along Texas Road.

## REQUESTED ZONING

The proposed zoning on this tract is Residential Single Family Duplex Medium/High Density (RSD-3).

Characteristics of this zone are as follows:

### Purpose:

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

### Permitted Uses:

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

**Conditional Uses:**

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

**Area and Bulk Regulations:**

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

**EXISTING ZONING**

The existing zoning on this tract is Extraterritorial Jurisdiction Open-1(ETJ Open-1). Characteristics of this zone are as follows:

**Purpose:**

A zone to protect the undeveloped areas within the city’s extraterritorial zoning jurisdiction from incompatible land use or other specific uses that may constitute a nuisance to the residents therein or uses that may create an endangerment to the health, safety, or general welfare of the jurisdiction’s population.

**Permitted Uses:**

Single family homes, duplexes, nurseries and greenhouses, truck farms, golf courses, fire and police station, utility substations and parks, playgrounds and other open spaces.

**Conditional Uses:**

Agricultural uses (limited), churches, country clubs more than ten (10) acres, boarding schools, nursing homes, orphanages, educational services and public buildings.

**SURROUNDING ZONING AND LAND USE**

The area to the north is zoned ETJ Open-1 and is developed as a single family residence.

The area to the east and parts of the north are zoned Extraterritorial Jurisdiction Industrial Moderate Special (ETJ-I-2 SPL) and is developed as Weatherford Industry oil and gas drilling company.

The areas to the south and west are zoned Residential Single Family Medium/High Density (RS-3) and are developed as single family residences.

## **MASTER LAND USE PLAN COMPLIANCE**

The Master Land Use Plan classifies the site as ETJ Low Density Residential. This classification is established to provide for diverse populations and households, by supporting variety and options in living environments, and housing, while protecting and improving property values.

The proposed Master Land Use Plan amendment to Residential Attached will facilitate the rezoning request.

## **STAFF COMMENTS AND RECOMMENDATIONS**

A neighborhood meeting was held Friday, January 2<sup>nd</sup> at 4:00 P.M. on site. Four surrounding property owners were present at the neighborhood meeting. There were no objections to the proposed project. A copy of the attendance record is enclosed.

Based on compatibility with surrounding zoning districts and land uses, staff recommends approval of this request subject to approval of the Master Land Use Plan amendment and the Board of Director's approval of the petition to annex this property.

**PETITION FOR CHANGE IN ZONING MAP**

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

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

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

SEE ATTACHED

2. Address of property: 8225 TEXAS ROAD

3. The above described property is now zoned: ETJ 0-1

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

- 5. Why is the zoning change requested?

UTILITIES

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

Signed:

BILL BROWDER  
Owner or Agent Name  
(please print)

Bill Browder  
Owner

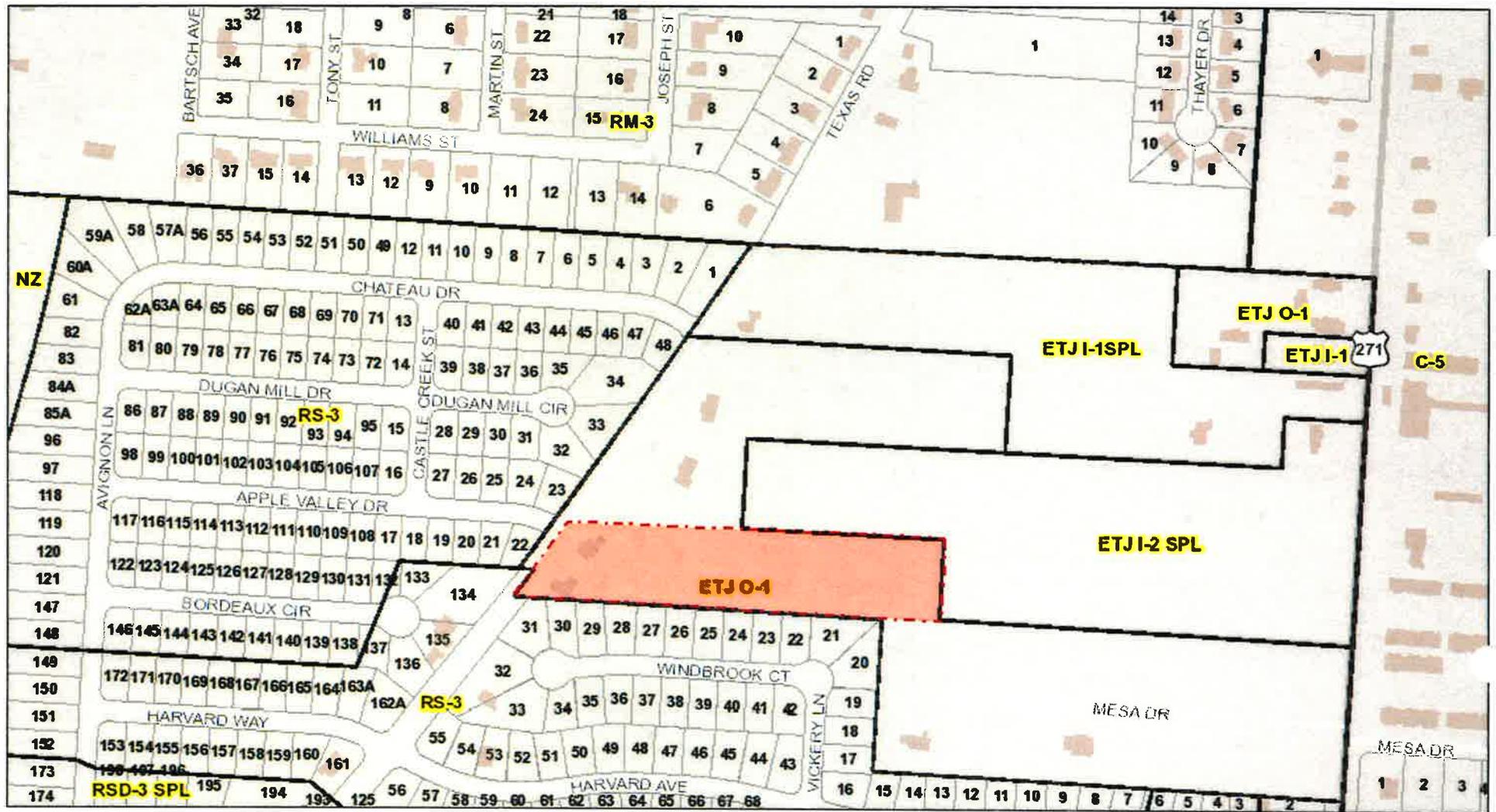
404 JANET LANE  
Owner or Agent Mailing Address

POCOLOA OK 74902 or

PH. 479-221-3602  
Owner or Agent Phone Number

Agent

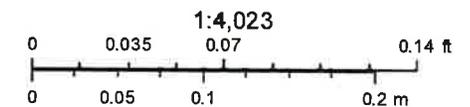
# Rezoning #1-1-15: From ETJ Open-1 to Residential Single Family-Duplex Medium/High Density (RSD-3) 8225 & 8227 Texas Road



December 16, 2014

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

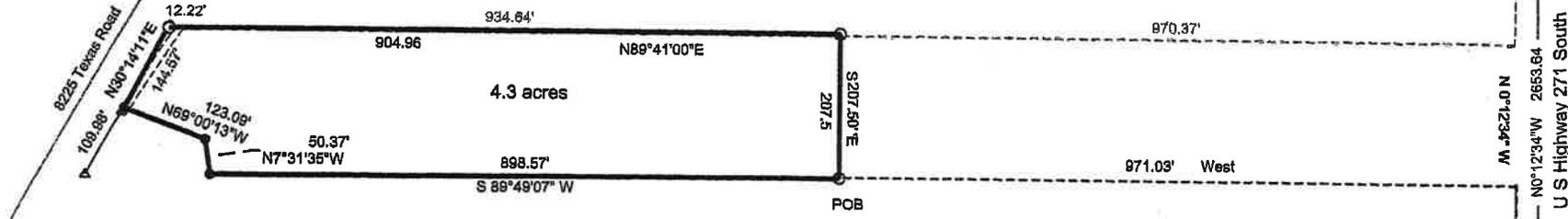
W  
M



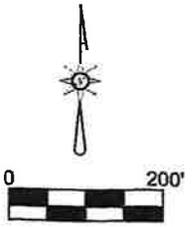
# PLAT OF SURVEY

Part of NE/4 Sec 8 T7N R32W, Sebastian County, AR

**PROPERTY DESCRIPTION;** Greenwood District, Sebastian County, AR (4.3 acres)  
 Beginning at a point 403.5 feet North and 971.03 feet West of the SE corner of the NE/4 of Section 8, Township 7 North, Range 32 West; thence West 898.57 feet; thence N7°31'35"W a distance of 50.37 feet; thence N69°00'13"W a distance of 123.09 feet; thence N30°14'11"E, along the east boundary of Texas Road, a distance of 144.57 feet; thence East 904.96 feet; thence South 207.5 feet to the point of beginning.  
**LESS AND EXCEPT** Part of the SW/4 of the NE/4 of Section 8, Township 7 North, Range 32 West, and being more particularly described as follows:  
 Commencing at an existing spike marking the NE corner of the NE/4 NE/4 of Section 8, S03°20'21"W, a distance of 2052.96 feet; thence leaving said East line, N86°39'39"W a distance of 970.37 feet; thence N86°35'06"W a distance of 934.64 feet to the point of beginning; thence S36°14'09"W a distance of 144.57 feet; thence S37°30'52"W a distance of 4.32 feet; to the South property line; thence N77°14'51"W a distance of 11.95 feet along said South line to the East right of way line of Texas Road; thence leaving South Property line, N36°32'29"E a distance of 147.03 feet along said East right of way line to the North Property line; thence leaving East right of way line, S86°35'06"E a distance of 12.22 feet along said North line to the point of beginning.



Existing Spike  
NEc NE/4



**SURVEYORS CERTIFICATION,** to Bill or Aretta Browder  
 This is to certify that this PLAT OF SURVEY represents a careful survey, made by the undersigned, of the property described herein.

Billy R Wilson LS 811 (original signed in blue ink)

SEAL

**BILLY R WILSON LLS**  
 P O Box 208  
 Kinta, OK 74552  
 (918) 768 3542

**FLOOD ZONE:**  
 The described property is not in 100 year flood zone. Zone Panel, NO 055013 0015 Dated July 16, 1991.

**BASIS OF BEARINGS:**  
 Bearings are based on record documents on file at the Recorders Office, Sebastian County, Greenwood District, Arkansas

| LEGEND |                                       |
|--------|---------------------------------------|
| ○      | Found Rebar                           |
| ●      | Set Rebar                             |
| ⊙      | Existing Spike                        |
| ⊕      | Quarter Corner                        |
| △      | Punch Mark on Metal Storm Drain Grate |
| •      | POINT                                 |

State Plat Coding

500-07N-32W-0-08-100-65-0811

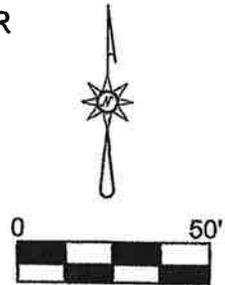
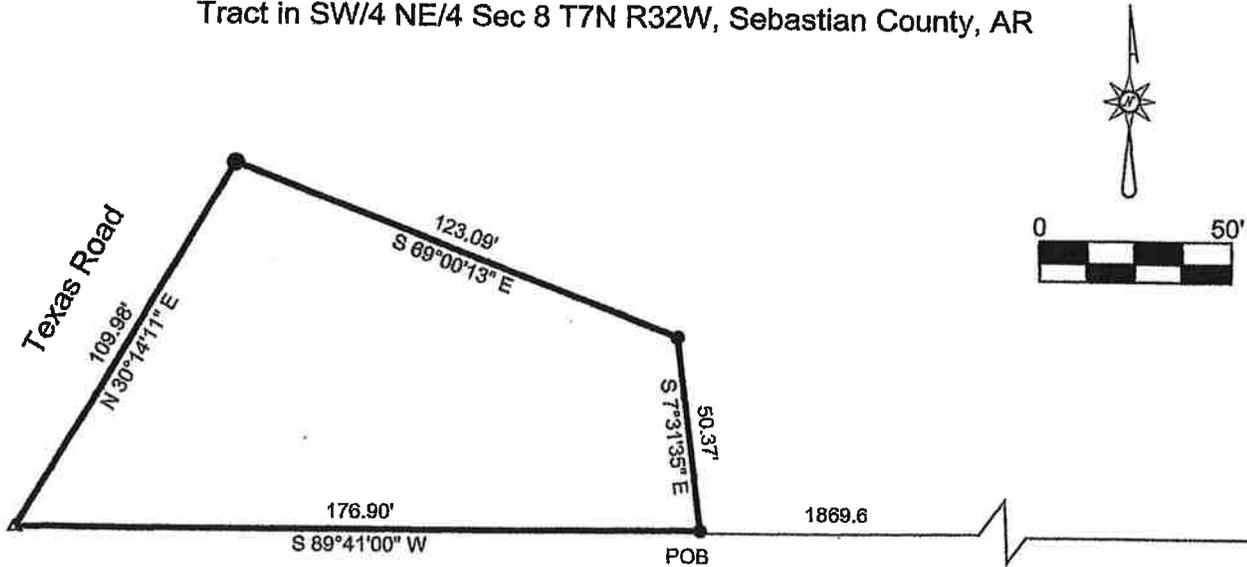
| FILE NAME           |            |             |
|---------------------|------------|-------------|
| 8-7N32W-BROWDER.TRV |            |             |
| SCALE               | DATE       | DRAWN BY    |
| 200 F/lh            | 11-11-2014 | Bill Wilson |
| JOB                 | REVISION   | SHEET       |
| 14041               | 2/1        | 1/1         |

This map drawn with TRAVERSE PC, Software

BF

# PLAT OF SURVEY

Tract in SW/4 NE/4 Sec 8 T7N R32W, Sebastian County, AR



**LEGAL DESCRIPTION;**

A tract of land lying in the Southwest Quarter (SW/4) of the Northeast Quarter (NE/4) of Section 8, Township 7 North, Range 32 West, Fifth PM, in the Greenwood District, Sebastian County, AR: Described as beginning at a point 403.5 feet North and 1869.6 feet West of the Southeast Corner of said Northeast Quarter; thence S89°41'00"W a distance of 176.9 feet; thence N30°14'11"E, along the easterly boundary line of Texas Road, a distance of 109.98 feet; thence S69°00'13"E a distance of 123.09 feet; thence S7°31'35"E a distance of 50.37 feet, to the point of beginning.

**SURVEYORS CERTIFICATION,** to Bill or Aretta Browder,  
This is to certify that this PLAT OF SURVEY represents a careful survey, made by the undersigned, of the property described herein.

\_\_\_\_\_  
Billy R Wilson LS 811

Section Line (East Boundary Section 8) U. S. Highway 271 South

●  
SEc NE4 Sec 8  
T7N R32W

**FEMA Flood Information:**  
The described property does not lie within the 100 year flood zone, Zone Panel, NO 055013 0015 Dated July 16, 1961

**BASIS OF BEARINGS:**  
Astronomical based on record documents on file at the Recorders Office, Sebastian County, Greenwood District, Arkansas

SEAL

| LEGEND |                                       |
|--------|---------------------------------------|
| △      | Punch Mark on Metal Storm Drain Grate |
| ●      | Set Rebar                             |

BILLY R WILSON LLS  
P O Box 208  
Kinta, OK 74552  
(918) 768 3542

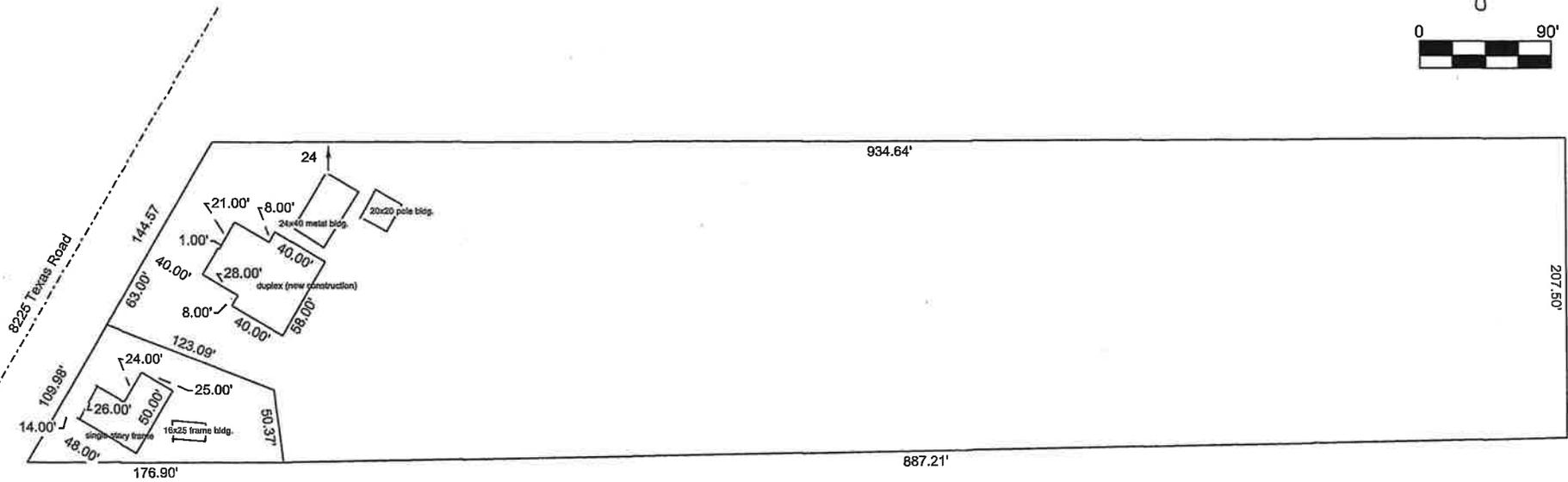
State Plat Coding  
500-07N-32W-0-08-100-65-0811

| FILE NAME           |            |             |
|---------------------|------------|-------------|
| 8-7N32W-BROWDER.TRV |            |             |
| SCALE               | DATE       | DRAWN BY    |
| 50 Ft/In            | 11-11-2014 | Bill Wilson |
| JOB                 | REVISION   | SHEET       |
| 14041               | 1/1        | 1/1         |

This map drawn with TRAVERSE PC, Software

36

# Exhibit "A" PLOT PLAN



|                       |           |             |
|-----------------------|-----------|-------------|
| FILE NAME             |           |             |
| 8-7N32W-Plot-Plan.TRV |           |             |
| SCALE                 | DATE      | DRAWN BY    |
| 90 Ft/in              | 12-9-2014 | Bill Wilson |
| JOB                   | REVISION  | SHEET       |
| 14042                 | 1/1       | 1/1         |

This map drawn with TRAVERSE PC, Software

Traverse PC

W  
H

Jacqueline & Jim Sanders  
707 Harvard  
Fort Smith, AR 72908

Shane & Jennifer Howald  
8409 Vickery Lane  
Fort Smith, AR 72908

Jerry & Betsy Parsons  
709 Windbrook Court  
Fort Smith, AR 72908

Frank & Courtney Halsey  
512 Bordeaux Circle  
Fort Smith, AR 72908

Anton Hoang  
620 Windbrook Court  
Fort Smith, AR 72908

Linda Houck  
P. O. Box 146  
Hackett, AR 72937

Jacob Holt & Jessica Ward  
607 Windbrook  
Fort Smith, AR 72908

Kendall Craig & Julia Humble  
700 Windbrook Court  
Fort Smith, AR 72908

Danny Haga  
622 Dugan Mill Circle  
Fort Smith, AR 72908

Sec. Housing Urban Development  
c/o Michaelson, Connor & Boul  
4400 Will Rogers Parkway  
Oklahoma City, OK 73108

Seane Kevin Fry  
716 Windbrook Court  
Fort Smith, AR 72908

Charles Selby  
604 Apple Valley Drive  
Fort Smith, AR 72908

Byra Patterson  
P. O. Box 146  
Hackett, AR 72937

Nancy Kay Smith  
708 Windbrook Court  
Fort Smith, AR 72908

Khanh Phuong Thi Nguyen  
615 Harvard Avenue  
Fort Smith, AR 72908

Becky Melancon  
619 Windbrook Court  
Fort Smith, AR 72908

Mumtaz Ahmed  
601 Windbrook Court  
Fort Smith, AR 72908

Tai Tran & Loan Nguyen  
609 Apple Valley Drive  
Fort Smith, AR 72908

Collins Ray Nellum  
8401 Vickery Lane  
Fort Smith, AR 72908

Matthew & Brenda Neissl  
715 Harvard Avenue  
Fort Smith, AR 72908

Chuong Le  
712 Windbrook Court  
Fort Smith, AR 72908

Michael & Katherine Rose  
604 Windbrook Court  
Fort Smith, AR 72908

Chau Tran  
701 Harvard Avenue  
Fort Smith, AR 72908

Thuy Ngoc Luu  
711 Harvard Avenue  
Fort Smith, AR 72908

Jo Lynn Cepeda  
508 Apple Valley Drive  
Fort Smith, AR 72908

Dung & Mai Nguyen  
701 Windbrook Court  
Fort Smith, AR 72908

Charlotte Bureau  
801 Windbrook Court  
Fort Smith, AR 72908

Vang Trinh  
611 Windbrook Court  
Fort Smith, AR 72908

Jim Tom Weir  
8121 Texas Road  
Fort Smith, AR 72903

Bill Copher, Jr.  
8111 Hwy. 271 South  
Fort Smith, AR 72903

Kenneth & Tammera Spears  
608 Dugan Mill Circle  
Fort Smith, AR 72908

Daniel Runke  
705 Harvard  
Fort Smith, AR 72903

Narender & Jayasree Gorukanti  
2004 Carleton Place  
Fort Smith, AR 72908

Rae Lynne Fowler  
614 Dugan Mill Circle  
Fort Smith, AR 72903

Eddie Foster  
615 Apple Valley Drive  
Fort Smith, AR 72908

Daniel Dorsch  
P. O. Box 181262  
Fort Smith, AR 72918

Justin Eckart  
713 Windbrook Court  
Fort Smith, AR 72908

Alex & Ladonna Lynch  
705 Windbrook Court  
Fort Smith, AR 72908

Huy Trong Huynh-Cong  
P. O. Box 180933  
Fort Smith, AR 72918

Sherry Lynn Grimm  
717 Windbrook Court  
Fort Smith, AR 72908

Justin & Ellen Cooke  
4508 Spring Mountain Road  
Fort Smith, AR 72916

Thomas Pearson  
618 Dugan Mill Circle  
Fort Smith, AR 72908

Boun & Susan Lovan  
511 Bordeaux Circle  
Fort Smith, AR 72908

Rickey Kennedy  
8201 Texas Road  
Fort Smith, AR 72908

Jason Neill  
616 Windbrook Court  
Fort Smith, AR 72908

Leroy & Verba Stephens  
8405 Vickery Lane  
Fort Smith, AR 72908

Byra Patterson  
8409 Northshore Drive  
Hackett, AR 72937

Billy & Aretta Browder  
404 Janet Lane  
Pocola, OK 74902

Margaret Blake Revocable Trust  
619 Harvard  
Fort Smith, AR 72908

Grant Carnahan  
604 Dugan Mill Circle  
Fort Smith, AR 72908

Zachary Vannara  
608 Apple Valley Drive  
Fort Smith, AR 72908

Phouang Sayaphath  
508 Bordeaux Circle  
Fort Smith, AR 72908

Thomas Johnson  
608 Windbrook Court  
Fort Smith, AR 72908

Fayaza Mian  
611 Harvard  
Fort Smith, AR 72908

Jody & Rachael Presson  
704 Windbrook Court  
Fort Smith, AR 72908

Jennifer Nolen  
600 Apple Valley Drive  
Fort Smith, AR 72908

Zackery Taliaferro  
615 Windbrook Court  
Fort Smith, AR 72908

Eric Atkinson  
507 Bordeaux Circle  
Fort Smith, AR 72908

Bryan Tran  
619 Apple Valley Drive  
Fort Smith, AR 72908

Frances Spencer  
600 Windbrook Court  
Fort Smith, AR 72908

Weatherford US LP  
515 Post Oak Blvd. – Suite 600  
Houston, TX 77027

Planning Commission Meeting Minutes  
January 13, 2015

2. **A request by Bill Browder for a Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Attached located at 8225 and 8227 Texas Road. (companion item to item #3)**
3. **Rezoning #1-1-15; A request by Bill Browder for a zone change from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by Classification located at 8225 and 8227 Texas Road. (companion item to item #2)**

Ms. Maggie Rice read the staff reports indicating that the purpose of these requests is to facilitate a request by the property owner to annex the property into the City of Fort Smith.

A neighborhood meeting was held on Friday, January 2, 2015, at 4:00 p.m. on site. Four (4) surrounding property owners were present at the neighborhood meeting with no objections to the proposed project.

Mr. Bill Browder was present to speak on behalf of these requests.

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

Following a discussion by the Commission, motion was made by Commissioner Spearman, seconded by Commissioner Howard and carried unanimously to amend this request to make approval subject to the Board of Director's approval of the petition to annex this property.

Chairman Sharpe then called for the vote on these requests as amended.

2. **A request by Bill Browder for a Master Land Use Plan Amendment from Extra Territorial Jurisdiction Low Density Residential to Residential Attached located at 8225 and 8227 Texas Road. (companion item to item #3)**

The vote on the Master Land Use Plan Amendment as amended was 8 in favor and 0 opposed.

- 3. Rezoning #1-1-15; A request by Bill Browder for a zone change from Extra Territorial Jurisdiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by Classification located at 8225 and 8227 Texas Road. (companion item to item #2)**

The vote on the rezoning request as amended was 8 in favor and 0 opposed.

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

- 4. Variance #2-1-15; A request by Lucious Arter for a variance from 30 feet to 2.5 feet exterior side yard setback; from 7.5 feet to 5.8 feet interior side yard setback and from 10 feet to 9 feet rear yard setback located at 1525 North 43<sup>rd</sup> Street.**

Ms. Brenda Andrews read the staff report indicating that the purpose of this request is to allow for the future construction of a bedroom addition to the north side of the residence. Ms. Andrews noted that the applicant has resolved the setback issues for the detached garage under construction in the backyard and, therefore, the variance from 7.5 feet to 5.8 feet interior side yard setback and from 10 feet to 9 feet rear yard setback will not be required. Ms. Andrews also noted an e-mail/memorandum from Stan Snodgrass about the potential future widening of North "O" Street.

Mr. Lucious Arter was present to speak on behalf of this request.

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

Following a discussion by the Commission, motion was made by Commissioner Keesee, seconded by Commissioner Parks and carried unanimously to amend this request for the variance request for the exterior side yard setback against North "O" Street and to make the approval subject to all construction complying with the submitted site plan. All changes or amendments to the submitted development plan being permitted but limited to those described in Section 27-329-8 of the UDO. Any changes greater than those described in this section will require Planning Commission approval.

Chairman Sharpe then called for the vote on the variance request for the exterior side yard setback as amended. The vote was 6 in favor and 2 opposed (Howard and Cox).

- 5. Variance #3-1-15; A request by Galen Hunter, agent for Fort Smith Public Schools, for a variance from Section 27-602-4 (C) (screening of rooftop mechanical equipment) located at 3415 Newlon Road.**

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

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

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

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

**WHEREAS**, the Planning Commission held a public hearing regarding these amendments and recommended on January 13, 2015, that said changes be made; and,

**WHEREAS**, three (3) copies of February 2015 Amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

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

**SECTION 1:** The February 2015 Amendments to the Unified Development Ordinance is hereby adopted.

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

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

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

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015.**

**APPROVED:**

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**Mayor**

**ATTEST:**

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**City Clerk**

**Approved as to form:**



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**Publish One Time**

January 26, 2015



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

Re: Unified Development Ordinance Amendments

On January 13, 2015, the City Planning Commission held a public hearing to consider an amendment to the Unified Development Ordinance.

Mr. Wally Bailey stated that the staff is proposing an amendment to the Unified Development Ordinance. Prior to the UDO, corner lots were allowed to use a reduced 15 foot setback on one of the streets which is known as the exterior side yard setback. The UDO requires corner lots to have two front yard setbacks which allows for setback continuity of buildings constructed on both streets.

The lots platted prior to the effective date of the UDO were not always platted with enough property to allow for a house or duplex to be constructed and meet the increased setback requirement on both streets.

The proposed amendment will add a setback exception to 27-404 (C) of the UDO, that will allow residential lots platted prior to the effective date of the UDO (*August 12, 2009*) the option to use the 15' exterior side yard setback which was the exterior side yard setback for residential lots prior to the adoption of the UDO. The exception will not apply to multi-family developments constructed on corner lots, which by definition is three or more (3) dwelling units.

No one was present to speak either in support or in opposition to the proposed amendments.

Following a discussion by the Commission, the revised amendment to Section 27-404 (C) was approved by a vote of 8 in favor and 0 opposed.

Respectfully Submitted,

  
CITY PLANNING COMMISSION

Marshall Sharpe, Chairman

MS/lp

cc: File  
City Administrator

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

**FEBRUARY 2015**  
**AMENDMENTS TO THE UNIFIED DEVELOPMENT**  
**ORDINANCE**

provided they are erected in compliance with the provisions of the Fort Smith Sign Regulations.

7. Gasoline sales are permitted under the following conditions:
  - a. Pump islands shall be located a minimum of twenty (20) feet from any public right-of-way.
  - b. Island canopy overhangs shall be located at least ten (10) feet from any public right-of-way and must have a height of at least twelve (12) feet. Supportive posts of canopies shall be located at least twenty (20) feet from any public right-of-way.
8. The following structures are exempt from setback regulations as specified below:
  - a. Patios, terraces, walks, and driveways provided they are at grade, and do not have enclosed walls or a roof;
  - b. Ramps for the purpose of meeting accessibility requirements provided they do not have enclosed walls or a roof;
  - c. Fences;
9. Residential property platted prior to the effective date (August 12, 2009) of the UDO is permitted to use the 15' exterior side yard setback. This exemption does not include multifamily developments.

#### D. Height

1. Measurement. Building height is the mean vertical distance from the average ground level at the minimum front setback to the highest permanent part of the building or structure.
2. A structure may not be more than the maximum allowable feet high at the minimum side setback line, but for each addition foot of horizontal setback in excess of the minimum, the height may be increased by one foot. The height of a gabled end of a building shall be measured at the midpoint of the gable instead of the peak of the gable.
3. The following structures may be exempted from the height requirements in the various districts if they are not detrimental to neighboring property and are approved by the city building official:

DRAFT

**PLANNING COMMISSION & BOARD OF ZONING ADJUSTMENT  
MINUTES  
ROSE ROOM  
CREEKMORE PARK COMMUNITY CENTER  
5:30 P.M.  
JANUARY 13, 2015**

On roll call, the following Commissioners were present: Brandon Cox, Marshall Sharpe, Rett Howard, Michael Redd, Jennifer Parks, Richard Spearman, Don Keesee and Vicki Newton. Commissioner Bob Cooper, Jr. was absent.

Chairman Sharpe called for the vote on the Planning Commission minutes from the December 9, 2015, meeting. Motion was made by Commissioner Parks, seconded by Commissioner Howard and carried unanimously to approve the minutes as written.

Mr. Wally Bailey spoke on the procedures.

**1. UDO Amendments**

Mr. Wally Bailey stated that staff is proposing the following two (2) amendments to the Unified Development Ordinance.

- 1) An editorial change correcting the lettering for Section 27-330-7. Mr. Bailey asked that this item be withdrawn and not voted upon.
- 2) An amendment adding a setback exception to 27-404 (C) allowing residential lots platted prior to the effective date of the UDO the option to use the 15' exterior side yard setback which was the exterior side yard setback for residential lots prior to the adoption of the UDO. Subdivisions platted before the UDO have difficulty meeting the increased exterior side yard setback requirements. Mr. Bailey provided the Planning Commission with a revised amendment and asked that they vote on the revised amendment. The revised amendment read as follows: "Residentially platted property prior to the effective date (August 12, 2009) of the UDO is permitted to use the 15' exterior side yard setback. This exemption does not include multifamily developments."

Following a discussion by the Commission, the revised amendment to Section 27-404 (C) was approved by a vote of 8 in favor and 0 opposed.

RESOLUTION \_\_\_\_\_

A RESOLUTION AUTHORIZING THE  
INSTALLATION OF SPEED TABLES ON CLIFF DRIVE

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

SECTION 1: There will be six speed tables and associated signage installed as a test area along Cliff Drive between South 30<sup>th</sup> Street and Old Greenwood Road as a means of traffic calming.

SECTION 2: This test area will be reevaluated in six to twelve months following the installation of the speed tables to determine the effectiveness of the speed tables and to allow for community feedback on desirability for speed tables.

SECTION 3: The adoption of a traffic calming policy will not take place until reevaluation of the test area. Requests for speed tables in other areas will be accepted and evaluated, but not acted upon until the Cliff Drive test area is reevaluated.

SECTION 4: Payment for construction authorized by Section 1 is hereby authorized from the Sales Tax Fund (1105).

This resolution adopted this \_\_\_\_\_ day of February, 2015.

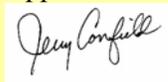
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form



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



## Memorandum

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**To:** Ray Gosack, City Administrator

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

**Subject:** Speed Tables on Cliff Drive between South 30<sup>th</sup> and Old Greenwood Road

**Date:** January 29, 2015

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At the August 5, 2014 town hall meeting, petitions were submitted to the Board of Directors requesting speed tables along Cliff Drive. The petitions stated that the speed of traffic flow has become hazardous to Sebastian Hills residents, pedestrians, pets and motorists and that it is not uncommon for vehicles to be traveling in excess of 50 mph. The petitioners recommended the City test speed tables on Cliff Drive as a means of ensuring public safety where needed in Fort Smith.

To evaluate the neighborhood's concerns about speeding, a traffic study along this section of Cliff Drive was conducted last fall. The results of the traffic study were presented to the Board of Directors at the October 28<sup>th</sup> Study Session. The study included determining the traffic volume and speed count data along Cliff Drive. At the study session, the board requested that the staff investigate a traffic calming policy for use on residential streets.

At the January 27<sup>th</sup> study session, a proposed traffic calming policy was presented. The policy focuses on speed tables and provides a detailed procedure for determining if the installation of speed tables could be considered. A copy of the draft policy is attached.

There was also discussion about the implementation of speed tables as a test area for a six to twelve month period. This test area would be located along Cliff Drive between Old Greenwood Road and South 30<sup>th</sup> Street. Six speed tables would be installed at an estimated cost of \$18,000 to \$30,000. This test would allow for community feedback on the effectiveness and desirability of speed tables before further installations are considered.

The attached Resolution authorizes the installation of the speed tables and associated signage along Cliff Drive as the test area. This test area will be reevaluated in six to twelve months following the installation of the speed tables to determine the effectiveness of the speed tables and to allow for community feedback on the desirability for speed tables. The adoption of a traffic calming policy will not take place until reevaluation of the test area. However, requests for speed tables on other residential streets will be accepted and evaluated, but not acted upon until the Cliff Drive test area is reevaluated.

A traffic calming policy is in alignment with the comprehensive plan policy TI-1.4 (Protect residential neighborhoods from excessive through traffic).

Enclosure

# City of Fort Smith Arkansas

## Traffic Calming Policy

### Introduction

The generally accepted definition of Traffic Calming was presented by I.M. Lockwood in an Institute of Transportation Engineers Journal article published in 1997. The definition is:

*“Traffic calming is the combination of mainly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior, and improve conditions for non-motorized street users.”<sup>1</sup>*

Traffic calming techniques apply to residential streets as all other types of streets are intended to carry larger volumes of motorized vehicles in an efficient manner.

Streets in Fort Smith serve different purposes. Streets are grouped together based on their intended purpose by classifications. The street classifications are designated in the City of Fort Smith’s Master Street Plan approved by the Board of Directors.

At the high end of the classification range are the freeways or interstates. These roadways extend across the city, are high speed roadways, and are accessible only at interchange ramps. The next highest class is arterial streets. These streets extend several miles, typically are four or five lanes with speed limits of 35 miles per hour up to 55 miles per hour, and carry large volumes of traffic. Examples include Rogers Avenue, Waldron Road, Phoenix Avenue, and Old Greenwood Road. Driveway access to these roads is limited to reduce friction points and assist in carrying the traffic in an efficient manner. The third class of streets is collector streets. Collector streets are generally 2 miles or less in length and provide access for traffic from neighborhoods and other developed areas to the arterial streets. Traffic volumes are lower than arterial streets and the posted speed limits are generally 30 miles per hour to 40 miles per hour. Examples include Free Ferry Road, Meandering Way, Albert Pike Avenue and Brooken Hill Drive. The fourth class of streets is residential, or local, streets. The purpose of residential streets is to provide access to individual properties. These streets typically are of shorter length and carry low traffic volumes. Residential streets connect to either collector streets or arterial streets. The upper range of traffic volumes is 1,000 vehicles per day.

All classifications of streets, with the exception of residential streets, are designed and intended to carry higher volumes of traffic. **Therefore, traffic calming techniques and this policy shall only be implemented on streets with a residential functional classification as defined in the City of Fort Smith’s Master Street Plan.**

Traffic calming can involve change in street alignment, vertical speed control techniques (speed tables), narrowing of the street, street closures, and other physical barriers to reduce the speed and volume of traffic. The techniques are intended to be self-enforcing. These techniques create inconvenience to motorists as well as emergency response vehicles and should be used judiciously. The techniques can also relocate the issue to other streets by diverting traffic. Therefore, it is necessary to determine if there is a speeding issue or if the traffic volumes are greater than the expected or accepted norms before embarking on traffic calming for an existing residential street. The policy delineates the process by which an evaluation can be made to determine the extent of the issue, if any. This policy will focus on vertical speed control techniques (speed tables) as it is the most commonly requested means of traffic calming.

Many residential streets in Fort Smith are straight long streets. Traffic volume generally increases as the length of a street increases because there are many residences served by the street. If a residential street connects to more than one arterial or collector street, the street can provide a route for traffic not living in the neighborhood to use the street. This type of traffic is known as “through” traffic (traffic that does not have an origin or destination on that street). It is difficult to determine how much of the traffic on a residential street is traffic generated by the houses on the street or “through” traffic. A 24 hour traffic count can provide some indication of how much “through” traffic exists. The length, width, and straightness can also encourage speeding. By state law, the speed limit on a residential street in Arkansas is 30 miles per hour. Thresholds for both speed and traffic volume are important to determine if a street or street segment exceeds acceptable traffic volumes or speeds.

### **Speed Tables**

The installation of speed tables will only be considered for streets classified as residential streets in the Fort Smith Master Street Plan. Further, only streets with a 24 hour traffic volume between 1,000 and 2,000 vehicles per day will be considered. Streets with traffic volume above 2,000 vehicles per day may be classified as residential streets but are functioning as a collector street or greater and will not be considered for speed tables. Average daily traffic volumes are commonly expected to reach up to 1,000 vehicles per day on residential streets. This upper limit for traffic volume on residential streets is used as the lower volume threshold for the speed table policy to differentiate residential streets with higher traffic volumes.

There are numerous factors that must be considered before the installation of speed tables. Speed tables increase emergency vehicle response time. Speed tables on one street often divert the traffic and the issues to a surrounding street. Citizens may be divided on liking or disliking the installation of speed tables. Additional signage will be installed at each speed table and there

is increased noise from vehicles as they brake, go over, then accelerate away from the speed table. Drainage in the street has to be considered as speed tables can block the free flow of water at the curb and speed tables affect snow removal. There can be inconvenience along with increased wear and tear to vehicles including solid waste collection, transit buses and delivery vehicles. The introduction of speed tables in the street also can affect bicyclists and pedestrians walking in the street in the absence of sidewalks. There are installation costs associated with implementing speed tables and ongoing maintenance costs that should be considered. It will also require considerable staff time to administer the policy.

The following procedures outline the policy for administering the speed table policy for the city.

Property owners may request speed tables be placed on a residential street by initiating a petition. The form of the request shall be in writing accompanied by a petition of landowners fronting the affected street segment. The petition form to be utilized for gathering signatures will be provided by the City and is included with this document. A total of two thirds (67%) or greater of the landowners fronting the street must sign for approval of the proposal for the street to be considered for the installation of speed tables. There shall be only one signature per property. The absence of a signature for a property shall be considered against the proposal.

Once a valid petition and request is received by staff, the street segment will be evaluated. Traffic counts will be collected along the roadway on an average weekday. In addition, a speed study will be conducted to determine the existing speeds on the street. Streets where a request has been made for the placement of speed tables must meet minimum criteria to be candidates. The criteria are based on the prevailing speeds and traffic volumes.

Acceptable qualification for residential streets to be considered for speed tables are 85<sup>th</sup> percentile speeds in excess of 5 miles per hour over the statutory speed limit of 30 miles per hour and at least 1,000 vehicles for a 24 hour period. The 85<sup>th</sup> percentile speed is the speed at which 85% of the motorists are driving at or below. It is the nationally accepted method of setting speed limits for a street and is also the accepted value for the prevailing speed on the street. If the 85<sup>th</sup> percentile speed is less than or equal to 35 miles per hour, or if the 24 hour traffic volume is less than 1,000 vehicles per day or greater than 2,000 vehicles per day, speed tables shall not be installed and the street segment will no longer be considered. A minimum of one year shall pass before the street segment can be submitted for consideration again, and a new petition meeting the requirements noted above is required.

If a street qualifies, a point system will be assigned to the street segment based on the results of the speed study and the traffic volume count. Qualifying streets will be prioritized based on the total points calculated.

The point system will give 5 points for every mile per hour over the 85<sup>th</sup> percentile speed of 35 miles per hour. The speed studies will be conducted for traffic traveling in both directions. The highest 85<sup>th</sup> percentile from either direction will be used. For example, if the 85<sup>th</sup> percentile speed in one direction is measured at 37.5 miles per hour and the 85<sup>th</sup> percentile speed in the opposite direction is measured at 40.2 miles per hour, the 40.2 miles per hour will be used for calculation purposes. The 40.2 miles per hour speed is over the minimum threshold of 35 miles per hour by 5.2 miles per hour. The number of points based on the speed for this street segment would be  $5.2 \times 5$  points, or 26.0 points.

One point will also be given for every 100 vehicles exceeding 1,000 vehicles per day, up to the maximum of 2,000 vehicles per day (maximum of 10 points). The traffic count will be the sum of both directions of travel. For example, if the 24 hour count is 1,641 vehicles, the resulting points will be  $(1,641 - 1,000)/100 \times 1$  point or 6.4 points. The total points for the example are  $26.0 + 6.4 = 32.4$  points.

For the example stated, with a petition of two thirds (67%) of the landowners in favor of speed tables, the residential street would be eligible for speed tables. It qualifies based on an 85<sup>th</sup> percentile speed over 35 miles per hour, a petition greater than 67% in favor and the daily traffic volume between 1,000 vehicles per day and 2,000 vehicles per day. The total point value assigned to the request would be 32.4 points. The point system allows a prioritization system and allows staff to install speed tables on the streets with the highest points with funding available. An annual report will be made to the Board of Directors for their approval and placement on the priority list based on the number of total points. The Board will take into consideration if a neighborhood association offers to pay all or a portion of the installation costs if the street meets all the speed table requirements.

### **Removal of Speed Tables**

Placement of speed tables is controversial. If after placement of the speed tables a majority of the property owners believe they have not been effective or disapprove of their installation, a petition can be submitted to the city requesting removal. A petition cannot be submitted within the first year of placement of the speed tables. The petition form to be utilized for gathering signatures will be provided by the City and is included with this document. The petition must be signed by two thirds (67%) or greater of the property owners fronting the street where removal is requested. Only one signature per property will be valid.

Once the city receives a valid petition, traffic volumes and speeds will again be measured. A report will be prepared for the Board of Directors comparing the “before” traffic data with the “after” traffic data. The Board of Directors will make the final decision on whether the speed

tables should be removed or remain. If the decision is to leave the speed tables, another petition cannot be submitted for a one year period. If the decision is to remove the speed tables, due to the expense of the study, installation and removal costs, the street segment shall not be reconsidered for speed tables for a 5 year period after removal. A new petition meeting the requirements noted above is required to reconsider the street segment for speed tables.

#### References

1. I.M. Lockwood, "ITE Traffic Calming Definition," *ITE Journal*, Vol. 67, July 1997, pp. 22–24.

**CITY OF FORT SMITH  
PETITION FOR SPEED TABLE EVALUATION STUDY**

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

We request the City of Fort Smith Engineering Department to conduct a speed/traffic volume study to determine if the following street satisfies the city adopted criteria for speed table installation:

\_\_\_\_\_ between \_\_\_\_\_ & \_\_\_\_\_  
 Name of affected Street (Intersecting Streets)

**Note:**

1. Study will be conducted ONLY if two thirds (67%) of the property owners (houses fronting the affected street) support speed table installation.
2. Speed tables may be installed ONLY if funding is available and study results indicate that speed tables warrants are satisfied.
3. Signatures of all property owners on the affected street must be obtained. The absence of a signature for a property will be considered against the request for speed tables.
4. Signature must be of the property owner. Only one signature per property allowed.

Name/Address of the person representing the neighborhood: \_\_\_\_\_

\_\_\_\_\_  
 Phone: \_\_\_\_\_

Return **originals** to: City of Fort Smith  
 Engineering Department  
 623 Garrison Avenue, Room 409  
 Fort Smith, AR 72902

**Please read carefully before signing:**

While speed tables generally reduce vehicle speeds, they also create other inconveniences such as increased vehicular noise in the vicinity of speed tables and increased response time for emergency vehicles. Also, because of spacing requirements, it is possible that a speed table, associated pavement markings and signage may be installed adjacent to your property.

| Signature | Printed Name | Street Address | For | Against |
|-----------|--------------|----------------|-----|---------|
|           |              |                |     |         |
|           |              |                |     |         |
|           |              |                |     |         |
|           |              |                |     |         |
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|           |              |                |     |         |
|           |              |                |     |         |
|           |              |                |     |         |

**CITY OF FORT SMITH  
 PETITION FOR SPEED TABLE REMOVAL**

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

We request the City of Fort Smith to remove the speed tables on the following street segment:

\_\_\_\_\_ between \_\_\_\_\_ & \_\_\_\_\_  
 Name of affected Street (Intersecting Streets)

**Note:**

1. Removal will ONLY be considered if two thirds (67%) of the property owners (houses fronting the affected street) support the speed table removal.
2. Signatures of all property owners on the affected street must be obtained. The absence of a signature for a property will be considered against the request for removing the speed tables.
3. Signature must be of the property owner. Only one signature per property allowed.

Name/Address of the person representing the neighborhood: \_\_\_\_\_

\_\_\_\_\_  
 Phone: \_\_\_\_\_

Return **originals** to: City of Fort Smith  
 Engineering Department  
 623 Garrison Avenue, Room 409  
 Fort Smith, AR 72902

**Please read carefully before signing:**

This petition is for the removal of speed tables on the above referenced street segment. If the speed tables are removed, this street segment will not be reconsidered for speed tables for a five (5) year period after removal.

| Signature | Printed Name | Street Address | For | Against |
|-----------|--------------|----------------|-----|---------|
|           |              |                |     |         |
|           |              |                |     |         |
|           |              |                |     |         |
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|           |              |                |     |         |

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

**RESOLUTION AUTHORIZING ACQUISITION OF REAL PROPERTY INTERESTS FOR TOWN BRANCH DRAINAGE IMPROVEMENTS, PHASE III PROJECT NO. 11-06-B**

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

The Board of Directors hereby accepts the offer made by Darrin and Glenda G. Bradley to grant the City a permanent drainage easement across, under and upon their property, along with a temporary construction easement, in exchange for a payment of \$7,500.00. The City Administrator and the City attorney are hereby authorized to conclude the acquisition of said easements for the above amount.

**THIS RESOLUTION ADOPTED** this \_\_\_\_\_ day of January, 2015.

**APPROVED:**

\_\_\_\_\_

**Mayor**

**ATTEST:**

\_\_\_\_\_

**City Clerk**

Approved as to form:



\_\_\_\_\_ NPR

# DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY  
ATTORNEYS AT LAW

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

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

www.dailywoods.com

WRITER'S DIRECT DIAL NUMBER:  
479-242-3955

JAMES E. WEST  
ROBERT R. BRIGGS, P.A. †

OF COUNSEL

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

WRITER'S E-MAIL ADDRESS:  
MLaFreniere@DailyWoods.com

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

January 29, 2015

Mr. Stan Snodgrass  
Director of Engineering  
623 Garrison Avenue, 4<sup>th</sup> Floor  
Fort Smith, AR 72901

Re: Town Branch Drainage Improvements, Phase III  
Project No. 11-06-B  
Tract No. 5

Dear Mr. Snodgrass:

Darrin & Glenda G. Bradley are the owners of property which is being acquired for the above referenced project. For a number of months we have been working with Mr. and Mrs. Bradley in an effort to acquire a permanent right-of-way, drainage easement, and a temporary construction easement for the project. By Resolution No. R-7-15, the Board of Directors authorized paying the appraised value, \$5,597.00, for the sought after easements.

Initial discussions with Mr. and Mrs. Bradley led them to offer to sell the property interests to the City for \$15,000.00. In an attempt to resolve the matter in a timely fashion, we informed Mr. and Mrs. Bradley that the City's staff was prepared to recommend that the City accept an offer of \$6,436.55 in total compensation for the property interests.

In response, Mr. and Mrs. Bradley have indicated that they are prepared to offer to sell the property interests to the city for \$7,500.00, so long as any breach to their perimeter fence is repaired and the disturbed portion of their lawn is seeded and restored. Those construction issues will be handled properly by the construction contractors.

We understand your office recommends acceptance of Mr. and Mrs. Bradley's most recent offer. We are enclosing a resolution which may be used to refer the matter to the governing body for decision.

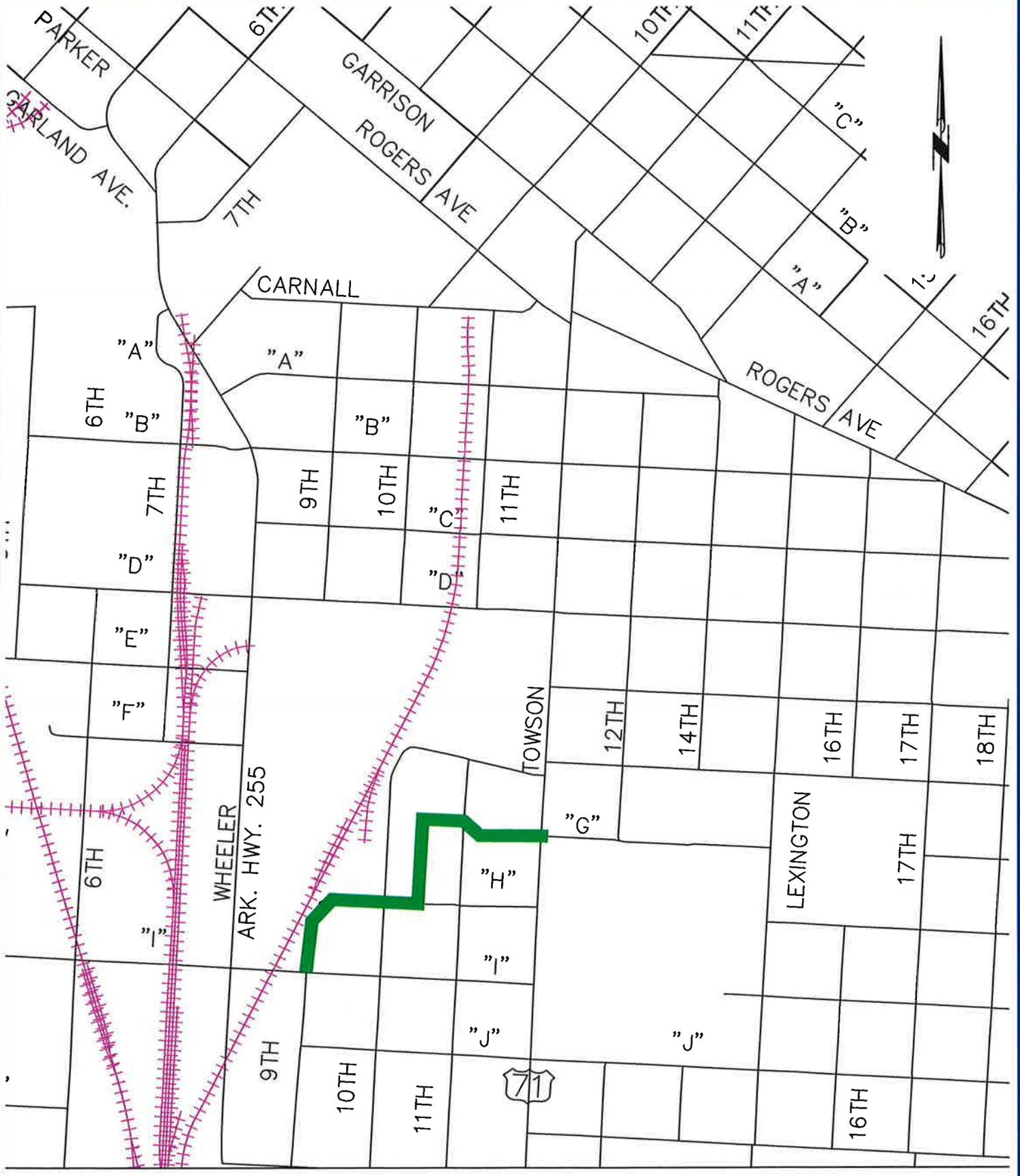
Thank you for your attention to this matter.

Very truly yours,



Michael A. LaFreniere  
Enclosure

cc: Mr. Matt Meeker (w/o encl.)

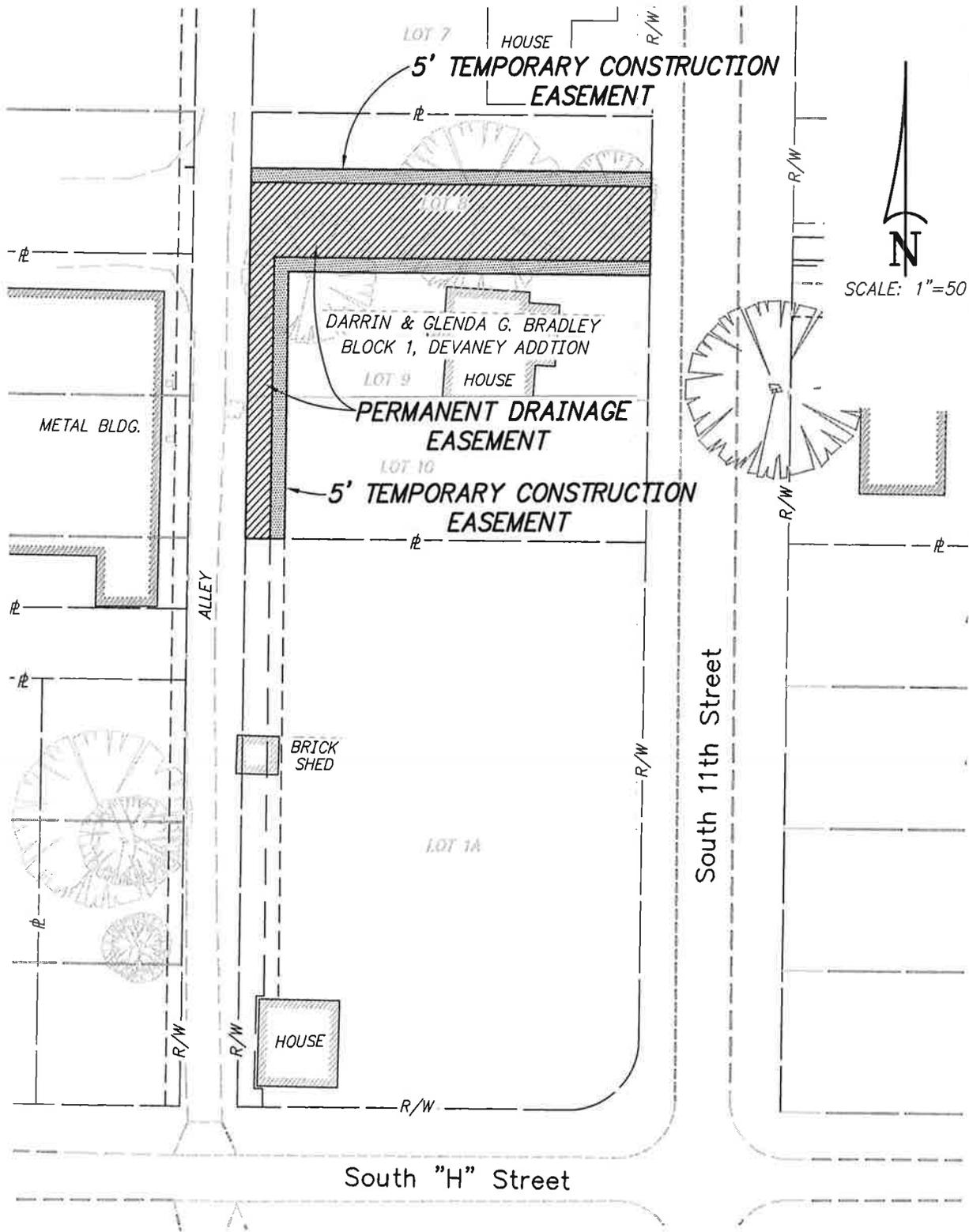


**TOWNBRANCH  
DRAINAGE IMPROVEMENTS  
PHASE III**



|           |           |
|-----------|-----------|
| Project:  | 11-06-B   |
| Date:     | JAN. 2015 |
| Scale:    | NONE      |
| Drawn By: | RBR       |

U:\DRAWINGS\PROJECTS\2012\2012062 CDM STORM SEWER SURVEY\ESMT EXHIBITS\TRACT 5.DWG, 11/7/2013 3:36 PM, AARON ST. AMANT, LAYOUT1



**HW HAWKINS & WEIR**  
ENGINEERS, INC.

110 South 7th Street • Van Buren, Arkansas 72956 • (479) 474-1227  
211 Natural Resources Drive • Little Rock, Arkansas 72205 • (501) 374-4846  
www.hawkins-weir.com

DRAINAGE EASEMENT – EXHIBIT A  
TOWN BRANCH DRAINAGE IMPROVEMENTS PHASE III  
TRACT 5 – DARRIN & GLENDA G. BRADLEY  
FOR: THE CITY OF FORT SMITH

DATE: 10/11/13

SCALE: 1" = 50'

JOB NO. 2012062

4C.

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

**AN ORDINANCE TO ABANDON A PUBLIC UTILITY EASEMENT  
LOCATED IN COMMERCIAL PARK SOUTH, PHASE II,  
AN ADDITION TO THE CITY OF FORT SMITH, SEBASTIAN COUNTY, ARKANSAS**

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

**SECTION 1:** The City of Fort Smith, Arkansas hereby releases, vacates and abandons all its rights together with the rights of the public generally to the public utility easement located in the hereinafter described real property:

A 15-foot-wide utility easement over, upon, and across Lot 1 of the Commercial Park South, Phase II, an addition to the City of Fort Smith, Sebastian County, Arkansas, recorded as Plat No. 1485, being more particularly described by metes and bounds as follows:

Beginning at a found 1 inch pipe with cap "LS 773" at the Southeast corner of Lot 2-C of the Commercial Park South, Phase I, recorded as Plat No. 1261, Thence along the West boundary of said Lot 1, North 03°18'40" East, a distance of 21.25 feet; Thence departing said boundary, South 41°35'59" East, a distance of 80.20 feet; Thence South 86°41'31" East, a distance of 143.01 feet; Thence North 62°07'23" East, a distance of 271.22 feet; Thence South 27°56'07" East, a distance of 15.00 feet to the South boundary of said Lot 1; Thence along said South Boundary, the following three (3) courses:

- 1.) South 62°07'23" West, a distance of 275.42 feet to a found 5/8 inch rebar with cap "LS 773";
- 2.) North 86°41'31" West, a distance of 153.43 feet to a found 5/8 inch rebar with cap "LS 773";
- 3.) North 41°35'59" West, a distance of 71.38 feet to the point of beginning, containing 7,460 square feet or 0.17 acres, more or less.

The public utility easement being released, vacated and abandoned is no longer required for municipal corporate purposes.

**SECTION 2:** A copy of the Ordinance duly certified by the City Clerk shall be filed with the Office of the Recorder of the County and recorded in the deed records of the County.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF FEBRUARY 2015.**

**APPROVED:**

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

**ATTEST:**

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

Approved as to form:



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

# Memo

To: Ray Gosack, City Administrator  
From: Wally Bailey, Director of Development Services  
Date: 1/29/2015  
Re: Request for Abandonment of a Public Utility Easement located in the Commercial Park South Phase II

The City is in receipt of the enclosed request from Stephen Giles, agent, for Stephens Production Company, to abandon a fifteen foot (15) public utility easement within the Commercial Park South Phase II subdivision as shown on the enclosed "Easement Abandonment Exhibit". The easement abandonment will facilitate the construction of an approximate 42,000 s.f. Wal-Mart Neighborhood Market at 8600 Highway 71 South. Enclosed is a vicinity map and site plan for the proposed facility.

The request to abandon the easement was reviewed by the appropriate city departments and the franchise utility companies. There were no objections to the request.

Enclosed for the Board's consideration is an ordinance authorizing the abandonment of the easement.

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

Enc.

**CITY OF FORT SMITH, ARKANSAS  
REQUEST FOR ABANDONMENT OF PUBLIC UTILITY EASEMENT**

APPLICATION:

Indicate one contact person for application: \_\_\_\_\_ Applicant     Representative

*Applicant (owner)*

*Representative (engineer, attorney, realtor, etc)*

Name: Stephens Production Co.

Name: Stephen R. Giles

Address: Continental Properties, LLC  
PO Box 2407  
Fort Smith, AR 72902

Address: 425 West Capitol Ave.  
Suite 3200  
Little Rock, AR 72201-3469

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

Telephone Number: 501-687-0836

E-Mail: \_\_\_\_\_

E-Mail: sgiles@gileslaw.net

Site Address/Location: Commercial Park South II, Lots 1A & 2A

Legal Description of easement(s) to be vacated: (attach separate sheet if necessary):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reason for Request: Development being built on easement.  
\_\_\_\_\_  
\_\_\_\_\_

Current Status of Easement(s): Currently serves existing utilities.  
\_\_\_\_\_  
\_\_\_\_\_

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

Name: (printed) STEPHEN R. GILES

Signature: Stephen R Giles

Date: Jan. 26, 2015

**Property Owner(s)/Authorized Agent:** I/we certify under penalty of perjury that I am/we are the owner(s) of the property that is subject of this application and that I/we have read this application and consent to its filing. **Note: If application is signed by authorized agent, all owners must sign and submit "Authorization of Agent" form.**

**AUTHORIZATION OF AGENT**

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

We the undersigned, being owners of real property, authorize  
to act as our agent.

*Stephen Giles and  
Tom Burry*  
(Print Name of Agent)

(Type or clearly print)

NAME & ADDRESS OF ALL OWNERS.

SIGNATURE OF ALL OWNERS.

1. *Stephens Production Company*  
623 Garrison Avenue  
Fort Smith, AR 72901

*W. N. Dawkins*  
General Counsel

2. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. \_\_\_\_\_

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\_\_\_\_\_

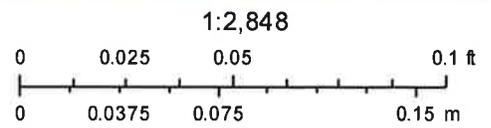


# Vicinity Map Wal-Mart Neighborhood Market



January 29, 2015

-  Fort Smith City Limits
-  Subdivisions





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

A RESOLUTION AUTHORIZING AGREEMENTS FOR  
EASEMENTS FOR THE GREG SMITH RIVERWALK

---

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

Section 1: The attached Agreement on behalf of the City of Fort Smith with Clayton Riverfront, LLC regarding trail easements needed for the construction of the Greg Smith Riverwalk is hereby approved.

Section 2: The attached Agreement on behalf of the City of Fort Smith with Westphal Leasing, LLC, Riverfront Exploration, LLC, Ozarks Oil & Gas, Inc., Bennie B. Westphal, Robin W. Clegg, Exotic Imports, Inc. and BancorpSouth Bank, Trustee of the Harry Schwartz Family Trust (collectively the "Owners") regarding trail easements needed for the construction of the Greg Smith Riverwalk is hereby approved.

Section 3: The attached Agreement on behalf of the City of Fort Smith with U.S. Marshall's Museum, Inc. regarding trail easements needed for the construction of the Greg Smith Riverwalk is hereby approved.

Section 4: The City Administrator is hereby authorized to execute the Agreements approved by Sections 1, 2 and 3 of this Resolution. The City Administrator is hereby authorized to accept, record and utilize for the purposes of the Greg Smith Riverwalk, trail easements from the owners identified in Sections 1, 2 and 3 substantially in the form of the Exhibit "B" attachments to each Agreement. Upon receipt of satisfactory trail easements substantially in the form of Exhibit "B" attached to each Agreement and verification of absence of title

issues, the City Administrator is authorized to execute the release documents to release the City's rights in the Trail/Lease Easement Agreement attached as Exhibit "A" to the Agreement approved by Section 1 and the Trail Easement Agreement attached as Exhibit "A" to the Agreement approved by Section 2.

This Resolution adopted this \_\_\_\_\_ day of February, 2015.

APPROVED:

\_\_\_\_\_  
Mayor

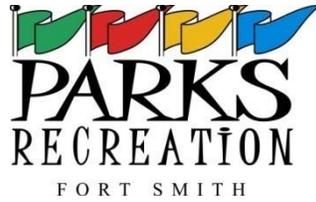
ATTEST:

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

APPROVED AS TO FORM



\_\_\_\_\_  
npr



## Memo:

January 30, 2015

To: Ray Gosack, City Administrator  
From: Jeff Dingman, Deputy City Administrator  
Re: Greg Smith Riverwalk Easements

*jud*

Trails have been a priority for many years now going back to when the Trails and Greenways Master Plan was approved in 2004. The Greg Smith Riverwalk, formerly known as the West River Front Trail, is a priority trail. Funding for the trail was not available until recently through a Walton Family Foundation Grant and the City's sales and use take dedicated to park improvements. The trail originally began as a temporary trail led by the late Greg Smith.

Temporary easements for the trail were obtained in 2008 and 2009; however permanent easements are required. Upon acceptance of the permanent easements the temporary easements will be released. The attached proposed easements are contingent upon owner approval.

Once the permanent easements are signed, construction of the trail will begin immediately and is expected to take approximately six (6) months. The Greg Smith Riverwalk is in alignment with the goals of the comprehensive plan action FLU3.2.3 and NCR 1.4.1. I recommend approval of the proposed easements.

attachment

**AGREEMENT**

This Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Fort Smith, Arkansas (“Fort Smith”) and Clayton Riverfront, LLC (the “Owner”).

**RECITALS**

WHEREAS, the Owner is the current owners of real property situated in the Fort Smith District of Sebastian County, Arkansas, currently encumbered by the Trail/Lease Easement Agreement in favor of Fort Smith recorded as Doc.# 7264157 in the real property records of the Fort Smith District, Sebastian County, AR (the “Existing Easement”). A true and correct copy of the Existing Easement is attached here and incorporated herein as Exhibit “A”.

WHEREAS, based on the current trail plans of Fort Smith, the Owners have agreed to execute a replacement Trail Easement (the “Replacement Easement”) in favor of the City of Fort Smith, Arkansas, in connection with a project known as the West River Front Trail Project (the “Project”), in consideration for Fort Smith’s release of the Existing Easement. A true and correct copy of the Replacement Easement is attached here and incorporated herein as Exhibit “B”.

WHEREAS, the City of Fort Smith, Arkansas, in consideration of the execution of the Replacement Easement by the Owner has agreed to release the Existing Easement.

WHEREAS, the parties agree that this Agreement is conditioned upon verification of the Owner’s title and conditioned upon final approval by the Fort Smith Board of Directors.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Upon the execution of this Agreement by the Owner, Fort Smith will seek final approval of this Agreement from the Fort Smith Board of Directors at its next regularly scheduled meeting. If approved by the Fort Smith Board of Directors, Fort Smith will execute this Agreement and furnish a copy of the same to the Owner.
2. Fort Smith will obtain verification of marketable title of the Owner's property at its expense. In the event that the Owner's property is subject to a mortgage, lien or other encumbrance, such lien holder must subordinate their interest to the Replacement Easement.
3. Within ten (10) business days of the date of the Fort Smith Board of Directors' approval of the Agreement or the satisfaction to Fort Smith of the marketability of Owner's title and subordination of any lien holder's interest to the Replacement Easement, which ever occurs later, the Owners will execute the Replacement Easement in the form attached hereto and incorporated herein as Exhibit "B".
4. Upon the completion of the Project, Fort Smith will execute and cause to be recorded a Release of Existing Easement in the form attached hereto and incorporated herein as Exhibit "C".
5. The time limits described herein shall automatically be extended for a reasonable time to allow sufficient time to cure any title defect or obtain the subordination of a lien holder's interest in the Owner's property to the Replacement Easement described in paragraph 3 herein.
6. This Agreement is specifically conditioned upon verification of Owner's marketable title, subordination of any lien holder's interest to the Replacement Easement, completion of the

Project and final approval from the Fort Smith Board of Directors.

City of Fort Smith, Arkansas

By: \_\_\_\_\_  
Ray Gosack  
City Administrator

CLAYTON RIVERFRONT, LLC

By: Rock Griffin

Name: \_\_\_\_\_

Title: Manager



**TRAIL/LEASE EASEMENT AGREEMENT**

270146

This Trail/Lease Easement Agreement This "Agreement" effective as of this 23 day of March, 2009, is entered into by and between Clayton Riverfront, LLC ("Clayton") and the City of Fort Smith, Arkansas (the "Holder").

**ARTICLE I  
Background**

- 1.01 Property. Clayton owns the surface of the real property described in attached Exhibit "A" and shown on the plan attached as Exhibit "B" (collectively the "Clayton real property") The Easement Area is located on the Clayton real property and is shown and described on attached Exhibit "C" ("Easement Area.")
- 1.02 Easement Purposes and Uses. The purpose of this Agreement is to create a lease for an Easement Area on which a trail may be constructed, maintained and used by the general public for outdoor recreation and educational purposes (the "Trail"). The Trail activities for which the Easement Area is intended include but are not limited to hiking, walking, jogging and non-motorized bicycling.
- 1.03 Consideration. Clayton acknowledges receipt of the sum of \$1.00 in consideration of the grant of easement to Holder under this Agreement.

**ARTICLE II  
Grant of Easement**

- 2.01 Grant of Easement and Right-of-Way. Subject to the reserved rights of Clayton set forth in Section 2.05 and the limitations on activities and use set forth in Sections 2.02 and 2.03, Clayton, intending to be legally bound, hereby grants, bargains, sales, transfers and conveys to Holder an exclusive easement and right-of-way in, over and across the Easement Area in perpetuity for the above described purposes and uses.
- 2.02 Limitation on Activities and Use.
  - (a) Use. Access to the Easement Area by the general public shall be subject to the rules, regulations or limitations established by Holder. The Holder shall prohibit the use of motorized vehicles on the Easement Area, except (i) in the case of an emergency; (ii) in connection with the construction, maintenance, repair or patrol of the Trail or the other improvements hereinafter described; or (iii) by persons who need to use motor-driven wheelchairs.



6201  
-219

Fort Smith Parks & Recreation  
3801 South M Street  
Fort Smith, AR 72903

- (b) **Disturbance.**  
The Holder may remove, cut or otherwise disturb the soil ~~and rock~~ <sup>7</sup> beneath the Easement Area only to the extent reasonably necessary to accommodate construction, maintenance and repair of the Trail and the other improvements hereinafter described.
- (c) **Construction.**  
Prior to commencing construction of the Trail or the other improvements hereinafter described, the Holder must obtain, at Holder's sole cost and expense, all permits and approvals for said construction required by any applicable governmental authority.
- (d) **Compliance with Laws.**  
The Holder shall be responsible, at its sole cost and expense, for complying with any federal, state or local statutes, regulations or ordinances that govern or apply to the construction, use, maintenance or repair of the Trail or any of the other improvements hereinafter described.

2.03 Trail Construction Materials. The Holder may, but shall not be obligated to, use the following materials in the construction of the Trail:

- (a) wood chips, mulch or other porous materials;
- (b) gravel, shale or crushed rock;
- (c) any materials required by applicable law; or
- (d) any combination of the forgoing;

provided, however; that the Holder shall not use asphalt, concrete or other hard surface material in the construction of the Trail (or any part thereof) without the express written consent of Clayton or their successor and assigns.

2.04 Other Improvements. With the express written consent of Clayton or their successor or assigns, the Holder may (but shall not be obligated to) construct the following improvements within the Easement Area:

- (a) Steps, railings and other trail surface structures as well as bridges or culverts for traversing wet or low areas within the Easement Area;
- (b) Accessory Facilities.
  - (i) Benches, picnic tables, and waste receptacles.
  - (ii) Signs or any of the following purposes:
    - (A) Mark the Trail and access thereto;

- 270148
- (B) Provide information regarding applicable time, place, and use restrictions;
  - (C) Indicate the interest of the Holder in the Easement Area; or
  - (D) Provide educational or interpretive information.
- (iii) Fencing, gates and barriers to control access to the Trail or for the safety of persons using the Trail, or both.
- (c) Landscaping.
    - (i) Trees, bushes, flowers, flower beds and other vegetation.
    - (ii) Sod or grasses.
    - (iii) Retaining walls, rip-rap and other structures or materials to prevent or control erosion.

2.05 Reserved Rights of Clayton. Clayton expressly reserves for itself and its successors and assigns the right (but not the obligation):

- (a) **Clayton Revocation.**  
To revoke and terminate the lease/easement granted herein at any time and for any reason upon thirty (30) days written notice to the Holder.
- (b) **Clayton Change in Location.**  
To move the lease/easement granted herein to another location ("New Easement Area") on Clayton's Real Property. Any such New Easement Area shall have a width of 25' (feet) and shall extend from the southern boundary of the Clayton's Real Property to the northern boundary of Clayton's Real Property so as to allow a continuous Trail along the Arkansas River between said boundaries. In order to establish the New Easement Area, Clayton shall file an Amendment to this Trail Easement Agreement, duly authenticated by Clayton (or their successors and assigns), that contains a legal description and survey of the New Easement Area. The New Easement Area shall be subject to all of the rights, uses, limitations and other terms and conditions of this Agreement. Clayton (or their successors and assigns) shall give the Holder sixty (60) days prior written notice of their intent to file any such Amendment to this Agreement.
- (c) **Clayton Use.**  
To use for a reasonable period of time so much of the Easement Area as is necessary for Clayton (or its successors or assigns) to develop the real

property that adjoins the Easement Area, including but not limited to the construction of Clayton.

270149

(d) Clayton Enforcement.

To take any action permitted under law to remove from the Easement Area persons or property whose use of or presence on the Easement Area does not comply with the purposes and uses for which this easement has been granted.

**ARTICLE III  
Other Legal Matters**

3.01 Holder's Enforcement. If Holder determines that this Agreement is being or has been violated then Holder may, in addition to other remedies available at law or in equity, do any one or more of the following:

(a) Injunctive Relief.

Seek injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; or to compel restoration of recreational resources destroyed or altered as a result of the violation.

(b) Self Help.

Enter the Easement Area to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

3.02 No Duty or Expense by Clayton. Clayton is not, and shall not be at any time in the future, responsible or liable for:

(a) The construction, maintenance, repair and inspection of the Trail or any other improvements in the Easement Area;

(b) Any alleged defects or alleged dangerous condition in or on the Easement Area; or

(c) The safety or security of any person using the Trail or the other improvements described above.

3.03 No Charge for Access. Neither the Holder nor any other person shall charge a fee for access to or use of the Easement Area or the Trail.

- 3.04 Immunity under Applicable Law. Nothing in this Agreement limits the ability of Clayton or Holder to avail themselves of the protections offered by any applicable law affording immunity to Clayton or Holder, including but not limited to the Arkansas Recreational Use Act, (A.C.A. 18-11-301, et seq) (as may be amended from time to time). 0150
- 3.05 Abandonment. The Holder may at anytime abandon the Easement Area (or any New Easement Area) and relinquish the easement granted herein upon thirty (30) days written notice to Clayton or their successor or assigns. Holder shall remove its above ground improvements within thirty (30) days of such termination of use.

#### **ARTICLE IV Miscellaneous**

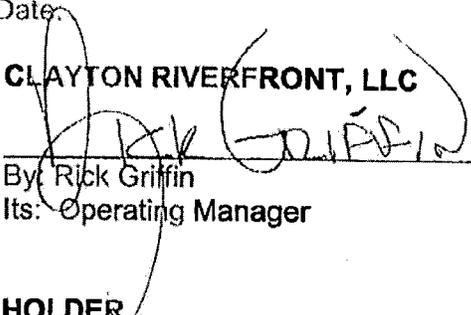
- 4.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Arkansas. The parties agree that the sole venue for any litigation arising under this Agreement shall be a court of competent jurisdiction in Sebastian County, Arkansas.
- 4.02 Agreement. This Agreement is a servitude running with the land, binding upon the Clayton and all subsequent owners of the Easement Area or any portion thereof. All subsequent owners shall be bound by the terms of this Agreement, whether or not the subsequent owner had actual notice of this Agreement and whether or not the deed of transfer to the subsequent owner, specifically refers to this Agreement or the easement created hereby. This Agreement binds and benefits Clayton and Holder and all of their respective successors and assigns.
- 4.03 Incorporation by Reference. Each exhibit referred to in this Agreement is incorporated into this Agreement by this reference.
- 4.04 Amendments; Waivers. No amendment or waiver of any provision of this Agreement is effective unless the amendment or waiver is in writing signed by both parties. Any amendment or waiver must be recorded in the Public Records of Sebastian County.
- 4.05 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.
- 4.06 Counterparts. This Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

4.07 Entire Agreement. This is the entire agreement of Clayton and Holder pertaining to the subject matter of this Agreement. The terms of this Agreement supersede<sup>270</sup> all statements and writings between Clayton and Holder pertaining to the subject matter of this Agreement. 151

4.08 Other Rights and Obligations. Nothing contained herein shall in anyway effect the rights, duties or obligations of any of the parties, or their successors or assigns under any current or future federal, state or local statute, rule, regulation or ordinance, including but not limited to the Holder's Trails and Greenways Master Plan or Bikeway Plan.

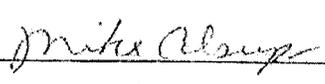
INTENDING TO BE LEGALLY BOUND, the undersigned Clayton and City of Fort Smith, Arkansas, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

CLAYTON RIVERFRONT, LLC

  
By: Rick Griffin  
Its: Operating Manager

HOLDER

CITY OF FORT SMITH, ARKANSAS

  
By: Mike Alsup  
Its: Parks Director





EXISTING FENCE  
100 YEAR FLOOD ELEVATION

# Exhibit A

Surveyor's notes:

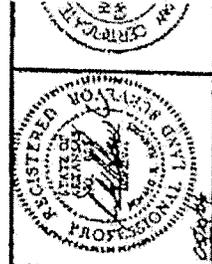
1. The Roadway Rn/Rz and 100 year flood plain elevation as shown are based on the location shown in LDMR dated 08/07/92 Community Parcel No. 055013 0010 D.
2. No research was performed and no title work provided therefore other easements may exist that were not located.
3. The topographic information and other improvements shown are from the City of Fort Smith's aerial mapping, dated 2003 project no. 03-12-A.
4. Bearing system assumed, north line assumed S 72°42'27"E, based on Arkansas State Plane coordinate system.
5. Set iron pins are #18" steel rebar set with yellow plastic cap stamped "SLS 105".
6. The surveyed property is subject to the Easement assessments and other restrictions by the Corp of Engineers. The west line of the property along the river, was determined using the apparent normal high water line which was estimated of approximately elevation 400.

Property Description

Part of the E/2, Section 5 and part of the W/2, Section 4 all in Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, more particularly described as follows:

Commencing at the Southwest corner of said Section 5; thence N 03°08'20"E along the east line of said Section 5, 2454.71' to the Point of Beginning on the west right-of-way line of Clayton Expressway (Arkansas Highway 285), being S 03°08'20"W 183.15' from the Northwest corner of the NE/4, SE/4, Section 5; thence along said west right-of-way line of Clayton Expressway the next (5) courses: S 17°11'07"W 256.97'; S 40°08'07"W 188.70'; S 24°51'07"W 100.00'; S 10°49'07"W 206.20'; S 24°51'07"W 203.14'; thence N 64°36'18"W 800' more or less, to the normal high water line of the Arkansas River; thence northwesterly along the meanderings of said normal high water line the next (15) courses: N 11°29'40"E 72.69'; N 20°26'19"E 71.38'; N 13°07'49"E 68.39'; N 17°52'10"E 131.08'; N 15°37'06"E 87.77'; N 16°34'43"E 87.06'; N 14°39'37"E 181.42'; N 14°49'50"E 111.68'; N 15°54'03"E 98.59'; N 13°21'07"E 137.32'; N 14°10'38"E 103.83'; N 13°14'15"E 129.42'; N 12°36'44"E 160.00'; N 14°06'20"E 125.78'; N 11°09'48"E 180.10'; thence leaving said normal high water line S 06°50'21"E 771.16' to the west line of levee right-of-way; thence S 04°22'16"W along said levee right-of-way 162.60'; thence continuing along said levee right-of-way on a curve to the left having a central angle of 85°06'19" and a radius of 75.00' to a point subtended by a chord bearing and distance of S 38°10'47"E 101.44' to said west right-of-way line of Clayton Expressway; thence S 10°11'07"W along said right-of-way line 170.02'; thence continuing along said right-of-way line S 07°16'07"W 567.00'; thence continuing along said right-of-way line S 17°11'07"W 188.03' to the Point of Beginning, containing 32.00 acres more or less.

500 08N 37W W 05 120 65 0905  
500 08N 37W W 04 430 65 0905



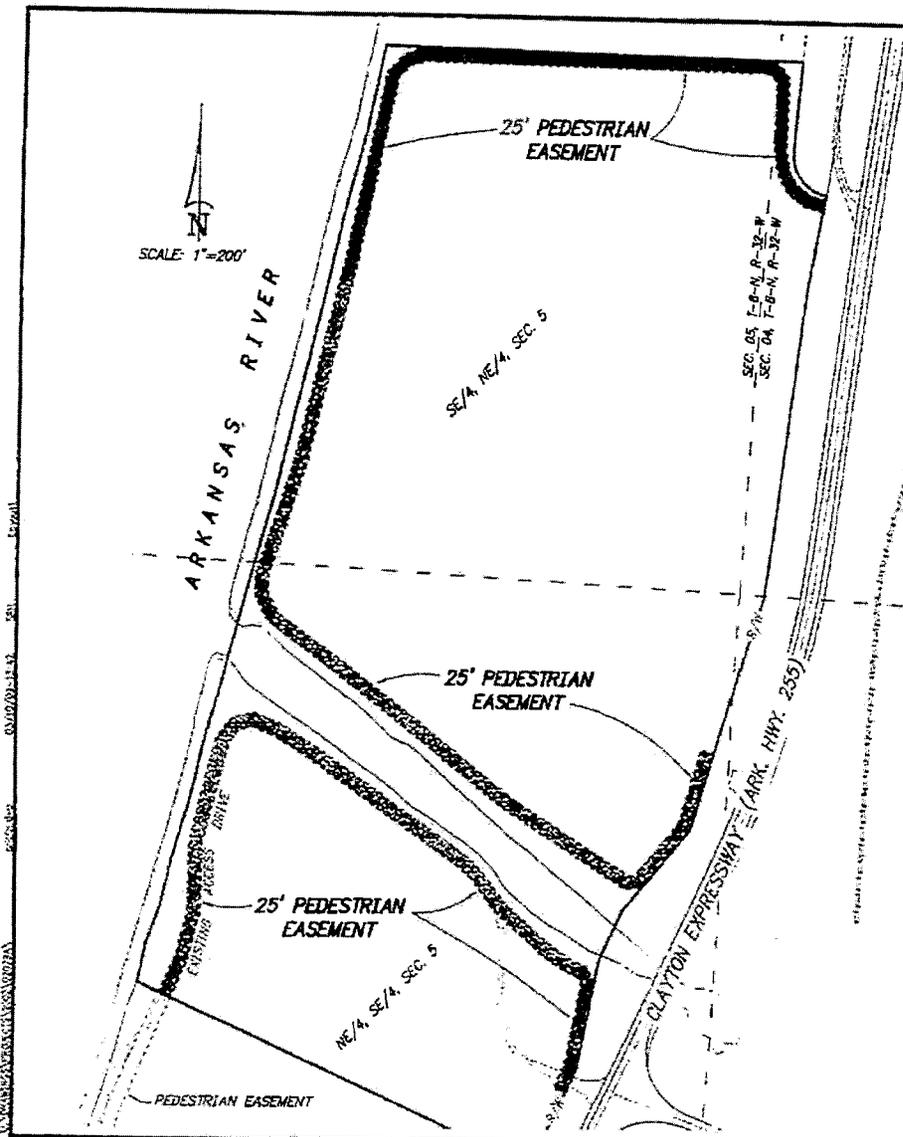
**HAWKINS-WEIR ENGINEERS, INC.**  
Engineers • Surveyors • Consultants  
110 South 7th Street  
P.O. Box 444  
Fort Smith, AR 72501-0444  
(501) 471-1177  
FAX (501) 471-8822  
www.hawkins-weir.com



FOR:  
RICHARD GRIFFIN  
BOUNDARY SURVEY  
OF PART OF THE  
W/2, SEC. 4, & PART OF THE  
E/2, SEC. 5, T-8-N, R-32-W

DATE: APRIL 2008  
SCALE: 1" = 100'  
DESIGNED BY:  
DRAWN BY: SRH  
HYDRO NO.: 080522A  
CIVIL NO.: 080522A01  
SHEET 1 OF 1





**Pedestrian Easement  
(Griffin Property)**

A 25' wide pedestrian easement crossing part of the NE/4, SE/4 of Section 5, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, said easement being 12.50' wide on each side of the centerline described as follows:

Commencing at the Southeast corner of said Section 5; thence N 03°08'20"E along the east line of said Section 5, 1,567.93'; thence N 86°51'40"W 316.23' to the westerly right-of-way line of Clayton Expressway (Arkansas Highway 255); thence N 64°56'18"W 747.36' to the Point of Beginning; thence N 23°19'58"E 76.47'; thence N 14°17'32"E 83.49'; thence N 01°02'10"E 121.06'; thence N 14°17'32"E 77.08'; thence N 15°00'47"E 115.52'; thence N 39°23'32"E 36.80'; thence N 76°55'06"E 32.22'; thence S 67°43'51"E 48.11'; thence S 57°20'57"E 79.75'; thence S 55°46'19"E 335.84'; thence S 45°48'30"E 38.59'; thence S 37°50'32"E 64.04'; thence S 48°02'10"E 53.17'; thence S 49°10'37"E 70.74'; thence S 54°59'23"E 43.15'; thence S 67°43'19"E 30.87'; thence S 25°50'48"E 23.47' to a point 12.5' west of said right-of-way line of Clayton Expressway; thence S 10°49'07"W paralleling said right-of-way line, 158.43'; thence S 24°51'07"W paralleling said right-of-way line, 35.76'; thence S 65°08'53"E 12.50' to the Point of Termination, containing 0.88 acres more or less.

Also, a 25' pedestrian easement crossing part of the SW/4, NW/4, Section 4 and part of the NE/4, SE/4, Section 5 and part of the SE/4, NE/4, Section 5, all in Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, said easement being 12.50' wide on each side of the centerline described as follows:

Commencing at the Southeast corner of said Section 5; thence N 03°08'20"E along the east line of said Section 5, 2,454.71' to the westerly right-of-way line of Clayton Expressway (Arkansas Highway 255); thence S 17°11'07"W along said right-of-way line, 128.91' to the Point of Beginning; thence N 72°48'53"W 12.50'; thence S 17°11'07"W paralleling said right-of-way line, 125.52'; thence S 40°08'07"W paralleling said right-of-way line, 128.91'; thence S 87°25'20"W 22.58'; thence N 57°50'03"W 277.97'; thence N 52°34'39"W 531.30'; thence N 27°33'16"W 44.90'; thence North 40.75'; thence N 18°23'33"E 213.80'; thence N 13°32'01"E 382.06'; thence N 11°24'57"E 333.47'; thence N 43°10'32"E 34.39'; thence N 71°03'56"E 34.77'; thence S 88°58'21"E 631.28'; thence S 68°07'45"E 20.71'; thence S 37°53'51"E 19.93'; thence S 00°47'27"W 126.69'; thence S 10°37'41"E 42.67'; thence S 29°51'30"E 30.62'; thence S 53°02'58"E 34.69'; thence S 72°25'42"E 35.77' to the Point of Termination on said westerly right-of-way line of Clayton Expressway, containing 1.79 acres more or less.

EXHIBIT C

FORT SMITH, ARKANSAS  
**RIVERWALK EASEMENT LOCATION**  
 GRIFFIN PROPERTY - CLAYTON EXPRESSWAY  
 FOR: THE CITY OF FORT SMITH

|  |  |
|--|--|
|  | <b>Hawkins-Weir Engineers, Inc.</b><br>Engineers Surveyors Consultants   |
|  | 110 SOUTH 7th ST • VAN BUREN, ARKANSAS • 72956<br>PH 479 474-1227 • FAX 479 474-8531<br><a href="http://www.hawkins-weir.com">www.hawkins-weir.com</a> |

DATE: 03/06/09 | SCALE: 1" = 200' | JOB NO. 02079A

## TRAIL EASEMENT

### KNOW ALL MEN BY THESE PRESENTS:

That CLAYTON RIVERFRONT, LLC, an Arkansas limited liability company, its successors and assigns, (GRANTOR), for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, its agents, successors, and assigns, GRANTEE a permanent easement for the construction, operation, and maintenance of public (GRANTEE owned) trail system for vehicular and pedestrian access to and from, of an unrestricted nature, with all appurtenances thereto, together with the right excavate, level, fill, grade, gravel, pave the surface, and to remove trees, brushes, undergrowth or other obstructions interfering with construction, operation and maintenance of said trail system over, under and upon the following lands situated in Fort Smith, Sebastian County, Arkansas, to wit:

Part of the Northeast Quarter of the Southeast Quarter, part of the Southeast Quarter of the Northeast Quarter of Fractional Section 5, and part of the Southwest Quarter of the Northwest Quarter of Section Fractional 4, all in Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas. Said easement being 25 feet wide and lying 12.5 feet on each side of the following described centerline:

Commencing at the Southeast Corner of said Fractional Section 5, said point being marked with an existing 2" aluminum cap; Thence N86°55'07"W, 850.78 feet to the westerly right-of-way line of River Front Drive; Thence along said westerly right-of-way line the following courses: N16°04'44"E, 252.09 feet; N17°59'44"E, 100.00 feet; N23°42'44"E, 402.00 feet; N13°07'44"E, 204.30; N26°36'44"E, 538.50 feet; N24°59'44"E, 166.03 feet to the southeasterly corner of the Griffin Property; Thence along the southerly line of said property, N64°57'05"W, 762.48 feet to the Point of Beginning; Thence along said centerline the following courses: N13°19'49"E, 265.55 feet; N12°54'28"E, 72.20 feet to **Event Node #7**; Continuing N12°54'28"E, 38.96 feet; 41.15 feet along the arc of a curve to the right, said curve having a radius of 100.00 feet and being subtended by a chord having a bearing of N24°41'48"E and a distance of 40.86 feet; N36°29'08"E, 243.74 feet to **Event Node #8**; Continuing N36°29'08"E, 53.05 feet; 29.18 feet along the arc of a curve to the left, said curve having a radius of 20.00 feet and being subtended by a chord having a bearing of N05°18'42"W and a distance of 26.66 feet; N47°07'19"W, 93.21 feet; 52.71 feet along the arc of a curve to the right, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of N16°55'53"W and a distance of 50.30 feet; N13°16'10"E, 68.71 feet; N19°11'42"E,



130.06 feet; N13°07'21"E, 539.96 feet to **Event Node #9**; Continuing N13°07'21"E, 44.30 feet; 272.11 feet along the arc of a curve to the right, said curve having a radius of 200.00 feet and being subtended by a chord having a bearing of N52°06'00"E and a distance of 251.61 feet; S88°55'14"E, 477.74 feet; 46.08 feet along the arc of a curve to the right, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of S62°31'08"E and a distance of 44.47 feet; S36°07'02"E, 88.40 feet to the Point of Termination on the easterly line of said Griffin Property, said point being S04°21'29"W, 102.43 feet from the northeasterly corner thereof. Containing 1.47 acres, more or less.

**And**

The following described areas associated with the above mentioned Event Nodes: Beginning at **Event Node #7**; Thence S77°01'07"E, 15.49 feet; Thence N23°00'14"E, 59.01 feet; Thence N43°37'43"E, 33.13 feet; N51°13'12"E, 130.74 feet; Thence N55°55'03"W, 83.34 feet; Thence N43°01'06"W, 32.71 feet; Thence N03°40'42"W, 15.39 feet; Thence N35°23'25"W, 26.80 feet; Thence N55°38'52"W, 18.92 feet; Thence S78°09'45"W, 20.74 feet; Thence S19°07'06"W, 39.01 feet; Thence S15°11'28"W, 105.17 feet; Thence S54°57'41"E, 56.96 feet; Thence S37°37'25"W, 28.59 feet; Thence S28°06'31"W, 25.26 feet; Thence S17°37'16"W, 52.03 feet; Thence S74°40'53"E, 20.34 feet to the Point of Beginning. Beginning at **Event Node #8**; Thence S51°42'05"E, 24.32 feet; Thence N38°05'22"E, 59.17 feet; Thence 57.23 feet along the arc of a curve to the left, said curve having a radius of 40.00 feet and being subtended by a chord having a bearing of N02°53'56"W and a distance of 52.47 feet; Thence N43°53'14"W, 100.98 feet; Thence S44°11'20"W, 129.84 feet; Thence S65°41'43"E, 69.36 feet; Thence S51°42'05"E, 56.53 feet to the Point of Beginning. A circle with a 40 foot radius centered on **Event Node #9**. Containing 0.73 acres, more or less.

Containing in aggregate 2.20 acres, more or less.

**And**

A temporary easement for construction purposes twenty five feet (25') in width on the eastern and western boundaries of the permanent easement, including the right with the right excavate, level, fill, grade, to remove trees, brushes, undergrowth or other obstructions interfering with the construction of the project. GRANTEE to restore the temporary easement area to the same or similar condition prior to construction. Said

temporary easement to terminate upon the completion and acceptance of the project by GRANTEE.

See Exhibit "A" attached hereto and hereby made a part of this instrument.

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

To have and to hold said easement unto GRANTEE forever.

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

GRANTOR does hereby covenant with GRANTEE that GRANTOR is lawfully seized and possessed of the real estate above described and that GRANTOR have a good and lawful right to convey the same or any part thereof.

Witness our hands and seals on this 28 day of JANUARY, 2015.

GRANTOR:

Clayton Riverfront, LLC

By: RICK GRIFFIN  
Name:  
Its: MANAGER

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
  )SS  
County of Sebastian )

On this 28<sup>th</sup> day of January, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named Rick Griffin, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and

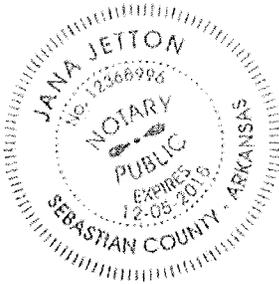
NOTARY PUBLIC

stated and acknowledged that he/she was the Manager of Clayton Riverfront, LLC and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of Clayton Riverfront, LLC, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 28<sup>th</sup> day of January, 2015.

My Commission Expires  
12/5/18

*Jana Jetton*  
Notary Public  
*Jana Jetton*





**RELEASE OF TRAIL/LEASE EASEMENT AGREEMENT**

KNOW ALL BY THESE PRESENTS:

This Release of Trail/Lease Easement Agreement is executed by the City of Fort Smith, Arkansas, an Arkansas municipal corporation, in consideration for the mutual promises and other good and valuable consideration, received from Clayton Riverfront, LLC ( the "Owner"), the receipt of which is hereby acknowledged.

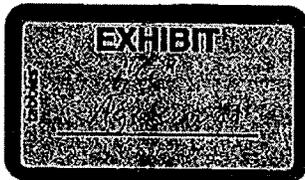
RECITALS

WHEREAS, Owner currently own real property situated in the Fort Smith District of Sebastian County, Arkansas, currently encumbered by the Trail/Lease Easement Agreement between the parties, recorded on March 27, 2009 as Doc. # 7264157 in the real property records of the Fort Smith District of Sebastian County, Arkansas.

WHEREAS, the parties have entered into an Agreement whereby the Owner has agreed to execute an Replacement Trail Easement in favor of the City of Fort Smith, Arkansas in exchange for the City of Fort Smith, Arkansas' release of the referenced Trail/Lease Easement Agreement upon completion of the City's West River Front Trail project..

NOW, THEREFORE, for the consideration described herein, the City of Fort Smith, Arkansas, hereby releases and discharges of record the Trail Easement Agreement between the parties, recorded on March 27, 2009 as Doc. # 7264157 in the real property records of the Fort Smith District of Sebastian County, Arkansas.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas, by its Administrator and attested by its City Clerk, duly authorized by Resolution of its Board of Directors has hereunto signed its corporate name on this \_\_\_\_ day of \_\_\_\_\_, 2015.



CITY OF FORT SMITH, ARKANSAS

By: \_\_\_\_\_  
Ray Gosack, City Administrator

Attested:



## AGREEMENT

This Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Fort Smith, Arkansas (“Fort Smith”) and Westphal Leasing, LLC, Riverfront Exploration, LLC, Ozark Oil & Gas, Inc., Bennie B. Westphal, Robin W. Clegg, Exotic Imports, Inc. and BancorpSouth Bank, Trustee of the Harry Schwartz Family Trust (collectively the “Owners”).

### RECITALS

WHEREAS, the Owners are the current owners of real property situated in the Fort Smith District of Sebastian County, Arkansas, currently encumbered by the Trail Easement Agreement in favor of Fort Smith recorded as Doc.# 7253373 in the real property records of the Fort Smith District, Sebastian County, AR (the “Existing Easement”). A true and correct copy of the Existing Easement is attached here and incorporated herein as Exhibit “A”.

WHEREAS, based on the current trail plans of Fort Smith, the Owners have agreed to execute a replacement Trail Easement (the “Replacement Easement”) in favor of the City of Fort Smith, Arkansas, in connection with a project known as the West River Front Trail Project (the “Project”), in consideration for Fort Smith’s release of the Existing Easement. A true and correct copy of the Replacement Easement is attached here and incorporated herein as Exhibit “B”.

WHEREAS, the City of Fort Smith, Arkansas, in consideration of the execution of the Replacement Easement by the Owners has agreed to release the Existing Easement.

WHEREAS, the parties agree that this Agreement is conditioned upon verification of the Owners' title and conditioned upon final approval by the Fort Smith Board of Directors.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Upon the execution of this Agreement by the Owners, Fort Smith will seek final approval of this Agreement from the Fort Smith Board of Directors at its next regularly scheduled meeting. If approved by the Fort Smith Board of Directors, Fort Smith will execute this Agreement and furnish a copy of the same to the Owners.

2. Fort Smith will obtain verification of marketable title of the Owners' property at its expense. In the event that the Owners' property is subject to a mortgage, lien or other encumbrance, such lien holder must subordinate their interest to the Replacement Easement.

3. Within ten (10) business days of the date of the Fort Smith Board of Directors' approval of the Agreement or the satisfaction to Fort Smith of the marketability of Owners' title and subordination of any lien holder's interest to the Replacement Easement, which ever occurs later, the Owners will execute the Replacement Easement in the form attached hereto and incorporated herein as Exhibit "B".

4. Upon the completion of the Project, Fort Smith will execute and cause to be recorded a Release of Existing Easement in the form attached hereto and incorporated herein as Exhibit "C".

5. The time limits described herein shall automatically be extended for a reasonable time to allow sufficient time to cure any title defect or obtain the subordination of a lien holder's interest in the Owners' property to the Replacement Easement described in paragraph 3 herein.

6. This Agreement is specifically conditioned upon verification of Owner's marketable title, subordination of any lien holder's interest to the Replacement Easement, completion of the Project and final approval from the Fort Smith Board of Directors.

City of Fort Smith, Arkansas

By: \_\_\_\_\_  
Ray Gosack  
City Administrator

Westphal Leasing, LLC

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

Riverfront Exploration, LLC

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

Ozark Oil & Gas, Inc.

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

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

**Exotic Imports, Inc.**

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

Name: \_\_\_\_\_

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

**BancorpSouth Bank, Trustee of the Harry  
Schwartz Family Trust**

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

Name: \_\_\_\_\_

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

\_\_\_\_\_  
**Bennie B. Westphal**

\_\_\_\_\_  
**Robin W. Clegg**

8



Doris Tate, County Clerk and Recorder

0059

### TRAIL EASEMENT AGREEMENT

This Trail Easement Agreement This "Agreement" effective as of this 3<sup>rd</sup> day of September, 2008, is entered into by and between Westphal Leasing, LLC, Riverfront Exploration, LLC, Westphal Properties, Inc., (formerly, Western Development Corporation, Inc.), and Widmer Place, LLC (collectively the "Owners") and the City of Fort Smith, Arkansas (the "Holder").

#### ARTICLE I Background

- 1.01 Property. The Owners own all of or an undivided interest in the surface estate of the real property, described in Exhibit "A" and shown on the plan attached as Exhibit "B" (the "Easement Area"). The Easement Area is located on the Owners' real property in Fort Smith, Arkansas that lies between the Clayton Expressway and the Arkansas River ("Owners' Real Property").
- 1.02 Easement Purposes and Uses. The purpose of this Agreement is to create an Easement Area on which a trail may be constructed, maintained and used by the general public for outdoor recreation and educational purposes (the "Trail"). The Trail activities for which the Easement Area is intended include but are not limited to hiking, walking, jogging and non-motorized bicycling.
- 1.03 Consideration. The Owners acknowledge receipt of the sum of \$1.00 in consideration of the grant of easement to Holder under this Agreement.

#### ARTICLE II Grant of Easement

- 2.01 Grant of Easement and Right-of-Way. Subject to the reserved rights of the Owners set forth in Section 2.05 and the limitations on activities and use set forth in Sections 2.02 and 2.03, the Owners, intending to be legally bound, hereby grant, bargain, sale, transfer and convey to Holder an exclusive easement and

FORT SMITH PARKS & REC  
3301 SOUTH M STREET  
FORT SMITH AR 72903

Doc #: 7253373



6201-219 Return to: Fort Smith Parks & Rec. 3301 S M St

right-of-way in, over and across the Easement Area in perpetuity for the above described purposes and uses.

033060

**2.02 Limitation on Activities and Use.**

**(a) Use.**

Access to the Easement Area by the general public shall be subject to the rules, regulations or limitations established by Holder. The Holder shall prohibit the use of motorized vehicles on the Easement Area, except (i) in the case of an emergency; (ii) in connection with the construction, maintenance, repair or patrol of the Trail or the other improvements hereinafter described; or (iii) by persons who need to use motor-driven wheelchairs.

**(b) Disturbance.**

The Holder may remove, cut or otherwise disturb the soil and rock beneath the Easement Area only to the extent reasonably necessary to accommodate construction, maintenance and repair of the Trail and the other improvements hereinafter described.

**(c) Construction.**

Prior to commencing construction of the Trail or the other improvements hereinafter described, the Holder must obtain, at Holder's sole cost and expense, all permits and approvals for said construction required by any applicable governmental authority.

**(d) Compliance with Laws.**

The Holder shall be responsible, at its sole cost and expense, for complying with any federal, state or local statutes, regulations or ordinances that govern or apply to the construction, use, maintenance or repair of the Trail or any of the other improvements hereinafter described.

**2.03 Trail Construction Materials.** The Holder may, but shall not be obligated to, use the following materials in the construction of the Trail:

- (a) wood chips, mulch or other porous materials;
- (b) gravel, shale or crushed rock;
- (c) any materials required by applicable law; or
- (d) any combination of the foregoing;

provided, however; that the Holder shall not use asphalt, concrete or other hard surface material in the construction of the Trail (or any part thereof) without the express written consent of the Owners or their successor and assigns.

2.04 Other Improvements. With the express written consent of the Owners or their successor or assigns, the Holder may (but shall not be obligated to) construct the following improvements within the Easement Area: 61

- (a) Steps, railings and other trail surface structures as well as bridges or culverts for traversing wet or low areas within the Easement Area;
- (b) Accessory Facilities.
  - (i) Benches, picnic tables, and waste receptacles.
  - (ii) Signs or any of the following purposes:
    - (A) Mark the Trail and access thereto;
    - (B) Provide information regarding applicable time, place, and use restrictions;
    - (C) Indicate the interest of the Holder in the Easement Area; or
    - (D) Provide educational or interpretive information.
  - (iii) Fencing, gates and barriers to control access to the Trail or for the safety of persons using the Trail, or both.
- (c) Landscaping.
  - (i) Trees, bushes, flowers, flower beds and other vegetation.
  - (ii) Sod or grasses.
  - (iii) Retaining walls, rip-rap and other structures or materials to prevent or control erosion.

2.05 Reserved Rights of Owners. The Owners expressly reserve for themselves and their successors and assigns the right (but not the obligation):

- (a) Owner's Revocation.  
To revoke and terminate the easement granted herein at any time and for any reason upon thirty (30) days written notice to the Holder.
- (b) Owners' Change in Location.  
To move the easement granted herein to another location ("New Easement Area") on the Owners' Real Property. Any such New Easement Area shall have a width of 25' (feet) and shall extend from the southern boundary of the Owners' Real Property to the northern boundary of the

Owners' Real Property so as to allow a continuous Trail along the Arkansas River between said boundaries. In order to establish the New Easement Area, the Owners shall file an Amendment to this Trail Easement Agreement, duly authenticated by the Owners (or their successors and assigns), that contains a legal description and survey of the New Easement Area. The New Easement Area shall be subject to all of the rights, uses, limitations and other terms and conditions of this Agreement. The Owners (or their successors and assigns) shall give the Holder sixty (60) days prior written notice of their intent to file any such Amendment to this Agreement. 0062

- (c) **Owners' Use.**  
To use for a reasonable period of time so much of the Easement Area as is necessary for the Owners (or their successors or assigns) to develop the real property that adjoins the Easement Area, including but not limited to the construction of the U.S. Marshall's Museum.
- (d) **Owners' Enforcement.**  
To take any action permitted under law to remove from the Easement Area persons or property whose use of or presence on the Easement Area does not comply with the purposes and uses for which this easement has been granted.

### **ARTICLE III Other Legal Matters**

**3.01 Holder's Enforcement.** If Holder determines that this Agreement is being or has been violated then Holder may, in addition to other remedies available at law or in equity, do any one or more of the following:

- (a) **Injunctive Relief.**  
  
Seek Injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; or to compel restoration of recreational resources destroyed or altered as a result of the violation.
- (b) **Self Help.**  
  
Enter the Property to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

- 3.02 No Duty or Expense by Owners. Owners are not, and shall not be at any time in the future, responsible or liable for:
- (a) The construction, maintenance, repair and inspection of the Trail or any other improvements in the Easement Area;
  - (b) Any alleged defects or alleged dangerous condition in or on the Easement Area; or
  - (c) The safety or security of any person using the Trail or the other improvements described above.
- 3.03 No Charge for Access. Neither the Holder nor any other person shall charge a fee for access to or use of the Easement Area or the Trail.
- 3.04 Immunity under Applicable Law. Nothing in this Agreement limits the ability of Owners or Holder to avail themselves of the protections offered by any applicable law affording immunity to Owners or Holder, including but not limited to the Arkansas Recreational Use Act, (A.C.A. 18-11-301, et seq) (as may be amended from time to time).
- 3.05 Abandonment. The Holder may at anytime abandon the Easement Area (or any New Easement Area) and relinquish the easement granted herein upon thirty (30) days written notice to the Owners or their successor or assigns.

#### **ARTICLE IV Miscellaneous**

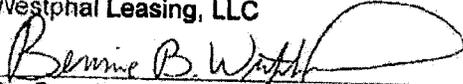
- 4.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Arkansas. The parties agree that the sole venue for any litigation arising under this Agreement shall be a court of competent jurisdiction in Sebastian County, Arkansas.
- 4.02 Agreement. This Agreement is a servitude running with the land, binding upon the Owners and all subsequent owners of the Easement Area or any portion thereof. All subsequent owners shall be bound by the terms of this Agreement, whether or not the subsequent owner had actual notice of this Agreement and whether or not the deed of transfer to the subsequent owner, specifically refers to this Agreement or the easement created hereby. This Agreement binds and benefits Owners and Holder and all of their respective successors and assigns.
- 4.03 Incorporation by Reference. Each exhibit referred to in this Agreement is incorporated into this Agreement by this reference.

- 4.04 Amendments; Waivers. No amendment or waiver of any provision of this Agreement is effective unless the amendment or waiver is in writing signed by both parties. Any amendment or waiver must be recorded in the Public Records of Sebastian County. 64
- 4.05 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.
- 4.06 Counterparts. This Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.
- 4.07 Entire Agreement. This is the entire agreement of Owners and Holder pertaining to the subject matter of this Agreement. The terms of this Agreement supersede all statements and writings between Owners and Holder pertaining to the subject matter of this Agreement.
- 4.08 Other Rights and Obligations. Nothing contained herein shall in anyway effect the rights, duties or obligations of any of the parties, or their successors or assigns under any current or future federal, state or local statute, rule, regulation or ordinance, including but not limited to the Holder's Trails and Greenways Master Plan or Bikeway Plan.

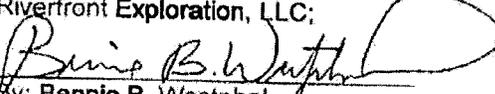
INTENDING TO BE LEGALLY BOUND, the undersigned Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

**OWNERS:**

Westphal Leasing, LLC

  
 By: Bennie B. Westphal  
 Its: Manager

Riverfront Exploration, LLC;

  
 By: Bennie B. Westphal  
 Its: Manager

Westphal Properties, Inc.,  
(formerly, Western Development Corporation, Inc.)

Bennie B. Westphal  
By: Bennie B. Westphal  
Its: President

Widmer Place, LLC

Bennie B. Westphal  
By: Bennie B. Westphal  
Its: Manager

**HOLDER:**

**CITY OF FORT SMITH, ARKANSAS**

Mike Alsup  
By: Mike Alsup  
Its: Parks Director

ACKNOWLEDGMENT

STATE OF Arkansas )  
 ) SS.  
COUNTY OF Sebastian )

12-1-08

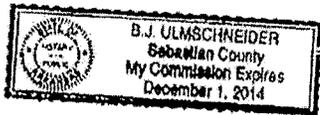
On this 3 day of Sept., 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within-named Mike Alsop in his/her capacity as Parks Director of City of Fort Smith, to me personally well known and duly authorized in his/her respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

7<sup>th</sup> IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of October, 2008.

B.J. Ulmschneider  
Notary Public

MY COMMISSION EXPIRES:

12-1-2014



**ACKNOWLEDGMENT**

STATE OF Arkansas )  
 ) ss.  
COUNTY OF SEBASTIAN )

007

On this 3 day of September, 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person Bennie B. Westphal, in his capacity as Manager of Westphal Leasing, LLC, to me personally well known and duly authorized in his respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3 day of September, 2008.

Lisa A. Hogan  
Notary Public

MY COMMISSION EXPIRES:

5-1-2013

LISA A. HOGAN  
NOTARY PUBLIC, STATE OF ARKANSAS  
MY COMMISSION EXPIRES 05-01-2013  
SEBASTIAN COUNTY

**ACKNOWLEDGMENT**

330064

STATE OF Arkansas )  
 ) SS.  
COUNTY OF Sebastian )

On this 3 day of September 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person Bennie B. Westphal, in his capacity as Manager of Widmer Place, LLC, to me personally well known and duly authorized in his respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3 day of September, 2008.

Lisa A. Hogan  
Notary Public

MY COMMISSION EXPIRES:

5-1-2013

**LISA A. HOGAN**  
NOTARY PUBLIC, STATE OF ARKANSAS  
MY COMMISSION EXPIRES 05-01-2013  
SEBASTIAN COUNTY

**ACKNOWLEDGMENT**

000369

STATE OF Arkansas )  
 ) SS.  
COUNTY OF Sebastian )

On this 3 day of Sept., 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person Bennie B. Westphal, in his capacity as Manager of Riverfront Exploration, LLC, to me personally well known and duly authorized in his respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3 day of September, 2008.

Lisa A. Hogan  
Notary Public

MY COMMISSION EXPIRES:

5-1-2013

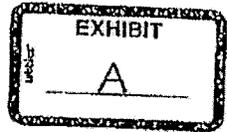
**LISA A. HOGAN**  
NOTARY PUBLIC, STATE OF ARKANSAS  
MY COMMISSION EXPIRES 05-01-2013  
SEBASTIAN COUNTY

03071

**Pedestrian Easement**

Part of the SE/4 of Fractional Section 5; and part of the NW/4, SE/4 and part of the NE/4, SW/4 and part of the W/2, NE/4 of Fractional Section 8 all in Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, more particularly described as follows:

Commencing at the Northeast corner of the NE/4 of said Section 8; thence N 89°08'00"W 366.38' along the north line of said Section 8; thence N 00°55'00"E 1,544.46' to a point on the westerly right-of-way line of Clayton Expressway (Ark. Hwy. 255) to the Point of Beginning; thence N 68°04'00"W 714.83'; thence S 30°27'28"W 111.03'; thence S 19°08'08"W 89.20'; thence S 13°40'55"W 140.31'; thence S 09°37'31"W 99.30'; thence S 17°36'41"W 152.95'; thence S 22°48'48"W 102.01' thence southwesterly paralleling and 25' east of the right high bank of the Arkansas River the next (23) courses: S 15°53'11"W 93.63'; S 13°35'39"W 77.45'; S 18°09'33"W 63.94'; S 09°58'58"W 155.47'; S 19°31'59"W 183.10'; S 11°56'36"W 208.08'; S 16°45'00"W 208.82'; S 17°56'21"W 208.80'; S 18°39'55"W 204.08'; S 16°10'12"W 94.55'; S 18°23'08"W 97.00'; S 20°29'03"W 208.02'; S 18°40'11"W 279.53'; S 20°40'15"W 259.44'; S 21°18'56"W 200.05'; S 21°21'00"W 199.01'; S 21°12'45"W 229.41'; S 21°56'47"W 231.78'; S 23°27'10"W 254.23'; S 23°56'14"W 194.64'; S 26°55'44"W 199.58'; S 29°07'34"W 220.84'; S 27°56'18"W 365.02'; thence N 53°13'24"W 25.30' to the right high bank of the Arkansas River; thence northeasterly along said high bank the next (23) courses: N 27°56'18"E 361.40'; N 29°07'34"E 220.62'; N 26°55'44"E 198.45'; N 23°56'14"E 193.88'; N 23°27'10"E 253.79'; N 21°56'47"E 231.29'; N 21°12'45"E 229.28'; N 21°21'00"E 199.03'; N 21°18'56"E 199.90'; N 20°40'15"E 258.86'; N 18°40'11"E 279.49'; N 20°29'03"E 207.96'; N 18°23'08"E 96.06'; N 16°10'12"E 94.61'; N 18°39'55"E 204.47'; N 17°56'21"E 208.38'; N 16°45'00"E 207.51'; N 11°56'36"E 208.68'; N 19°31'59"E 182.67'; N 09°58'58"E 155.17'; N 18°09'33"E 64.73'; N 13°35'39"E 76.89'; N 15°17'47"E 88.25'; thence leaving said high bank N 22°48'48"E 109.91'; thence N 17°36'41"E 150.06'; thence N 09°37'31"E 98.44'; thence N 13°40'55"E 142.38'; thence N 19°08'08"E 92.87'; thence N 30°27'28"E 135.04'; thence S 68°04'00"E 736.36' to said westerly right-of-way line of Clayton Expressway (Ark. Hwy. 255); thence S 21°56'00"W along said right-of-way line 25.00' to the Point of Beginning, containing 3.37 acres more or less.



**ACKNOWLEDGMENT**

000070

STATE OF Arkansas )  
 ) SS.  
COUNTY OF Sebastian )

On this 3 day of Sept., 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person Bennie B. Westphal, in his capacity as President of Westphal Properties, Inc., (formerly, Western Development Corporation, Inc.), to me personally well known and duly authorized in his respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3 day of September, 2008.

Lisa A. Hogan  
Notary Public

MY COMMISSION EXPIRES:  
5-1-2013

**LISA A. HOGAN**  
NOTARY PUBLIC, STATE OF ARKANSAS  
MY COMMISSION EXPIRES 05-01-2013  
SEBASTIAN COUNTY



## TRAIL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That WESTPHAL LEASING, LLC, an Arkansas limited liability company, RIVERFRONT EXPLORATION, LLC, an Arkansas limited liability company, OZARK OIL & GAS, INC., an Arkansas corporation, BENNIE B. WESTPHAL, an Individual resident of Arkansas, ROBIN W. CLEGG, an Individual resident of Arkansas, EXOTIC IMPORTS, INC., an Arkansas corporation, and BancorpSouth Bank, Trustee of the HARRY SCHWARTZ FAMILY TRUST, and their heirs, successors, and assigns, (collectively GRANTORS), for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, its agents, successors and assigns, GRANTEE a permanent easement for the construction, operation, and maintenance of public (GRANTEE owned) trail system for vehicular and pedestrian access to and from, of an unrestricted nature, with all appurtenances thereto, together with the right excavate, level, fill, grade, gravel, pave the surface, and to remove trees, brushes, undergrowth or other obstructions interfering with construction, operation and maintenance of said trail system over, under and upon the following lands situated in Fort Smith, Sebastian County, Arkansas, to wit:

Part of the West Half of the Northeast Quarter of Fractional Section 8; Part of the Southwest Quarter of the Southeast Quarter, and part of the East Half of the Southeast Quarter of Fractional Section 5, all in Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas. Said easement being 25 feet wide and lying 12.5 feet on each side of the following described centerline:

Commencing at the Northeast Corner of said Fractional Section 8, said point being marked with an existing 2" aluminum cap; Thence N86°55'07"W, 850.78 feet to the westerly right-of-way line of River Front Drive; Thence along said westerly right-of-way line the following courses: S16°04'44"W, 48.11 feet; S13°52'37"W, 277.16 feet; S25°58'17"W, 411.70 feet; S23°27'44"W, 105.20 feet; S17°08'44"W, 325.60 feet; S22°24'44"W, 209.80 feet; S33°43'44"W, 275.30 feet; S39°33'44"W, 335.00 feet; S37°20'44"W, 305.20 feet; S42°38'44"W, 371.90 feet; S41°15'44"W, 278.70 feet; S38°30'44"W, 151.75 feet at the southeasterly corner of the Westphal property; Thence along the southerly line of said property, N57°35'23"W, 334.02 feet to the Point of Beginning; Thence along said centerline the following courses: N27°32'41"E, 66.98 feet; 11.82 feet along the arc of a curve to the left, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of N20°46'20"E and a distance of 11.79 feet; N13°59'59"E, 156.26 feet; 12.15 feet along the arc of a curve to the right, said curve having a radius of 50.00 feet and

being subtended by a chord having a bearing of N20°57'38"E and a distance of 12.12 feet; N27°55'16"E, 191.75 feet; N23°52'56"E, 177.63 feet to **Event Node #3**; Continuing N23°52'56"E, 122.17 feet; N24°49'07"E, 626.05 feet; N23°07'29"E, 283.56 feet; N22°09'59"E, 291.82 feet; N22°35'04"E, 459.12 feet to **Event Node #4**; Continuing N22°35'04"E, 151.30 feet; N20°23'11"E, 292.13 feet; N16°02'24"E, 300.59 feet; N21°15'27"E, 276.70 feet; N16°17'07"E, 32.33 feet to **Event Node #5**; Continuing N16°17'07"E, 292.01 feet; N16°56'08"E, 185.99 feet to **Event Node #6**; Continuing N16°56'08"E, 114.40 feet; N22°13'01"E, 282.63 feet; N13°19'49"E, 65.62 feet to the Point of Termination on the northerly line of said Westphal property, said point being N64°57'05"W, 762.48 feet from the northeasterly corner thereof. Containing 2.52 acres, more or less.

**And**

The following described areas associated with the above mentioned Event Nodes: a circle with a 45 foot radius centered on **Event Node #3**; a circle with a 45 foot radius centered on **Event Node #4**; a circle with a 40 foot radius centered on **Event Node #5**; a circle with a 45 foot radius centered on **Event Node #6**. And that portion of a circle contained within said Westphal property, said circle having a 35 foot radius centered on Event Node #2. Containing 0.36 acres, more or less.

Containing in aggregate 2.88 acres, more or less.

**And**

A temporary easement for construction purposes twenty five feet (25') in width on the eastern and western boundaries of the permanent easement, including the right with the right excavate, level, fill, grade, to remove trees, brushes, undergrowth or other obstructions interfering with the construction of the project. GRANTEE to restore the temporary easement area to the same or similar condition prior to construction. Said temporary easement to terminate upon the completion and acceptance of the project by GRANTEE.

See Exhibit "A" attached hereto and hereby made a part of this instrument.

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

To have and to hold said easement unto GRANTEE forever.

The consideration paid by GRANTEE is received and accepted by GRANTORS in full

satisfaction of every right hereby conveyed.

GRANTORS do hereby covenant with GRANTEE that GRANTORS are lawfully seized and possessed of the real estate above described and that GRANTORS have a good and lawful right to convey the same or any part thereof.

And we, Landy K. Westphal and Elliott L. Clegg, spouses of Bennie B. Westphal and Robin W. Clegg, respectively, do hereby relinquish and release unto GRANTEE all of right, possibility or interest to homestead, dower and curtesy to the property herein conveyed.

Witness our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

GRANTORS:

Westphal Leasing, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Riverfront Exploration, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Ozark Oil & Gas, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Exotic Imports, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

BancorpSouth Bank,  
Trustee of the Harry Schwartz Family Trust

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Bennie B. Westphal

\_\_\_\_\_  
Landy K. Westphal

\_\_\_\_\_  
Robin W. Clegg

\_\_\_\_\_  
Elliott L. Clegg

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 )SS  
County of Sebastian )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named \_\_\_\_\_, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that he/she was the \_\_\_\_\_ of Westphal Leasing, LLC and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of Westphal Leasing, LLC, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 )SS  
County of Sebastian )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named \_\_\_\_\_, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that he/she was the \_\_\_\_\_ of Riverfront Exploration, LLC and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of Riverfront Exploration, LLC, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 )SS  
County of Sebastian )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named \_\_\_\_\_, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that he/she was the \_\_\_\_\_ of Ozark Oil & Gas, Inc., and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of Ozark Oil & Gas, Inc., and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 )SS  
County of Sebastian )

On this \_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named \_\_\_\_\_, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that he/she was the \_\_\_\_\_ of Exotic Imports, Inc., and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of Exotic Imports, Inc., and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 )SS  
County of Sebastian )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named \_\_\_\_\_, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that he/she was the \_\_\_\_\_ of BancorpSouth Bank, the Trustee of the Harry Schwartz Family Trust, and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of Harry Schwartz Family Trust, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
 )SS  
County of Sebastian )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named Bennie B. Westphal and Landy K Westphal, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that they had executed the same for the consideration, uses and purposes therein mentioned, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
  )SS  
County of Sebastian     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named Robin W. Clegg and Elliott L. Clegg, to me personally well known as the persons whose names appear upon the within and foregoing instrument, and stated and acknowledged that they had executed the same for the consideration, uses and purposes therein mentioned, and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

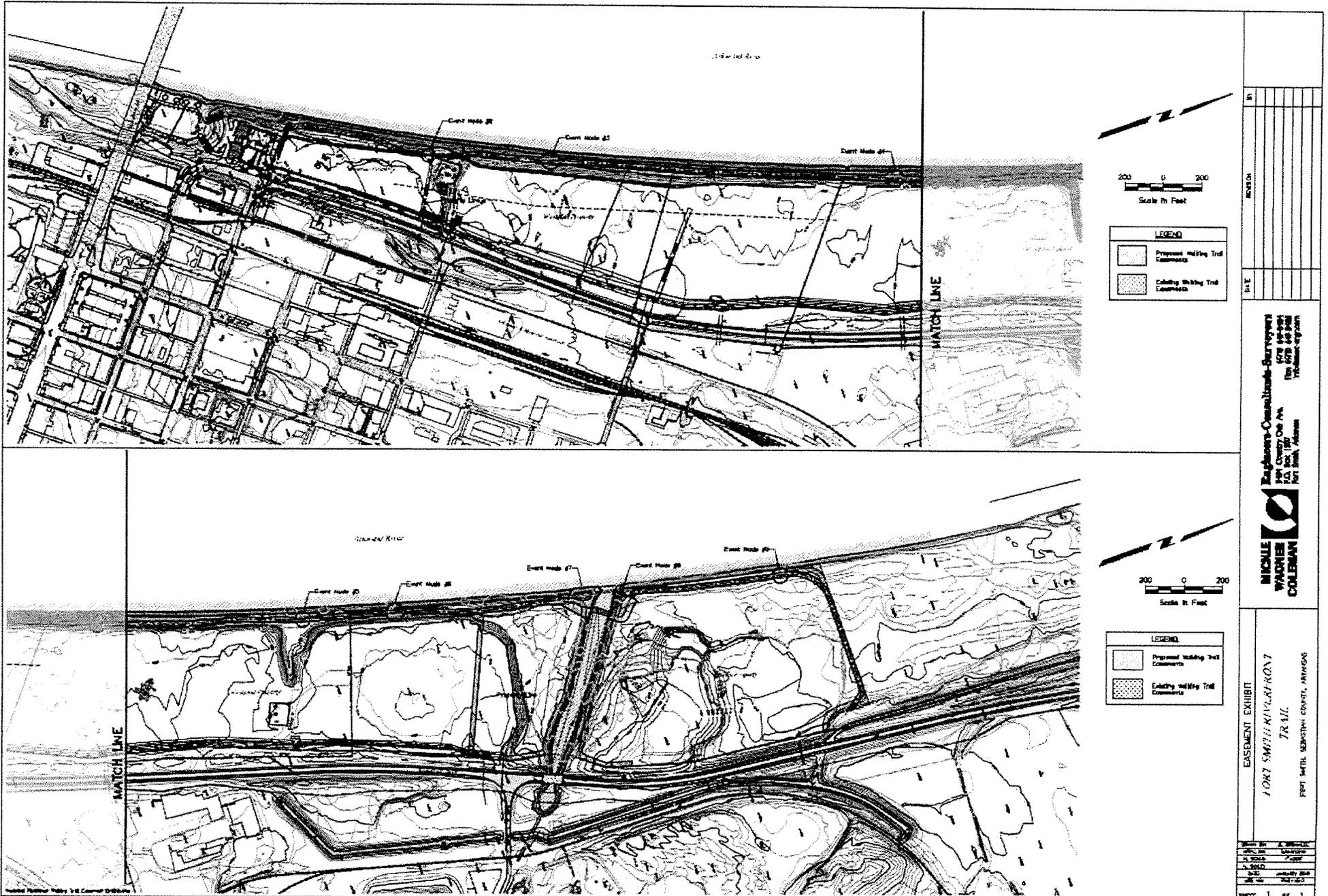
My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

# Exhibit "A"



|          |  |
|----------|--|
| DATE     |  |
| REVISION |  |
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|          |  |

Engineering-Construction-Surveying  
 1001 Cherry Oak Ave. Ste. 100  
 P.O. Box 1001  
 Fort Smith, Arkansas 72301-1001  
 (501) 321-1001  
 (501) 321-1002



EASEMENT EXHIBIT  
 FORT SMITH KAYAK/ARROW  
 TR III  
 PORT SMITH SEWER/STORM COVERT, ARKANSAS

|      |         |    |           |
|------|---------|----|-----------|
| DATE | 1/27/15 | BY | A. WACHEN |
| DATE | 1/27/15 | BY | A. WACHEN |
| DATE | 1/27/15 | BY | A. WACHEN |
| DATE | 1/27/15 | BY | A. WACHEN |
| DATE | 1/27/15 | BY | A. WACHEN |
| DATE | 1/27/15 | BY | A. WACHEN |
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| DATE | 1/27/15 | BY | A. WACHEN |

**RELEASE OF TRAIL EASEMENT AGREEMENT**

KNOW ALL BY THESE PRESENTS:

This Release of Trail Easement Agreement is executed by the City of Fort Smith, Arkansas, an Arkansas municipal corporation, in consideration for the mutual promises and other good and valuable consideration, received from Westphal Leasing, LLC, Riverfront Exploration, LLC, Westphal Properties, Inc., (formerly, Western Development Corporation, Inc.), and Widmer Place, LLC or their successors (collectively the "Owners"), the receipt of which is hereby acknowledged.

RECITALS

WHEREAS, Owners (or their successors) currently own real property situated in the Fort Smith District of Sebastian County, Arkansas, currently encumbered by the Trail Easement Agreement between the parties, recorded on October 10, 2008 as Doc. # 7253373 in the real property records of the Fort Smith District of Sebastian County, Arkansas.

WHEREAS, the parties have entered into an Agreement whereby the Owners (or their successors) have agreed to execute an Replacement Trail Easement in favor of the City of Fort Smith, Arkansas in exchange for the City of Fort Smith, Arkansas' release of the referenced Trail Easement Agreement upon completion of the City's West River Front Trail project..

NOW, THEREFORE, for the consideration described herein, the City of Fort Smith, Arkansas, hereby releases and discharges of record the Trail Easement Agreement between the parties, recorded on October 10, 2008 as Doc. # 7253373 in the real property records of the Fort Smith District of Sebastian County, Arkansas.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas, by its Administrator and attested by its City Clerk, duly authorized by Resolution of its Board of Directors has hereunto signed its corporate name on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF FORT SMITH, ARKANSAS

By: \_\_\_\_\_  
Ray Gosack, City Administrator





## AGREEMENT

This Agreement is entered into on the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Fort Smith, Arkansas (“Fort Smith”) and U.S. Marshall’s Museum, Inc. (the “Owner”).

### RECITALS

WHEREAS, the Owner is the current owner of real property situated in the Fort Smith District of Sebastian County, Arkansas, currently encumbered by the Trail Easement Agreement in favor of Fort Smith recorded as Doc.# 7253373 in the real property records of the Fort Smith District, Sebastian County, AR (the “Existing Easement”). A true and correct copy of the Existing Easement is attached here and incorporated herein as Exhibit “A”.

WHEREAS, based on the current trail plans of Fort Smith, the Owner has agreed to execute a replacement Trail Easement (the “Replacement Easement”) in favor of the City of Fort Smith, Arkansas, in connection with a project known as the West River Front Trail Project (the “Project”), in consideration for Fort Smith’s release of the Existing Easement. A true and correct copy of the Replacement Easement is attached here and incorporated herein as Exhibit “B”.

WHEREAS, the City of Fort Smith, Arkansas, in consideration of the execution of the Replacement Easement by the Owner has agreed to release the Existing Easement.

WHEREAS, the parties agree that this Agreement is conditioned upon verification of the Owner’s title and conditioned upon final approval by the Fort Smith Board of Directors.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

1. Upon the execution of this Agreement by the Owner, Fort Smith will seek final approval of this Agreement from the Fort Smith Board of Directors at its next regularly scheduled meeting. If approved by the Fort Smith Board of Directors, Fort Smith will execute this Agreement and furnish a copy of the same to the Owner.

2. Fort Smith will obtain verification of marketable title of the Owner's property at its expense. In the event that the Owner's property is subject to a mortgage, lien or other encumbrance, such lien holder must subordinate their interest to the Replacement Easement.

3. Within ten (10) business days of the date of the Fort Smith Board of Directors' approval of the Agreement or the satisfaction to Fort Smith of the marketability of Owner's title and subordination of any lien holder's interest to the Replacement Easement, which ever occurs later, the Owner will execute the Replacement Easement in the form attached hereto and incorporated herein as Exhibit "B".

4. Upon the completion of the Project, Fort Smith will execute and cause to be recorded a Release of Existing Easement in the form attached hereto and incorporated herein as Exhibit "C".

5. The time limits described herein shall automatically be extended for a reasonable time to allow sufficient time to cure any title defect or obtain the subordination of a lien holder's interest in the Owner's property to the Replacement Easement described in paragraph 3 herein.

6. This Agreement is specifically conditioned upon verification of Owner's marketable title, subordination of any lien holder's interest to the Replacement Easement, completion of the

Project and final approval from the Fort Smith Board of Directors.

City of Fort Smith, Arkansas

By: \_\_\_\_\_  
Ray Gosack  
City Administrator

U.S. Marshals Museum, Inc.

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



### TRAIL EASEMENT AGREEMENT

This Trail Easement Agreement This "Agreement" effective as of this 3<sup>rd</sup> day of September, 2008, is entered into by and between Westphal Leasing, LLC, Riverfront Exploration, LLC, Westphal Properties, Inc., (formerly, Western Development Corporation, Inc.), and Widmer Place, LLC (collectively the "Owners") and the City of Fort Smith, Arkansas (the "Holder").

#### ARTICLE I Background

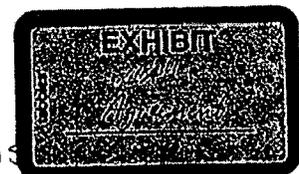
- 1.01 Property. The Owners own all of or an undivided interest in the surface estate of the real property, described in Exhibit "A" and shown on the plan attached as Exhibit "B" (the "Easement Area"). The Easement Area is located on the Owners' real property in Fort Smith, Arkansas that lies between the Clayton Expressway and the Arkansas River ("Owners' Real Property").
- 1.02 Easement Purposes and Uses. The purpose of this Agreement is to create an Easement Area on which a trail may be constructed, maintained and used by the general public for outdoor recreation and educational purposes (the "Trail"). The Trail activities for which the Easement Area is intended include but are not limited to hiking, walking, jogging and non-motorized bicycling.
- 1.03 Consideration. The Owners acknowledge receipt of the sum of \$1.00 in consideration of the grant of easement to Holder under this Agreement.

#### ARTICLE II Grant of Easement

- 2.01 Grant of Easement and Right-of-Way. Subject to the reserved rights of the Owners set forth in Section 2.05 and the limitations on activities and use set forth in Sections 2.02 and 2.03, the Owners, intending to be legally bound, hereby grant, bargain, sale, transfer and convey to Holder an exclusive easement and

FORT SMITH PARKS & REC  
3301 SOUTH M STREET  
FORT SMITH AR 72903

Doc #: 7253373



6201-219 Return to: Fort Smith Parks & Rec 3301 S MS

right-of-way in, over and across the Easement Area in perpetuity for the above described purposes and uses.

033060

2.02 Limitation on Activities and Use.

(a) Use.

Access to the Easement Area by the general public shall be subject to the rules, regulations or limitations established by Holder. The Holder shall prohibit the use of motorized vehicles on the Easement Area, except (i) in the case of an emergency; (ii) in connection with the construction, maintenance, repair or patrol of the Trail or the other improvements hereinafter described; or (iii) by persons who need to use motor-driven wheelchairs.

(b) Disturbance.

The Holder may remove, cut or otherwise disturb the soil and rock beneath the Easement Area only to the extent reasonably necessary to accommodate construction, maintenance and repair of the Trail and the other improvements hereinafter described.

(c) Construction.

Prior to commencing construction of the Trail or the other improvements hereinafter described, the Holder must obtain, at Holder's sole cost and expense, all permits and approvals for said construction required by any applicable governmental authority.

(d) Compliance with Laws.

The Holder shall be responsible, at its sole cost and expense, for complying with any federal, state or local statutes, regulations or ordinances that govern or apply to the construction, use, maintenance or repair of the Trail or any of the other improvements hereinafter described.

2.03 Trail Construction Materials. The Holder may, but shall not be obligated to, use the following materials in the construction of the Trail:

- (a) wood chips, mulch or other porous materials;
- (b) gravel, shale or crushed rock;
- (c) any materials required by applicable law; or
- (d) any combination of the foregoing;

provided, however; that the Holder shall not use asphalt, concrete or other hard surface material in the construction of the Trail (or any part thereof) without the express written consent of the Owners or their successor and assigns.

2.04 Other Improvements. With the express written consent of the Owners or their successor or assigns, the Holder may (but shall not be obligated to) construct the following improvements within the Easement Area: 055061

- (a) Steps, railings and other trail surface structures as well as bridges or culverts for traversing wet or low areas within the Easement Area;
- (b) Accessory Facilities.
  - (i) Benches, picnic tables, and waste receptacles.
  - (ii) Signs or any of the following purposes:
    - (A) Mark the Trail and access thereto;
    - (B) Provide information regarding applicable time, place, and use restrictions;
    - (C) Indicate the interest of the Holder in the Easement Area; or
    - (D) Provide educational or interpretive information.
  - (iii) Fencing, gates and barriers to control access to the Trail or for the safety of persons using the Trail, or both.
- (c) Landscaping.
  - (i) Trees, bushes, flowers, flower beds and other vegetation.
  - (ii) Sod or grasses.
  - (iii) Retaining walls, rip-rap and other structures or materials to prevent or control erosion.

2.05 Reserved Rights of Owners. The Owners expressly reserve for themselves and their successors and assigns the right (but not the obligation):

- (a) Owner's Revocation.  
To revoke and terminate the easement granted herein at any time and for any reason upon thirty (30) days written notice to the Holder.
- (b) Owners' Change in Location.  
To move the easement granted herein to another location ("New Easement Area") on the Owners' Real Property. Any such New Easement Area shall have a width of 25' (feet) and shall extend from the southern boundary of the Owners' Real Property to the northern boundary of the

Owners' Real Property so as to allow a continuous Trail along the Arkansas River between said boundaries. In order to establish the New: 0062 Easement Area, the Owners shall file an Amendment to this Trail Easement Agreement, duly authenticated by the Owners (or their successors and assigns), that contains a legal description and survey of the New Easement Area. The New Easement Area shall be subject to all of the rights, uses, limitations and other terms and conditions of this Agreement. The Owners (or their successors and assigns) shall give the Holder sixty (60) days prior written notice of their intent to file any such Amendment to this Agreement.

- (c) **Owners' Use.**  
To use for a reasonable period of time so much of the Easement Area as is necessary for the Owners (or their successors or assigns) to develop the real property that adjoins the Easement Area, including but not limited to the construction of the U.S. Marshall's Museum.
- (d) **Owners' Enforcement.**  
To take any action permitted under law to remove from the Easement Area persons or property whose use of or presence on the Easement Area does not comply with the purposes and uses for which this easement has been granted.

### **ARTICLE III Other Legal Matters**

**3.01 Holder's Enforcement.** If Holder determines that this Agreement is being or has been violated then Holder may, in addition to other remedies available at law or in equity, do any one or more of the following:

- (a) **Injunctive Relief.**  
  
Seek Injunctive relief to specifically enforce the terms of this Agreement; to restrain present or future violations of this Agreement; or to compel restoration of recreational resources destroyed or altered as a result of the violation.
- (b) **Self Help.**  
  
Enter the Property to remove any barrier to the access provided under this Agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this Agreement.

- 3.02 No Duty or Expense by Owners. Owners are not, and shall not be at any time in the future, responsible or liable for:
- (a) The construction, maintenance, repair and inspection of the Trail or any other improvements in the Easement Area;
  - (b) Any alleged defects or alleged dangerous condition in or on the Easement Area; or
  - (c) The safety or security of any person using the Trail or the other improvements described above.
- 3.03 No Charge for Access. Neither the Holder nor any other person shall charge a fee for access to or use of the Easement Area or the Trail.
- 3.04 Immunity under Applicable Law. Nothing in this Agreement limits the ability of Owners or Holder to avail themselves of the protections offered by any applicable law affording immunity to Owners or Holder, including but not limited to the Arkansas Recreational Use Act, (A.C.A. 18-11-301, et seq) (as may be amended from time to time).
- 3.05 Abandonment. The Holder may at anytime abandon the Easement Area (or any New Easement Area) and relinquish the easement granted herein upon thirty (30) days written notice to the Owners or their successor or assigns.

#### **ARTICLE IV Miscellaneous**

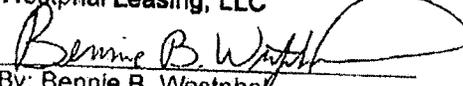
- 4.01 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of Arkansas. The parties agree that the sole venue for any litigation arising under this Agreement shall be a court of competent jurisdiction in Sebastian County, Arkansas.
- 4.02 Agreement. This Agreement is a servitude running with the land, binding upon the Owners and all subsequent owners of the Easement Area or any portion thereof. All subsequent owners shall be bound by the terms of this Agreement, whether or not the subsequent owner had actual notice of this Agreement and whether or not the deed of transfer to the subsequent owner, specifically refers to this Agreement or the easement created hereby. This Agreement binds and benefits Owners and Holder and all of their respective successors and assigns.
- 4.03 Incorporation by Reference. Each exhibit referred to in this Agreement is incorporated into this Agreement by this reference.

- 4.04 Amendments; Waivers. No amendment or waiver of any provision of this Agreement is effective unless the amendment or waiver is in writing signed by both parties. Any amendment or waiver must be recorded in the Public Records of Sebastian County. 64
- 4.05 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this Agreement invalid, illegal, or unenforceable in any respect.
- 4.06 Counterparts. This Agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.
- 4.07 Entire Agreement. This is the entire agreement of Owners and Holder pertaining to the subject matter of this Agreement. The terms of this Agreement supersede all statements and writings between Owners and Holder pertaining to the subject matter of this Agreement.
- 4.08 Other Rights and Obligations. Nothing contained herein shall in anyway effect the rights, duties or obligations of any of the parties, or their successors or assigns under any current or future federal, state or local statute, rule, regulation or ordinance, including but not limited to the Holder's Trails and Greenways Master Plan or Bikeway Plan.

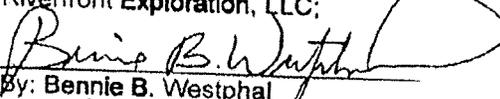
INTENDING TO BE LEGALLY BOUND, the undersigned Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Agreement as of the Agreement Date.

**OWNERS:**

Westphal Leasing, LLC

  
 By: Bennie B. Westphal  
 Its: Manager

Riverfront Exploration, LLC;

  
 By: Bennie B. Westphal  
 Its: Manager

Westphal Properties, Inc.,  
(formerly, Western Development Corporation, Inc.)

Bennie B. Westphal  
By: Bennie B. Westphal  
Its: President

Widmer Place, LLC

Bennie B. Westphal  
By: Bennie B. Westphal  
Its: Manager

**HOLDER:**

**CITY OF FORT SMITH, ARKANSAS**

Mike Alsop  
By: Mike Alsop  
Its: Parks Director

ACKNOWLEDGMENT

STATE OF Arkansas )  
 ) SS.  
COUNTY OF Sebastian )

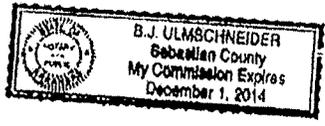
1006

On this 3 day of Sept., 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within-named Mike Aisup in his/her capacity as Parks Director of City of Fort Smith, to me personally well known and duly authorized in his/her respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

17<sup>th</sup> IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of October, 2008.

B. J. Ulmschneider  
Notary Public

MY COMMISSION EXPIRES:  
12-1-2014



ACKNOWLEDGMENT

STATE OF Arkansas )  
 ) SS.  
COUNTY OF SEBASTIAN )

On this 3 day of September 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person Bennie B. Westphal, in his capacity as Manager of Westphal Leasing, LLC, to me personally well known and duly authorized in his respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3 day of September, 2008.

Lisa A. Hogan  
Notary Public

MY COMMISSION EXPIRES:

5-1-2013

LISA A. HOGAN  
NOTARY PUBLIC, STATE OF ARKANSAS  
MY COMMISSION EXPIRES 05-01-2013  
SEBASTIAN COUNTY



ACKNOWLEDGMENT

STATE OF Arkansas )  
 ) SS.  
COUNTY OF Sebastian )

000369

On this 3 day of Sept., 2008, before me, the undersigned Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person Bennie B. Westphal, in his capacity as Manager of Riverfront Exploration, LLC, to me personally well known and duly authorized in his respective capacity to execute the foregoing Agreement for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 3 day of September, 2008.

Lisa A. Hogan  
Notary Public

MY COMMISSION EXPIRES:  
5-1-2013

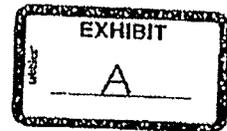
**LISA A. HOGAN**  
NOTARY PUBLIC, STATE OF ARKANSAS  
MY COMMISSION EXPIRES 05-01-2013  
SEBASTIAN COUNTY

080071

Pedestrian Easement

Part of the SE/4 of Fractional Section 5; and part of the NW/4, SE/4 and part of the NE/4, SW/4 and part of the W/2, NE/4 of Fractional Section 8 all in Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas, more particularly described as follows:

Commencing at the Northeast corner of the NE/4 of said Section 8; thence N 89°08'00"W 366.38' along the north line of said Section 8; thence N 00°55'00"E 1,544.46' to a point on the westerly right-of-way line of Clayton Expressway (Ark. Hwy. 255) to the Point of Beginning; thence N 68°04'00"W 714.83'; thence S 30°27'28"W 111.03'; thence S 19°08'08"W 89.20'; thence S 13°40'55"W 140.31'; thence S 09°37'31"W 99.30'; thence S 17°36'41"W 152.95'; thence S 22°48'48"W 102.01' thence southwesterly paralleling and 25' east of the right high bank of the Arkansas River the next (23) courses: S 15°53'11"W 93.63'; S 13°35'39"W 77.45'; S 18°09'33"W 83.94'; S 09°58'58"W 155.47'; S 19°31'59"W 183.10'; S 11°56'36"W 208.08'; S 16°45'00"W 208.82'; S 17°56'21"W 208.80'; S 18°39'55"W 204.08'; S 16°10'12"W 94.55'; S 18°23'08"W 97.00'; S 20°29'03"W 208.02'; S 18°40'11"W 279.53'; S 20°40'15"W 259.44'; S 21°18'56"W 200.05'; S 21°21'00"W 199.01'; S 21°12'45"W 229.41'; S 21°56'47"W 231.78'; S 23°27'10"W 254.23'; S 23°56'14"W 194.84'; S 26°55'44"W 199.58'; S 29°07'34"W 220.84'; S 27°56'18"W 365.02'; thence N 53°13'24"W 25.30' to the right high bank of the Arkansas River; thence northeasterly along said high bank the next (23) courses: N 27°56'18"E 361.40'; N 29°07'34"E 220.62'; N 26°55'44"E 198.45'; N 23°56'14"E 193.88'; N 23°27'10"E 253.79'; N 21°56'47"E 231.29'; N 21°12'45"E 229.28'; N 21°21'00"E 199.03'; N 21°18'56"E 199.90'; N 20°40'15"E 258.86'; N 18°40'11"E 279.49'; N 20°29'03"E 207.96'; N 18°23'08"E 96.06'; N 16°10'12"E 94.61'; N 18°39'55"E 204.47'; N 17°56'21"E 208.38'; N 16°45'00"E 207.51'; N 11°56'36"E 208.68'; N 19°31'59"E 182.67'; N 09°58'58"E 155.17'; N 18°09'33"E 64.73'; N 13°35'39"E 76.89'; N 15°17'47"E 88.25'; thence leaving said high bank N 22°48'48"E 109.91'; thence N 17°36'41"E 150.06'; thence N 09°37'31"E 98.44'; thence N 13°40'55"E 142.38'; thence N 19°08'08"E 92.87'; thence N 30°27'28"E 135.04'; thence S 68°04'00"E 736.36' to said westerly right-of-way line of Clayton Expressway (Ark Hwy. 255); thence S 21°56'00"W along said right-of-way line 25.00' to the Point of Beginning, containing 3.37 acres more or less.







## TRAIL EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That U.S. Marshals Museum Inc., an Arkansas nonprofit corporation, and their heirs, successors, and assigns, GRANTORS, for and in consideration of the sum of one dollar (\$1.00) and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to the CITY OF FORT SMITH, ARKANSAS, a municipal corporation, its agents, successors and assigns, GRANTEE a permanent easement for the construction, operation, and maintenance of public (GRANTEE owned) trail system for vehicular and pedestrian access to and from, of an unrestricted nature, with all appurtenances thereto, together with the right excavate, level, fill, grade, gravel, pave the surface, and to remove trees, bushes, undergrowth or other obstructions interfering with construction, operation and maintenance of said trail system over, under and upon the following lands situated in Fort Smith, Sebastian County, Arkansas, to wit:

Part of the Northwest Quarter of the Southeast Quarter, and part of the Southwest Quarter of the Northeast Quarter of Fractional Section 8, Township 8 North, Range 32 West, Fort Smith, Sebastian County, Arkansas. Said easement being 25 feet wide and lying 12.5 feet on each side of the following described centerline:

Commencing at the Northeast Corner of said Fractional Section 8, said point being marked with an existing 2" aluminum cap; Thence N86°55'07"W, 850.78 feet to the westerly right-of-way line of River Front Drive; Thence along said westerly right-of-way line the following courses: S16°04'44"W, 48.11 feet; S13°52'37"W, 277.16 feet; S25°58'17"W, 411.70 feet; S23°27'44"W, 105.20 feet; S17°08'44"W, 325.60 feet; S22°24'44"W, 209.80 feet; S33°43'44"W, 275.30 feet; S39°33'44"W, 335.00 feet; S37°20'44"W, 305.20 feet; S42°38'44"W, 371.90 feet; S41°15'44"W, 278.70 feet; S38°30'44"W, 278.70 feet; S37°07'31"W, 399.68 feet to an existing ½" rebar at the southeasterly corner of the U.S. Marshals Museum property; Thence along the southerly line of said property, N50°05'43"W, 244.08 feet to the Point of Beginning; Thence along said centerline the following courses: 17.67 feet along the arc of a curve to the right, said curve having a radius of 50.00 feet and being subtended by a chord having a bearing of N07°41'20"E and a distance of 17.58 feet; N17°48'46"E, 85.85 feet; 21.53 feet along the arc of a curve to the right, said curve having a radius of 100.00 feet and being subtended by a chord having a bearing of N23°58'53"E and a distance of 21.49 feet; N31°03'51"E, 310.62 feet; 24.90 feet along the arc of a curve to the right, said curve having a radius of 100.00 feet and being subtended by a chord having a bearing of N38°11'55"E and a distance of

24.83 feet; N46°14'34"E, 150.14 feet; 32.64 feet along the arc of a curve to the left, said curve having a radius of 100.00 feet and being subtended by a chord having a bearing of N36°53'46"E and a distance of 32.50 feet; N27°32'41"E, 117.23 feet to **Event Node #2**; N27°32'41"E, 18.58 feet to the Point of Termination on the northerly line of said U.S. Marshals Museum property, said point being N57°35'23"W, 334.02 feet from the northeasterly corner thereof. Containing 0.45 acres, more or less.

**And**

The following described area associated with the above mentioned Event Node: a circle with a 35 foot radius centered on **Event Node #2**, that portion of said circle contained within said U.S. Marshals Museum property being 0.04 acres, more or less.

Containing in aggregate 0.49 acres, more or less.

**And**

A temporary easement for construction purposes twenty five feet (25') in width on the eastern and western boundaries of the permanent easement, including the right with the right excavate, level, fill, grade, to remove trees, brushes, undergrowth or other obstructions interfering with the construction of the project. GRANTEE to restore the temporary easement area to the same or similar condition prior to construction. Said temporary easement to terminate upon the completion and acceptance of the project by GRANTEE.

See Exhibit "A" attached hereto and hereby made a part of this instrument.

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

To have and to hold said easement unto GRANTEE forever.

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

GRANTORS do hereby covenant with GRANTEE that GRANTORS are lawfully seized and possessed of the real estate above described and that GRANTORS have a good and lawful right to convey the same or any part thereof.

Witness our hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

GRANTORS:

U.S. Marshals Museum, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF ARKANSAS     )  
  )SS  
County of Sebastian     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, a Notary Public, duly commissioned, qualified and acting, within and for the County of Sebastian, Arkansas, appeared in person the within named \_\_\_\_\_, to me personally well known as the person whose name appears upon the within and foregoing instrument, and stated and acknowledged that he/she was the \_\_\_\_\_ of U.S. Marshals Museum, Inc. and that he/she had executed the same for the consideration, uses and purposes therein mentioned pursuant to authorization of U.S. Marshals Museum, Inc., and I do hereby so certify.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

Notary Public

My Commission Expires

F:\DOC\Easement\Arkansas River Front Trail (U.S. Marshals Museum Property).doc

**RELEASE OF TRAIL EASEMENT AGREEMENT**

KNOW ALL BY THESE PRESENTS:

This Release of Trail Easement Agreement is executed by the City of Fort Smith, Arkansas, an Arkansas municipal corporation, in consideration for the mutual promises and other good and valuable consideration, received from Westphal Leasing, LLC, Riverfront Exploration, LLC, Westphal Properties, Inc., (formerly, Western Development Corporation, Inc.), and Widmer Place, LLC or their successors (collectively the "Owners"), the receipt of which is hereby acknowledged.

RECITALS

WHEREAS, Owners (or their successors) currently own real property situated in the Fort Smith District of Sebastian County, Arkansas, currently encumbered by the Trail Easement Agreement between the parties, recorded on October 10, 2008 as Doc. # 7253373 in the real property records of the Fort Smith District of Sebastian County, Arkansas.

WHEREAS, the parties have entered into an Agreement whereby the Owners (or their successors) have agreed to execute an Replacement Trail Easement in favor of the City of Fort Smith, Arkansas in exchange for the City of Fort Smith, Arkansas' release of the referenced Trail Easement Agreement upon completion of the City's West River Front Trail project..

NOW, THEREFORE, for the consideration described herein, the City of Fort Smith, Arkansas, hereby releases and discharges of record the Trail Easement Agreement between the parties, recorded on October 10, 2008 as Doc. # 7253373 in the real property records of the Fort Smith District of Sebastian County, Arkansas.

IN WITNESS WHEREOF, the City of Fort Smith, Arkansas, by its Administrator and attested by its City Clerk, duly authorized by Resolution of its Board of Directors has hereunto signed its corporate name on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF FORT SMITH, ARKANSAS

By: \_\_\_\_\_  
Ray Gosack, City Administrator



Attested:

By: \_\_\_\_\_  
Sherri Gard, City Clerk

**ACKNOWLEDGMENT**

STATE OF ARKANSAS    )  
  )  
COUNTY OF SEBASTIAN )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me, the undersigned officer, personally appeared Ray Gosack and Sherri Gard, who acknowledged themselves to be the City Administrator and City Clerk, respectively, of the City of Fort Smith, Arkansas, a municipal corporation, and that they, as such City Administrator and City Clerk, being authorized to so do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as City Administrator and City Clerk, respectively.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_

My commission expires:

**RESOLUTION \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FORT SMITH, ARKANSAS, AND SEBASTIAN COUNTY, ARKANSAS, CONCERNING ADMINISTRATION AND FUNDING FOR THE HOMELAND SECURITY GRANT PROGRAM.**

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

**Section 1:** The Memorandum of Understanding between the City of Fort Smith, Arkansas, Police Department and Sebastian County Office of Emergency Management, which shall be substantially in the form attached hereto, is hereby approved and provides for the terms, conditions, and mutual understandings for the administration of the Homeland Security Grant funds awarded to Fort Smith Police Department SWAT in the amount of \$125,590.00.

**Section 2:** The Mayor, his signature being attested by the City clerk, is hereby authorized to execute this Memorandum of Understanding to which the City of Fort Smith is a party.

**THIS RESOLUTION ADOPTED** this \_\_\_\_\_ day of February 2015.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to Form



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



**Fort Smith Police Department**  
Kevin Lindsey, Chief of Police

**INTERDEPARTMENTAL MEMORANDUM**

**To:** Ray Gosack, City Administrator

**From:** Kevin Lindsey, Chief of Police

**Subject:** A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FORT SMITH, ARKANSAS AND SEBASTIAN COUNTY, ARKANSAS, CONCERNING ADMINISTRATION AND FUNDING FOR THE HOMELAND SECURITY GRANT PROGRAM.

**Date:** January 28, 2015

The purpose of this memorandum is to provide information to you and the Board of Directors regarding the awarding of Homeland Security Grant monies to the Fort Smith Police Department SWAT in the amount of \$125,590.

The application for the funds was made through Sebastian County Office of Emergency Management. Major Pitts was asked to submit equipment requests for the Grant funding. The equipment requested by the Major was SWAT robot, Individual Night Vision, Illuminators, Thermal Weapons Sight, Night Vision Weapons Sight, Watercraft and lifejackets. The County was eligible to receive \$125,590. Fort Smith Police Department SWAT was the only applicant for these funds and granted all of the \$125,590 for all equipment listed above. The County Office of Emergency Management will administer the grant and all record reporting.

The requested project will enhance the mission capabilities of the Fort Smith Police Department SWAT Team by providing robotic capabilities to lessen officer safety concerns, along with improving active shooter response functions in high-threat tactical environments. The watercraft will provide enhanced flexibility for the SWAT team to conduct water-based operations independent of the Fire Department.

If you have any questions, please contact me.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY  
OF FORT SMITH, ARKANSAS, AND SEBASTIAN COUNTY,  
ARKANSAS, CONCERNING ADMINISTRATION AND FUND-  
ING FOR THE HOMELAND SECURITY GRANT PROGRAM.**

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This Agreement is made and entered into this \_\_\_\_\_ day of February, 2015, by and between Sebastian County acting by and through its governing body, the Quorum Court, hereinafter referred to as “County”, and the City of Fort Smith, Arkansas, acting through its governing body, the Board of Directors, hereinafter referred to as “City”.

**WHEREAS**, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public; and

**WHEREAS**, this Agreement is made necessary to comply with applicable Grant requirements; and

**WHEREAS**, the County will be designated as the fiscal agent for the program and as such will be responsible for required financial and program reporting; and

**WHEREAS**, the County will receive zero funds and the City will receive \$125,590.00 of the awarded Homeland Security Grant Program.

**NOW, THEREFORE, the CITY and COUNTY agree as follows:**

**Section 1**

County agrees the City shall receive \$125,590.00 and further County agrees the County shall receive zero funds of the awarded Homeland Security Grant Program for fiscal year 2014. In consideration of receiving \$125,590.00, the City agrees to allocate the grant funds to the Fort Smith Police Department SWAT as stated in the grant application. The County agrees to act as fiscal agent for the program and will be responsible for all required financial and program reporting.

**Section 2**

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable for any civil liability that may arise from furnishing of the services by the other party or from failure of other party to furnish required services.

**Section 3**

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

**Section 4**

By entering this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto. This Agreement constitutes a final written expression of all the terms and conditions of this Agreement. It is complete and is an exclusive statement of those terms between the City of Fort Smith and Sebastian County.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives.

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
David Hudson, County Judge  
Sebastian County, Arkansas

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

ATTEST:

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

ORDINANCE DECLARING AN EXCEPTIONAL SITUATION AND WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR THE REHABILITATION OF THE LEE CREEK FACILITY'S HORIZONTAL KAPLAN S-TURBINE

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

WHEREAS, the Federal Energy Regulatory Commission license issued for the Lee Creek water project required the installation of the hydro-electric turbine generation equipment with stipulations for its operation and maintenance; and,

WHEREAS, the hydro-turbine is currently out of service due to normal wear from its 22 years of operation and must undergo refurbishment of its operating components to restore it to an operating condition as required by the license conditions; and,

WHEREAS, the required specialized machining services required for the rehabilitation of a horizontal Kaplan S-turbine are not available within the local service area making it not feasible to seek competitive bids:

SECTION 1: Because it is not feasible to obtain competitive bids (beyond the acquired competitive proposals for services) for the making of the necessary repairs to the Lee Creek hydro-turbine, it is determined that any requirement of competitive bids is hereby waived.

SECTION 2: The Mayor is hereby authorized to execute, his signature being attested by the City Clerk, the attached contract with Precision Machine and Supply, Inc., of Spokane, Washington, in the amount of \$343,764.00, for the making of such repairs.

PASSED AND APPROVED this \_\_\_\_ day of January 2015.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** January 13, 2015

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

**SUBJECT:** Refurbishment of the Hydro-Turbine for  
the Lee Creek Power Generation Facility

The hydro-electric turbine generator installed at the Lee Creek water project has been in service for 22 years. The unit was taken out of service in 2014 after its annual inspection due to excessive wear in the turbine blade bushings, continued oil loss past the blade seals and other wear items requiring attention. As power generation is one of the regulated components of the project's license issued by the Federal Energy Regulatory Commission, staff has notified their Atlanta regional office that the generation facility is off-line for the refurbishment of the hydro-turbine.

During the 2013 annual inspection the department's maintenance mechanics checked the wear of the blade bushings and installed oversized seals to limit oil loss to an acceptable level after consulting with a hydro-turbine maintenance specialty company. This provided a temporary solution until funding for further repairs could be identified with the utility department's 2014 operations budget. The 2014 operating budget identified funding for the replacement of the blade bushings along with the upgrade of the generator control system software as the program was no longer supported due to its age. When the unit underwent its annual inspection in the summer of 2014 it was found that additional repairs to the turbine would be needed. The repairs would require the unit's further dismantling beyond our maintenance mechanics training and would require the services of a qualified outside provider.

To determine the full extent of repairs needed without first disassembling the unit made it impractical to follow a traditional competitive bidding process. Staff sought statements of qualifications from machine repair and fabrication companies with expertise in the repair and rebuilding of hydro-turbines. Qualification statements were received from three firms. Precision Machine and Supply, Inc., located in Spokane, Washington, was selected and asked to provide a detail inspection of our unit. They performed additional disassembly and an extensive inspection over a three-day period. It was found that after 22 years of operation that in addition to the blade bushing replacements that there was wear on other seals which had begun to allow water into the turbine's runner hub along with wear on other components which should be addressed now in order to avoid future repairs and assure the unit's reliability. The repairs require an extensive disassembly with the runner assembly being transported to their facility in Spokane for machine work and refurbishing.

Precision Machine and Supply has provided a quote for the needed repairs for an amount of \$343,764.00. Sufficient funding for the work has been assembled with the encumbrance of the funds identified for the turbine repair and control system upgrade (\$218,000) in the 2014 budget along with some remaining 2014 funds (\$105,800) from other line items. An additional

\$20,000 will need to be allocated from the 2015 operating budget identified for the water treatment plant backwash lagoon cleaning. The generator control system replacement will need to be reestablished as part of the 2016 operating budget.

An Ordinance waiving competitive bidding requirement and authorizing a contract with Precision Machine and Supply, Inc., is attached for the Board's consideration. It is staff's recommendation that it is approved.

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

attachment

pc: Jeff Dingman

**LEE CREEK SERVICE CONTRACT  
BETWEEN THE  
CITY OF FORT SMITH  
AND  
PRECISION MACHINE AND SUPPLY, INC.**

**GENERAL TERMS AND CONDITIONS  
FOR THE  
REHABILITATION WORK OF ONE S-TURBINE**

**1. Definitions**

**PMSI** shall mean Precision Machine and Supply, Inc. – The PMSI.

**City of Fort Smith** shall mean the client of PMSI for each Specific Agreement.

**Existing Plant** shall mean the Client's existing plant including all ancillary units.

**Offer** shall mean the offer and its appendixes submitted by PMSI in response to a tender or inquiry of the Client.

**Party** shall mean either the Client or PMSI, depending on the context.

**Plant Components** shall mean all machines, components and materials included in a Unit of the Client's Existing Plant that are to be repaired or replaced by PMSI pursuant to the Specific Agreement and all other machines, components and materials that PMSI shall supply and/or install in respect of a Unit.

**Services** shall mean installation, dismantling, training or supervision services provided by PMSI pursuant to a Specific Agreement.

**Specific Agreement** shall mean the agreement entered into for each specific order.

**Supplies** shall mean the supply of Plant Components in accordance with a Specific Agreement.

**Unit / Units** shall mean part(s) of the Client's Existing Plant such as turbine-generator sets, including accessories and appertaining Plant Components and Work as provided by the Specific Agreement.

**Work** shall mean all Supplies and Services to be performed by PMSI under a Specific Agreement.

**2. Contract Documents**

These General Terms and Conditions for Rehabilitation Work shall apply to all Work performed by PMSI unless an Offer contains deviating regulations.

**3. Effectiveness**

Unless a Specific Agreement provides otherwise, PMSI shall be bound by each of its Offers for a maximum period of 30 days.

The Specific Agreement shall come into force at the date of receipt of the written order confirmation of PMSI, or, if the Client has to make an advance payment or provide payment guarantees, at the date of receipt of such payment on the account of PMSI, or receipt of such guarantees and fulfilment of any other pre-condition determined in the Offer or in the Specific Agreement.

In urgent cases, an order may be placed by the Client orally, by telefax or by e-mail, in which case any terms deviating from the Offer in the written confirmation order received from the Client at a later date shall not be valid.

**4. Scope of Work**

The Scope of Work is detailed in the Offer and, subject to the limitations provided for under clause 5 below, includes the delivery of new Supplies and/or the performance of rehabilitations, repairs, inspections, tests and/or other Services.

Any information contained in catalogues, leaflets and brochures of PMSI shall not be binding.

PMSI shall in no event be responsible for the functionality of the Existing Plant as a whole.

In performing the Work, PMSI will comply with the regulations, standards and laws valid at the time of submission of the Offer and detailed in the Specific Agreement.

The consequences of any changes in the agreed regulations, standards and laws during

performance of the Specific Agreement, including additional costs, shall be for the Client's account.

Should such changes impact the time schedule, the Parties shall amend the time schedule by way of a Variation/Change order.

All taxes, custom duties and contributions shall be for the Client's account.

PMSI shall be entitled to allocate any of its Work to subcontractors without Client's prior approval.

Should it be necessary to dismantle and check single Plant Components, then the Client and PMSI shall make an assessment together at the premises of PMSI after the dismantling and amend the Scope of Work and the price as necessary.

#### **5. Exclusions from the Scope of Work**

Any administrative authorizations and permits necessary for the performance of the Work shall be obtained by the Client. If these authorizations are not obtained in due time, then the time schedule shall be extended accordingly.

PMSI shall not be liable for the geological characteristics of the site (soil risk) or for any risks that are not recognizable or verifiable.

PMSI shall not be responsible for the coordination with third parties other than its subcontractors.

PMSI is not responsible for verifying the compatibility of the Work with other components of the Existing Plant or existing ancillaries; PMSI makes no representations in this respect.

The success owed under the agreed supply of the Work shall be limited to those Plant Components that have actually been inspected by PMSI beforehand. In particular, PMSI shall not be responsible for the success of the Work if the Client has provided no or only insufficient access to the Plant Components for inspection.

The exclusions detailed in the Scope of Work of the Offer and the Specific Agreement shall also apply.

#### **6. Client's supplies**

The Client shall be responsible for the completeness, correctness and notification of subsequent modifications of the information transmitted by it (such as drawings, descriptions, technical specifications).

Notwithstanding the above, PMSI shall be granted unrestricted access to the Existing Plant and/or to individual Plant Components at any time and be given the opportunity to inspect these Plant Components in detail.

Any supplies provided by the Client, such as equipment, tools, devices or services shall be of suitable quality to allow PMSI to perform the Work.

The Client shall ensure timely hand-over of its supplies and proper functioning of these supplies during the entire duration of the Specific Agreement.

Unless otherwise agreed, the Client shall in particular provide the following:

- ◇ Lockable and/or guarded rooms and sanitary installations required for PMSI' personnel while staying at the construction site;
- ◇ Offices and meeting rooms with telephone and internet access;
- ◇ Heating, lighting, electric power, water;
- ◇ Suitable dry and lockable and/or guarded rooms in the immediate vicinity of the place of performance for storing the Plant Components and machine parts, materials and tools.

Any installation and/or auxiliary personnel provided by the Client must observe and follow the instructions and orders of PMSI' installation supervisor. PMSI expressly declines any liability in respect of the Client's personnel and their actions or omissions. In addition, the Client shall be obliged to inform PMSI' personnel of any specific risks associated with the operation of the Existing Plant.

#### **7. Delivery Dates**

The delivery dates shall be agreed separately for each Specific Agreement.

If any delays in the agreed time schedule are caused by unforeseeable circumstances or circumstances beyond a Parties' reasonable control, then the time schedule shall be extended at least by the duration of such an occurrence. The time schedule shall also be extended if such circumstances occur at a Party's sub-PMSI or sub-supplier. Examples are:

- ◇ PMSI is prevented from carrying out its Work in time due to reasons of Force majeure (see clause 14);
- ◇ PMSI is prevented from carrying out its Work in time for reasons for which it is not responsible, e.g. delay in or failure of the Client to provide its work or supplies or failure to cooperate on the part of the Client;
- ◇ Failure of one of PMSI' major sub-PMSIs, whose supplies are difficult to replace, to supply at all or in due time;
- ◇ The conditions necessary for the performance of its Work by PMSI have not been fulfilled for unavoidable or unforeseeable reasons, or
- ◇ Necessity to perform additional Work (see clause 18).

The Client shall reimburse PMSI any costs and expenses incurred as a result of delays not attributable to PMSI.

If the written order of the Client is not received within the deadlines stipulated in the Offer, the time schedule shall be extended as necessary to ensure timely procurement and/or manufacturing at the premises of PMSI.

## **8. Transfer of Risk, Place of Performance, Transfer of Ownership**

The risk of accidental loss of any Plant Components to be repaired by PMSI shall remain the Client's risk.

The transfer of risks for Services occurs when the Service is performed.

The transfer of ownership occurs when the Work has been fully paid by the Client.

## **9. Execution, Acceptance**

If the Client refuses Acceptance of the Work, he shall notify PMSI thereof in writing without delay, indicating the reasons. Acceptance may only be refused if the Work shows major defects. Minor defects that do not hamper the safe operation of the Existing Plant – for instance, missing parts of documentation, or non-availability of the final version of the documentation – shall be listed in the Acceptance certificate and shall not prevent Acceptance.

The Work shall be deemed accepted, if the Client does not send a written notification to the contrary within 4 (four) weeks from PMSI' written notification of readiness for start-up.

If the Client starts commercial operation of any part of the Work, then the Work shall be deemed accepted.

## **10. Liquidated damages**

This clause 10 shall apply if liquidated damages have been agreed by the Parties:

Any delay in the readiness for start-up that PMSI is solely responsible for, and after a grace period of at least fourteen (14) days, shall entitle the Client to the payment of liquidated damages as follows:

0.5% for each full week of delay, up to a maximum amount of 5% of the part of the value of the Work being delayed, provided the Client has suffered damage. The claim of the Client according to this clause shall be limited to delays in the "readiness for start-up" and/or – in the event of Supplies only - to delays in the "notification of readiness for dispatch". No intermediate milestones shall be subject to the payment of liquidated damages. Liquidated damages for delay shall not be claimed for delay of non-essential parts which do not prevent start-up, such as outstanding parts of documentation.

Liquidated damages represent the Client's sole and exclusive remedy for delay. Reimbursement of any damage exceeding the amount of liquidated damages shall be excluded.

If the Specific Agreement provides for liquidated damages for failure to achieve guaranteed performance values, these shall not exceed 5% of the contract price unless otherwise provided in the Specific Agreement.

Any further claims in respect of the failure to achieve the guaranteed performance and/or reimbursement of any damage exceeding the amount of liquidated damages shall be excluded. Upon payment of these liquidated damages, the guaranteed performances are deemed to be met.

## 11. Invoicing / payment terms

### Prices for Supplies:

All prices and rates mentioned in the Offer or in any of its appendixes shall be in Dollar (USD), net excluding value-added tax.

The prices mentioned in the Offer shall only apply if the entire scope is ordered at once and within the validity period of the Offer. If parts of the Supply are ordered later or only a partial order is placed, the prices and conditions must be agreed separately.

The prices mentioned shall be understood *CIP* in accordance with Incoterms 2000, and shall include the costs for packing, loading and transport.

### Terms of payment:

Unless special payment conditions have been agreed in the Specific Agreement, a down-payment in the amount of 25% of the contract value shall be payable after receipt of the written order confirmation of PMSI.

In case of the Client's delay with payments, PMSI shall – notwithstanding any other rights it may have - be entitled to claim default interest in the amount of 2.50 percentage points.

The Client shall not be entitled to withhold or deduct sums from any amounts due.

In case of delay which PMSI is not liable for, each payment term shall be deemed due at the latest 3 (three) months after the contractually agreed date.

## 12. Warranties

Provided the agreed payment terms have been complied with, PMSI will remedy any defect in design, materials or workmanship, existing at the time of Acceptance of the Work. No warranty claims shall be made based on information provided in catalogues, leaflets, brochures, written or oral statements, which have not been expressly included in the Specific Agreement.

For any repair work, PMSI warrants due and proper workmanship of the repair work and the material used for this work.

The warranty period shall be 12 (twelve) months and shall start at the time of delivery of the Supply or performance of the Service.

Any warranty claim shall be contingent on the defect being notified without delay in writing and such notification being received by PMSI. The Client shall prove the existence of a defect and shall, in particular, make available to PMSI any relevant documents and data.

If the existence of a defect is subject to warranty, PMSI may, at its discretion, either remedy the defective part by repairing or replacing it on site or by having the defective part sent to its premises for the purpose of remedying it, or shall agree to reduce the price by a reasonable amount. The warranty period shall not start anew for repaired or replaced items.

For any work under a warranty claim carried out on the Client's site, any necessary auxiliary personnel, lifting devices, scaffolding and small materials shall be provided by the Client free of charge. Replaced parts shall become the property of PMSI.

If a certain Service is performed by PMSI solely on account of design data, drawings, models or other specifications supplied by the Client, PMSI' warranty obligation shall be limited to the workmanship complying with these specifications.

Any defect due to assembling or installation work not performed by PMSI, insufficient equipment, non-compliance with the installation or operation requirements and manuals, excessive strain on the components beyond the values given by PMSI, negligent or incorrect operation and use of unsuitable operation materials and equipment, shall be excluded from the warranty, as shall be defects that were caused by services provided by the Client.

Any damage due to third party's actions, atmospheric discharge, overvoltage and chemical influences shall be excluded from PMSI' warranty.

PMSI provides no warranty for used goods, replacement of Supplies that are subject to natural wear and tear, as well as anything provided by the Client, even if supplied by sub-suppliers suggested to the Client by PMSI.

The warranty shall cease immediately if any modification or repair works are carried out by the Client or any third party not expressly authorized by PMSI in writing.

The express warranties set forth in this clause 12 are the only warranties PMSI will make. There are no warranties or representations of any kind beyond those expressly set forth herein, whether statutory, oral, written, express or implied, including any warranties of merchantability or fitness for a particular purpose.

### **13. Confidentiality**

The Client shall treat all technical and commercial information (hereinafter referred to as "Information") such as drawings, plans, descriptions and technical specifications received by PMSI in whatever form, as confidential, shall not disclose it to third parties without the prior written consent of PMSI and shall not use such Information for any purpose other than the performance of the Specific Agreement. This confidentiality obligation does not apply to Information that, at the time of disclosure by PMSI, was:

- ◊ already known to the Client; or
- ◊ in the public domain otherwise than as result of any breach of this confidentiality obligation.

The Client shall be bound by the stipulations under this clause even after termination of the Specific Agreement – for whatever reason -, cancellation or completion of the Work.

### **14. Force majeure**

Each Party shall give notice the other as soon as possible upon becoming aware of the occurrence of a Force majeure event and, to the extent possible, of its expected duration. During the duration of such event, the Party in default shall not be liable for any delay or non-performance of its obligations. The agreed delivery dates shall be extended by the duration of the event, whether the Force majeure event occurs at a Party or at any of its subcontractors.

Force majeure includes, but is not limited to, acts of God, war, terrorism, insurrections, revolutions, military and civil coups, strikes, labor disputes and natural disasters (such as flood, storms, fires, avalanches).

Each Party shall be entitled to terminate the part of the Specific Agreement that is affected by Force majeure, if such Force majeure lasts over 3 (three) months. All costs incurred by PMSI as a result of such suspension or termination for reasons of force majeure shall be borne by the Client.

### **15. Intellectual property rights**

The intellectual property rights, copyrights and other rights connected therewith, in respect of drawings, specifications, documents, data and software made available by PMSI to the Client under a Specific Agreement shall be owned solely by PMSI and shall remain its property. The Client shall be granted a non-exclusive, non-transferable license to use the intellectual property rights, limited to the performance of the Specific Agreement. This license does not entitle the Client to grant sub-licenses or to copy documents without PMSI' prior written consent.

### **16. Liability**

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply:

- (a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall PMSI, its officers, directors, employees, subcontractors, suppliers or affiliated companies be liable to client or any third party for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Goods, Products, Services or Work (hereinafter collectively referred to as "Work"), loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect,

special, incidental or consequential damages of any nature.

(b) The aggregate liability of PMSI, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with the Work, Services or this Agreement or from the performance or breach thereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed the contract price.

(c) The limitations and exclusions of liability set forth in this paragraph shall take precedence over any other provision of this Agreement and shall apply whether the claim of liability is based on contract, warranty, tort (including negligence), strict liability, indemnity, or otherwise. The remedies provided in this Agreement are Client's exclusive remedies.

(d) All liability of PMSI, its officers, directors, employees, subcontractors, suppliers or affiliated companies, resulting from, arising out of or connected with the Work, Services or this Agreement or from the performance or breach thereof shall terminate on the third anniversary of the date of this Agreement.

(e) In no event shall PMSI be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods serviced (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under this Agreement) or caused by the use of goods by the Client against the advice of PMSI. If PMSI furnishes Client with advice or assistance concerning any products or systems that is not required pursuant to the contract, the furnishing of such advice or assistance will not subject PMSI to any liability whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

(f) The maximum liability of PMSI for liquidated damages on account of delays or on account of performance guarantees shall not exceed, in the aggregate, 5% of the contract price.

#### **17. Regulations**

PMSI shall comply with the regulations regarding labor, social security, environment protection and safety detailed in the Specific Agreement.

#### **18. Variations/Change Orders**

If the Client requests changes to the Work or an extension of the Scope of Work, PMSI shall – upon written request of the Client - inform the latter of the consequences of these variations in terms of time schedule, warranty, price changes and other relevant contractual amendments.

The Parties shall agree on the time schedule, warranty, price changes and other relevant contractual amendments. However, PMSI shall not be obliged to accept any variation requested by the Client.

Any additional work necessary as a result of new findings, unforeseeable, non-existent, unrecognizable or unverifiable circumstances at the time of submission of the Offer are variations, to be agreed by the Parties as provided above.

In the event variations are agreed, any milestones which trigger liquidated damages shall be extended accordingly.

If the Client requests a third party to perform additional work, the Client shall be fully liable for this work.

#### **19. Suspension**

If the Client suspends or impedes the performance of the Work or a Specific Agreement, PMSI shall be entitled to claim reimbursement of any costs resulting from the suspension or impediment.

If the Client breaches a contractual obligation, PMSI shall be entitled to suspend the performance of the Work, without prejudice to any of its other rights, and claim reimbursement of any costs caused by such suspension. The Client shall bear the risk of deterioration of the Existing Plant since its inspection by PMSI (e.g. wear phenomena).

In the event of a suspension or impediment, the Parties shall agree on the necessary changes to

the time schedule and other necessary amendments, such as changes in the price. Any milestones triggering liquidated damages shall be extended accordingly.

If any suspension or impediment not caused by PMSI lasts longer than 3 (three) months, PMSI shall have the right to terminate the Specific Agreement.

## 20. Termination

Each Party shall be entitled to terminate a Specific Agreement with immediate effect if the following occurs:

- ◊ an essential breach of the Specific Agreement by the other Party, e.g. default in payment by the Client, after having granted a reasonable cure period in writing;
- ◊ Institution of bankruptcy or composition proceedings against the other Party's assets; or
- ◊ Force majeure, subject to the provisions of clause 14.

In the event a delay is solely attributable to PMSI or if the agreed performance guarantees have not been achieved, the Client shall have the right to terminate the Specific Agreement once the maximum liquidated damages have been reached and after expiry of a further cure period of at least 14 (fourteen) days granted in writing.

PMSI shall also be entitled to terminate the Specific Agreement as provided under clause 19.

In case of termination, PMSI shall be entitled to payment of the Work carried out as well as reasonable expenses and costs incurred as a result of the commencement of performance of Work (including costs for material already ordered, cost of reinstatement to the original status, cancellation costs for supply contracts concluded with sub-suppliers), against presentation of invoices and minus any payments received before the notice of termination. If the termination is due to the Client, PMSI shall receive in addition a reasonable share of its profit.

## 21. Applicable Law and Dispute Resolution

Any dispute arising out of a Specific Agreement or this Agreement shall be governed by the laws of Arkansas, without regard to its conflicts of law principles. In the event of such a dispute, the Parties agree to first seek amicable resolution through an in person meeting of executives of the Parties within 30 days of written notice from one Party to the other to do so, unless a longer time period to conduct such meeting is agreed in writing. In the event the dispute is not finally settled through such settlement discussions, the Parties shall then attempt to resolve the dispute through non-binding mediation with a mediator mutually selected by the Parties. The mediation shall be scheduled within 45 days of written notice from the Party requesting the mediation, unless the Parties agree in writing to a longer time period to conduct the mediation. The Parties shall also agree to the location of the mediation. If the mediation is unsuccessful, the Parties may agree to pursue other means of alternate resolution, or may resort to any court of competent jurisdiction to adjudge the dispute. The Parties mutually waive their rights to a jury trial.

## 22. Miscellaneous

Any side letters, modifications and supplements to a Specific Agreement as well all declarations made in connection with the termination of the present agreement shall be made in writing. The Parties agree that no verbal subsidiary agreements exist.

Any assignment, transfer or pledge, with or without consideration, of any rights and obligations under a Specific Agreement by the Client shall not be permitted unless prior written approval from PMSI has been obtained.

This Service Contract is entered into as of.....and is executed in at least two original copies, of which one is to be delivered to the client and one to PMSI.

Approved:

**City of Fort Smith –Mayor***(Signature)*

3900 Kelley Hwy  
 Fort Smith, AR 72904  
 479-784-2331

*(Contract Delivery Address)***PMSI - Precision Machine and Supply, Inc.***(Signature)*

15708 E. Marietta Avenue  
 Spokane, WA 99216  
 (509) 922-1666

*(Contract Delivery Address)*

Attest:

-----  
**City of Fort Smith - Clark**

**EXHIBIT A SCOPE OF WORK****PRICE ITEMS**

It is agreed that the materials to be furnished by the PMSI are as follows:

| Item | Quantity | Description  | Amount            |
|------|----------|--|-------------------|
|      |          | Kaplan Runner Rehab  |                   |
| 1    | lot      | Dismantling Works  | 92,686.00         |
|      |          | Includes all Manpower, Equipment, Tools and Consumables                          |                   |
|      |          | Working time is 10 hours a day 6 days a week. Duration approx 3 weeks            |                   |
|      |          | Further included: Per Diem, Hotel fees, Allowances, Site Vehicles                |                   |
| 2    | lot      | Kaplan Runner Refurbishment  | 75,256.00         |
|      |          | Includes Machining of Runner Hub Bores, New set of Seals and                     |                   |
|      |          | Bushings, Pressure ( Oil LeakageTest ). 1 new Thordon Bearing for the TGB        |                   |
|      |          | Includes weld up and machining at Runner Blade ends to achieve proper clearances |                   |
| 3    | lot      | Reassembling of the Unit   | 155,280.00        |
|      |          | Includes all Manpower, Equipment, Tools and Consumables                          |                   |
|      |          | Working time is 10 hours a day 6 days a week. Duration approx 4 weeks            |                   |
|      |          | Further included: Per Diem, Hotel fees, Allowances, Site Vehicles                |                   |
| 4    | lot      | Inspection and Run out of Shaft-Inspection and Polishing of Discharge Ring       | 2,813.00          |
| 5    | lot      | Commissioning Support ( According labor Rates for 2015 ).                        |                   |
| 6    | lot      | Two ( 2 ) Inspection Trips Vice-Versa for one Person                             | 2,842.00          |
| 7    | lot      | Shipping of Turbine parts to and from Spokane.                                   | 14,887.00         |
|      |          | 8.7% WA State Sales Tax  | 29,907.47         |
|      |          | Total Contract Price including Tax.  | <b>343,764.00</b> |

**Clarifications:**

- Following components supposed to be shipped to Spokane:
  - Runner and Runner blades
  - Discharge Ring
  - Downstream ( long ) Turbine Shaft
  - Upstream Turbine Shaft and Bearing Housing
- Access to powerhouse restrooms and water for hand-washing, so portable restrooms will not be needed

- 120 V/240V power supply in the power house
- One small office room and lunch room in the power house and use of sanitary services
- Compressed air supply for working heavy power tools at the Unit
- Full access to the bulb case. The bulb case needs to be kept in dry condition over the whole working period.
- The client will be responsible for keeping the water outside the working area.
- There are no other spare parts included other than those mentioned in the price items.

**Delivery period:**

According attached schedule. 12-14 weeks after receipt of a written PO.

**Payment Conditions:**

25% Down Payment. 30 days after receipt of the final invoice. For a payment within 10 days after inspection and receipt of the final invoice we will grant 1.5% discount.

**Validity:**

Our Quote is valid until Jan. 31<sup>st</sup>, 2015.

**EXHIBIT B****SITE SPECIFIC INSURANCE REQUIREMENTS**

PMSI will provide following coverage and limits of insurance:

## Coverages to be provided

| Type | Limit of Liability  |
|------|---|
|      | Workers Compensation Statutory, including occupational disease and stop gap coverage (for work performed in monopolistic fund states)   |
|      | Employers Liability \$1,000,000   |
|      | Commercial General Liability \$1,000,000 per occurrence, \$2,000,000 general and aggregate Occurrence form \$2,000,000 products/completed operations aggregate  |
|      | PMSI shall maintain the products/completed operation coverage through any applicable statute of repose after completion of the work under this Service Contract. Automobile Liability \$1,000,000 each accident or loss; all vehicles covered including but not limited to hired and non-owned. |

## General Requirements

A. All coverages required above must be maintained by insurance carriers licensed to do business in the State(s) where the project is located and having at least an A.M. Best's rating of "A-VII" or greater.

B. All coverages required shall be maintained without interruption from the date of commencement of work hereunder through and including the date of final payment.

C. With respect to the Commercial General Liability insurance, the client shall be included as an additional insured for ongoing operations, but limited to PMSI's indemnity obligations hereunder.

D. The Commercial General Liability policy shall be endorsed to contain a waiver of subrogation against PMSI and client to be included as additional insureds as stated hereinabove.

E. The Commercial General Liability policy shall contain a provision to the effect that the coverage provided by such policy shall be primary insurance and shall not be adversely effected or diminished by reason of any other insurance coverage maintained by any of the parties to be included as additional insured.

F. All policies shall contain endorsement providing at least (30) days prior written notice to the first named insured in the event any coverage is cancelled (ten (10) days for non-payment of premium). PMSI agrees to forward any such notice to PMSI.

G. Certificates of insurance on an ACORD form must be provided for the project upon which the PMSI is providing services or materials. The insurance certificate shall at a minimum, contain the following:

- i. Each certificate of insurance shall specifically describe the project site at which the PMSI is to provide labor, material or services to the client.
- ii. The certificate of insurance shall expressly state that the client, its affiliates, officers, directors, and employees, and owner be included as additional insureds with respect to the Commercial General Liability policy maintained by the PMSI as required herein.

- iii. The certificate of insurance should specifically reference all of the other requirements set forth herein.
- iv. A separate certificate of insurance should be provided for each project at which the PMSI will be providing labor, material or services to the client..

**EXHIBIT C**

**Form W-9** Request for Taxpayer Identification Number and Certification  
 (Rev. December 2011)  
 Department of the Treasury  
 Internal Revenue Service

Give Form to the requester. Do not send to the IRS.

Name (as shown on your income tax return)  
**PRECISION MACHINE & SUPPLY, INC.**  
 Business name (do not include suffix name, if a firm) from above

Check appropriate box for federal tax classification:  
 Individual sole proprietor  Corporation  Partnership  Trust/estate  
 Limited liability company. Enter the tax classification (S-C corporation, P-partnership) ▶  Exempt payee  
 Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
**18708 E. MARIETTA LN.**  
 City, state, and ZIP code  
**SPOKANE, WA 99216**  
 List exempt number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**  
 Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Notes: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

|                                |   |   |   |   |   |   |   |   |   |
|--------------------------------|---|---|---|---|---|---|---|---|---|
| Social security number         |   |   |   |   |   |   |   |   |   |
|                                |   |   |   |   |   |   |   |   |   |
| Employer identification number |   |   |   |   |   |   |   |   |   |
| 8                              | 2 | - | 0 | 3 | 5 | 5 | 2 | 4 | 7 |

**Part II Certification**  
 Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign this certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here: Signature of U.S. person ▶ *[Signature]* Date ▶ *09/16/14*

**General Instructions**  
 Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**  
 A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Notes: If a requester gives you a form other than Form W-9 to request your TIN, you may use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations to section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

**EXHIBIT D  
 PMSI  
 LABOR RATES 2015**

|   |    |                  |                         |
|---|----|------------------|-------------------------|
| <b><u>In Shop:</u></b>                    |    |                  |                         |
| Machining                                 | \$ | 75.00 per hour   | ( straight time basis ) |
| Welding & Fabrication                     | \$ | 85.00 per hour   | ( straight time basis ) |
| <b><u>Lewiston:</u></b>                   |    |                  |                         |
| Vertical Boring Mill (10' Dia.)           | \$ | 95.00 per hour   | ( straight time basis ) |
| Horizontal Boring Mill (5" Spindle)       | \$ | 95.00 per hour   | ( straight time basis ) |
| Planner Mill (8' x 24')                   | \$ | 95.00 per hour   | ( straight time basis ) |
| Lathe (49" x 40')                         | \$ | 90.00 per hour   | ( straight time basis ) |
| CNC Machining                             | \$ | 95.00 per hour   | ( straight time basis ) |
| <b><u>Spokane:</u></b>                    |    |                  |                         |
| Bullard (48" dia )                        | \$ | 85.00 per hour   | ( straight time basis ) |
| Horizontal Boring Mill ( 5"Spindle )      | \$ | 95.00 per hour   | ( straight time basis ) |
| Lath ( 55"x 20' )                         | \$ | 95.00 per hour   | ( straight time basis ) |
| CNC Machining                             | \$ | 95.00 per hour   | ( straight time basis ) |
| CNC Horizontal Boring Mill ( 6 "Spindle ) | \$ | 95.00 per hour   | ( straight time basis ) |
| <b><u>Field Service:</u></b>              |    |                  |                         |
| Turbine Supervisor                        | \$ | 1,650.00         | per Calender day        |
| Straight Time                             | \$ | 95.00 per hour   |                         |
| Overtime                                  | \$ | 135.00 per hour  |                         |
| Field Machining                           | \$ | 105.00 per hour  | ( straight time basis ) |
| Travel Time                               | \$ | 90.00 per hour   |                         |
| Mileage                                   | \$ | 0.88 per mile    |                         |
| Meals & Lodging                           | \$ | 150.00 per day   | ( per diem per man )    |
| FARO Laser Tracker                        | \$ | 1,580.00 per day |                         |
| <b><u>Mark-Ups:</u></b>                   |    |                  |                         |
| Materials&Outside Services                |    | Cost plus 35%    |                         |
| Equipment Rental                          |    | Cost plus 35%    |                         |
| Sub-Contractor Work                       |    | Cost plus 35%    |                         |
| Freight                                   |    | Cost plus 35%    |                         |

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH RJN GROUP, INC., FOR PROVIDING ENGINEERING SERVICES ASSOCIATED WITH YEAR 2015 SEWER SYSTEM ASSESSMENTS

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

SECTION 1: An Agreement with RJN Group, Inc., for providing engineering services associated with the Year 2015 Sewer System Assessments, Project Number 15-04-ED1, is hereby approved.

SECTION 2: The Mayor is hereby authorized to execute an Agreement for professional engineering services in the amount of \$1,028,990.48.

This Resolution adopted this \_\_\_\_\_ day of February 2015.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:



\_\_\_\_\_  
npr



## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** January 26, 2015

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

**SUBJECT:** Year 2015 Sewer System Assessments  
Project Number 15-04

Under the terms of the Consent Decree (CD) the city must conduct sewer system assessments (SSAs) for gravity sewer lines and manholes in the wastewater collection system. The city began conducting SSAs in 2002 and has completed assessment of approximately 75 miles of gravity sewer and associated manholes. The Consent Decree recognizes this effort but requires that the city complete SSAs on the remaining lines and manholes over an eight year period beginning in 2015. The Consent Decree further stipulates that the city complete SSA activities on a total of 150 miles of sewer within three years from the date of lodging of the CD with no less than 40 unique miles assessed in each calendar year.

In June 2014, the Board authorized an agreement with RJN Group, Inc., to conduct sewer system assessments within sub-basins P007 and S004 totaling approximately 18.7 miles of gravity sewer. These sub-basins were selected because of reoccurring wet weather overflows that must be eliminated. This work is underway and the field tasks are scheduled to be completed this year. Under terms of the Consent Decree, assessments within these two sub-basins may be included in the 2015 assessment project.

Also in 2014, the Board authorized wastewater flow monitoring studies that provided an assessment of the wet weather infiltration and inflow for each of the 68 sub-basins making up the city's wastewater collection system. The ranking of these sub-basins along with known wet weather overflow points, dry weather overflow points and locations of line segments requiring regularly scheduled cleaning were utilized in selecting additional sub-basins for inclusion in this year's sewer system assessments. For 2015, staff has selected sub-basins FL01, S003, S008 and S009. These sub-basins include approximately 43 miles of gravity sewer and 969 manholes that will be assessed. I have attached an exhibit showing the location of all sub-basins to be included in the Year 2015 Sewer System Assessment project.

Staff prepared and sent a request for proposal to RJN Group, Inc., for the Year 2015 Sewer System Assessment project. The scope of work identified in the proposal includes the following tasks:

1. Coordinate location, rim elevations and depths of all manholes within study areas.
2. Cleaning and debris removal from all sewer lines within study area.
3. Field assessments of sewer lines and manholes within sub-basins FL01, S003, S008 and S009 by smoke testing, televised and visual inspections, and dyed water testing.
4. Preparation of condition assessment and remedial measures plan, including sub-basin P007 and S004, for submission to EPA by the Consent Decree mandated deadline of March 31, 2016.
5. Preparation of Consent Decree mandated remedial measures plan for Basin 12 (previously assessed) to be submitted to EPA by March 31, 2016.
6. Consent Decree mandated review of all field data from previously completed SSAs for development of a list of private service line defects discovered.

7. Listing of all private service line defects discovered while conducting SSAs within sub-basins P007 and S003 and all such defects discovered within the four additional sub-basins to be assessed.

Funds for these services are available from the 2014 sales and use tax issued for wastewater improvements. A Resolution authorizing an engineering services agreement with RJN Group, Inc., in the amount of \$1,028,990.48, is attached.

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

attachment

pc: Jeff Dingman

January 16, 2015

Mr. Jack Dillon, P.E.  
 Assistant Director of Utilities  
 City of Fort Smith Utility Department  
 Utility Department  
 3900 Kelley Hwy.  
 Fort Smith, AR 72904

Subject: Year 2015 Sanitary Sewer Assessments  
 Project Number: 15-04-ED1

Dear Mr. Dillon:

We appreciate the opportunity to submit this proposal to perform consulting engineering services for assessments within six (6) of the City’s wastewater collection system sub-basins. Two of the sub-basins, P007 and S004 are currently under assessment by RJN Group and would be combined with the results from new assessments conducted in FL01, S003, S008, and S009.

These assessments are being conducted in accordance with the City’s Consent Decree requirements and RJN Group has reviewed in detail the Decree documents outlining sewer system condition assessments, condition assessment reporting, development of the remedial measures plan, report certification requirements, and deadlines for submitting the various reports.

Enclosed, please find Exhibit A that details the proposed scope of the project (prepared by the City), Exhibit B that outlines the proposed compensation schedule along with standard hourly rates, Exhibit C outlining the proposed schedule, and Exhibit D which outlines the study areas.

Our proposed not to exceed fee for assessment activities is **\$1,028,990.48**. Reimbursable expenses and subcontract fees incurred in conjunction with this project will be charged based on their actual cost times a factor of 1.07. We anticipate the following subcontract fees for this project:

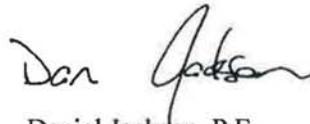
|  |                    |
|--|--------------------|
| ACE Pipe Cleaning (CCTV and Tap Removals)    | \$492,629.90       |
| Hawkins Weir (Sub-Centimeter Survey of MH’s) | <u>\$39,240.00</u> |
| Sub-Total                                    | \$531,869.90       |
| 7%   | <u>\$37,230.96</u> |
| Total  | \$569,100.86       |

We will begin work immediately upon your approval of this proposal and authorization to proceed and will complete the tasks as outlined in Exhibit C – Schedule. Additionally, we understand the importance of deadlines based on reporting requirements outlined in the Consent Decree and the report will be submitted by December 31, 2015.

If this proposal is both acceptable and describes the project and its proposed scope of services, we will prepare and execute a copy of the City's Standard Agreement for Engineering Services. If you have any questions or comments, please do not hesitate to contact us.

Respectfully Submitted,

RJN GROUP, INC.



Daniel Jackson, P.E.  
Senior Project Manager

DHJ

Enclosures: Exhibit A – Scope of Services  
Exhibit B – Compensation Schedule and Standard Hourly Rates  
Exhibit C – Schedule  
Exhibit D – Map Outlining Study Areas

Request for Proposal  
Year 2015 Sanitary Sewer Assessments  
Project Number 15-04-ED1  
January 14, 2015

**PROJECT BACKGROUND INFORMATION:**

The City of Fort Smith has negotiated the terms of a Consent Decree with the US Department of Justice and EPA to address clean water act violations within the City's wastewater system. Among other provision, the Consent Decree requires that the City conduct sewer system assessments (SSAs) on approximately 405 miles of gravity sewer lines and associated manhole structures. Under terms of the consent decree that city must assess a minimum of 40 miles of gravity sewer per year and complete all assessments within an eight (8) year period beginning in 2015. The sanitary sewer assessment activities performed in Year 2015 shall be described in a condition assessment report and submitted to EPA for review and comment no later than March 31, 2016. After completing these SSA activities City is required to develop a Remedial Measure Plan for all pipe segments and manholes discovered through the SSA to be rated 4 or 5 in accordance with the NASSCO condition rating systems. City shall submit the Remedial Measures Plan to EPA for review and approval on or before March 31, 2017.

Since 2002 the City of Fort Smith has completed wastewater collection system assessment of approximately 74.6 miles of gravity sewer and associated manhole structures and will not be required to reassess these lines during the eight (8) year period. In addition, the City is scheduled to complete condition assessment in early 2015 for approximately 18.7 miles of gravity sewer and associated manhole structures located within sewer sub-basins P007 and S004. The 18.7 miles of gravity sewer lines within these sub-basins were identified within the 405 miles of sewer lines to be assessed under terms of the Consent Decree and will be included as a part of the Year 2015 SSA activities.

Between August 2013 and December 2014 the City contracted for wastewater flow monitoring of its entire gravity collection system. That effort resulted in the ranking, on the basis of inflow rates in gpd/1,000 LF of gravity sewer from a 1-Year/60-Minute storm event, of all sixty-eight (68) sewer sub-basins comprising the gravity collection system. Utilizing this information, the historical occurrence of both dry-weather and wet-weather overflows, and other relevant information, the City has selected the sub-basins to included in the Year 2015 sanitary sewer condition assessments.

**PROJECT DESCRIPTION:**

For the Year 2015 SSA project, sanitary sewer assessments will be conducted within six (6) of the city's wastewater collection system sub-basins. As described above, two of these sub-basins, P007 and S004, are currently being assessed under separate contract and scheduled to be

completed in 2015. As a part of this project the results and findings from these assessments will be combined with the results of the additional assessments described herein for the purposes of preparing the final condition assessment report and remedial measures plan. Consultant shall verify that pipe and manhole condition ratings from the assessment of sub-basins P007 and S004 are coded in conformance with the NASSCO condition rating system.

The four (4) additional sub-basins are included in the attached table and shown on the attached exhibit. These sub-basins include approximately 969 manholes and 42.9 miles of gravity sewer. The project will include manhole location and inspection, gravity sewer line cleaning, inspection, smoke testing, dyed water flooding and CCTV inspection of certain lines as detailed below. The city intends to retain the services of a qualified engineering firm (Consultant) to perform SSAs within each of these sewer sub-basins and to prepare the final condition assessment report and remedial measures plan.

### **SCOPE OF SERVICES:**

Consultant shall review in detail the Consent Decree document and become familiar with all requirements pertaining to the task of performing sewer system condition assessments, condition assessment reporting, development of the remedial measures plan, report certification requirements, and deadlines for submitting the various reports required.

All SSA activities and investigations shall be performed in accordance with applicable provisions of "The Handbook: Sewer System Infrastructure Analysis and Rehabilitation", EPA/625/6-91/030; "Existing Sewer Evaluation and Rehabilitation", WEF Manual of Practice FD-6, 3<sup>rd</sup> edition (2009); "A Guide to Short Term Flow Surveys of Sewer Systems, WRC Engineering (1987); the "Code of Practice of Hydraulic Modeling of Sewer Systems", Version 3.001, December 2002, prepared by the Chartered Institution of Water Environmental Management (CIWEM - formerly WaPUG); the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"; and sound engineering practice.

SSA activities in each sub-basin shall begin with flow monitoring of the discharge from that sub-basin with concurrent rainfall measurement using a rain gauge located within the sub-basin or area tributary to the flow meter. Flow monitoring will provide an estimated pre-remediation peak wet-weather flow rate and measured dry-weather flow rate for each sub-basin. Under the terms of the Consent Decree, such flow and rainfall data gathered within two (2) years prior to conducting SSA activities may be utilized. For the Year 2015 SSA project, the results of flow and rainfall monitoring conducted between August 2013 and December 2014 shall be used.

Utilizing the City's manhole numbering system, Consultant shall endeavor to locate all manholes within the study area and shall determine location by GPS coordinates and record rim elevation and depth of manhole. This task will include all manholes within sub-basins P007 and S004 that are currently being assessed. Consultant shall provide City with a listing of any manholes not located or for which obstructions prevented access. City will conduct follow-up

field investigations and notify Consultant as manholes are located or exposed.

SSA activities in each sub-basin shall include sewer line cleaning of all small-diameter gravity sewer lines using hydraulically propelled, high-velocity jet, or mechanically powered equipment. The equipment shall be capable of removing dirt, grease, rocks, sand, and other materials and obstructions from the sewer lines and manholes. All materials dislodged from line segments shall be removed from downstream manholes and properly disposed of in a permitted landfill. Cleaning shall permit television operations to adequately record pipe deficiencies, lateral locations, roots, and any unusual conditions. Consultant shall provide City with a listing of pipe segments for which heavy root removal should be performed by others.

All gravity lines within each sub-basin shall be subject to the sewer system assessment process presented in Appendix A of the Consent Decree and shall include the following:

- a. Smoke-testing of all small-diameter gravity sewer lines (less than 24" in diameter) and tributary private service lines;
- b. Closed circuit television (CCTV) inspection of all non-plastic small-diameter gravity sewer lines;
- c. Dyed-water testing with concurrent CCTV of all parallel storm sewers proximate and above each pipe segment that test positive from smoke-testing;
- d. External visual inspection from the public right-of-way during smoke-testing of buildings in the sub-basin to ascertain the presence of downspouts, other private property storm water drains that are connected to the public sewer, or structural defects in the private service line serving the building;
- e. Inspection of all manholes;
- f. CCTV inspection of all plastic small-diameter gravity sewer lines constructed prior to 1995 and all other plastic small-diameter gravity plastic gravity sewer lines for which visual inspection or other investigations reveal defects;
- g. Inspection of all large-diameter gravity sewer lines (24" or greater in diameter) using CCTV, 360-degree video, laser imaging or physical entry, and inspection of adjacent manholes, unless line segment was installed after 1995 and those line segments listed in Appendix E1 and E2 of the Consent Decree if actually replaced or scheduled for replacement.

The investigation of all gravity sewer lines and manholes included in the project shall be sufficient to determine the condition score of each applying the NASSCO Pipe Assessment and Certification Program and the Manhole Assessment and Certification Program rating system as set forth in Appendix A of the Consent Decree, and to discover other defects that may have caused or significantly contribute to the occurrence of sewer system overflows.

If in the course of conducting line cleaning or CCTV inspections Consultant encounters a pipe defect or obstruction that prevents completion of the SSA activities described herein, Consultant shall notify and consult with City's representative regarding options for remediating the problem.

All field work and submittal of a preliminary condition assessment/remedial measures plan report (Final Report) must be completed by December 31, 2015. City shall expeditiously review and provide written comment to Consultant for incorporation into final report. The Final Report will be included in the first Annual Report to EPA due on or before March 31, 2016. Under the terms of the Consent Decree, the City is liable for the payment to EPA of stipulated penalties progressing from \$500 to \$2000 per day for failure to submit timely and/or complete deliverables. Consultant shall provide the necessary staffing and equipment, and schedule and execute the work identified herein in a time frame which provides for the City's review and comment, and the Consultant's preparation of the final reports sufficiently ahead of any anticipated or stated deadlines.

Under terms of the Consent Decree, Section XI., City shall provide a summary report and certification, approval, and seal, by a lead Professional Engineer licensed by the Arkansas State Board of Licensure for Professional Engineers and Professional Surveyors for the Remedial Measures Plan resulting from SSA activities conducted in the first calendar year following date of lodging. Consultant shall prepare the summary report and provide the certification, approval, and seal in compliance with the provisions of the Consent Decree.

#### **SUBMITTALS:**

All SSA activities performed, results, and remedial recommendations shall be described in the Final Report. The report will include all SSA activities in sewer sub-basins P007 and S004 which were begun in Year 2014 and are scheduled for completion in Year 2015. The report shall be included with and become a part of the City's Annual Report of Year 2015 Consent Decree activities to be submitted to EPA by March 31, 2016. The report shall include narratives, analysis, calculations, exhibits, legible maps, and other supporting information necessary to fully document SSA investigations and findings. The report shall include both a condition assessment and a recommended remedial measures plan, each as a separate section within the body of the report. SSA activities, findings, and recommendations for each sub-basin assessed shall be documented separately within the final report. The report shall document all sub-basins in which SSA activities were performed and provide the number of miles of gravity sewer line and number of manholes assessed. Report shall include the attached Appendix A and a statement verifying that manhole and gravity sewer line SSA activities were performed on at least 40 miles of gravity sewer line and in accordance with the Appendix A process.

The condition assessment section of the report shall include a tabulation of SSA activities that include the following:

- a. Flow monitoring performed in each sub-basin and estimated pre-remediation peak wet-weather flow rate and measured dry-weather flow rate in each sub-basin. Documentation shall include a legible sub-basin map displaying flow monitoring and rainfall measurement locations;
- b. Linear feet of gravity sewer lines cleaned;
- c. Linear feet of small diameter and large diameter gravity sewer lines CCTV inspected in each sub-basin;

- d. Gravity sewer lines determined not to require CCTV inspection in accordance with Appendix A;
- e. Total number of linear feet of gravity sewer lines smoke tested in each sub-basin;
- f. Linear feet and/or location where dyed water testing was performed;
- g. The condition rating scores for all pipe segments and manholes assessed using the NASSCO condition rating system as set forth in Appendix A;
- h. Other gravity sewer line investigations performed;
- i. Location of properties on which private service line defects and/or storm water discharges were discovered;
- j. List of any direct discharges from the wastewater collection system discovered in the course of conducting SSA activities.

The report shall include a legible map documenting the annual progress of SSAs by sub-basin. The map shall depict, by different symbols, colors or other demarcations, those sub-basins in which SSAs were completed as a part of the Year 2015 SSA project, and those sub-basins in which SSAs were completed in all prior years.

Consultant shall provide City with GPS coordinates (Arkansas State Plane NAD83 US Foot) for all sanitary sewer manholes included in study area and shall develop an associated data base listing City designated manhole number, rim and invert elevation, material of construction, structural rating and other data. This shall included all manholes within sewer sub-basins P007 and S004. Consultant shall also provide data base on each pipe segment listing pipe segment number (utilizing upstream manhole number as identifier), diameter, length, material of construction, structural rating and other data. Data base shall be provided in a format suitable for entry into City's GIS system.

After completing the SSA activities described above, Consultant shall prepare a remedial measures plan for all pipe segments and manholes following the process presented in the attached Appendix D of the Consent Decree. The remedial measures plan shall address all pipe and manhole defects discovered through the SSA to be rated 4 or 5 in accordance with the NASSCO condition rating system and any other defects that have caused or significantly contribute or likely to contribute to SSOs. The remedial measures section of the condition assessment/remedial measures report shall include the following:

- a. The condition rating score in accordance with NASSCO condition rating system for all pipe segments and all manholes assessed;
- b. The condition remedial measures projects for which construction was initiate in Year 2015 and the schedule for completing. It is anticipated that construction of the remedial measures currently under design in Basin 17 will be the only such project to be identified in the report;
- c. A legible map showing the annual progress of completing remedial measures by sub-basin. This map shall depict, by different symbols, colors or other demarcation those sub-basins in which remedial measures were completed in Year 2015, those sub-basins in which remedial measures were in progress in Year 2015, and all of the sub-basins in which remedial measures were completed in all prior years.

## **ADDITIONAL SERVICES:**

The Consent Decree requires the City to develop a private service line defect remediation program to encourage Owners of private service lines to remediate private service line defects that are a source of I&I. Development of that plan is outside the scope of this RFP. However, Consultant shall provide City with a listing of all locations where private service line defects are observed through SSA activities. Photographic evidence of private service line defects discovered during the smoke testing of public sewer lines shall be provided. Consultant shall also be responsible for researching property ownerships and providing City with property owner contact information. Remediation of defects discovered will be addressed through the City's future private service line defect remediation program.

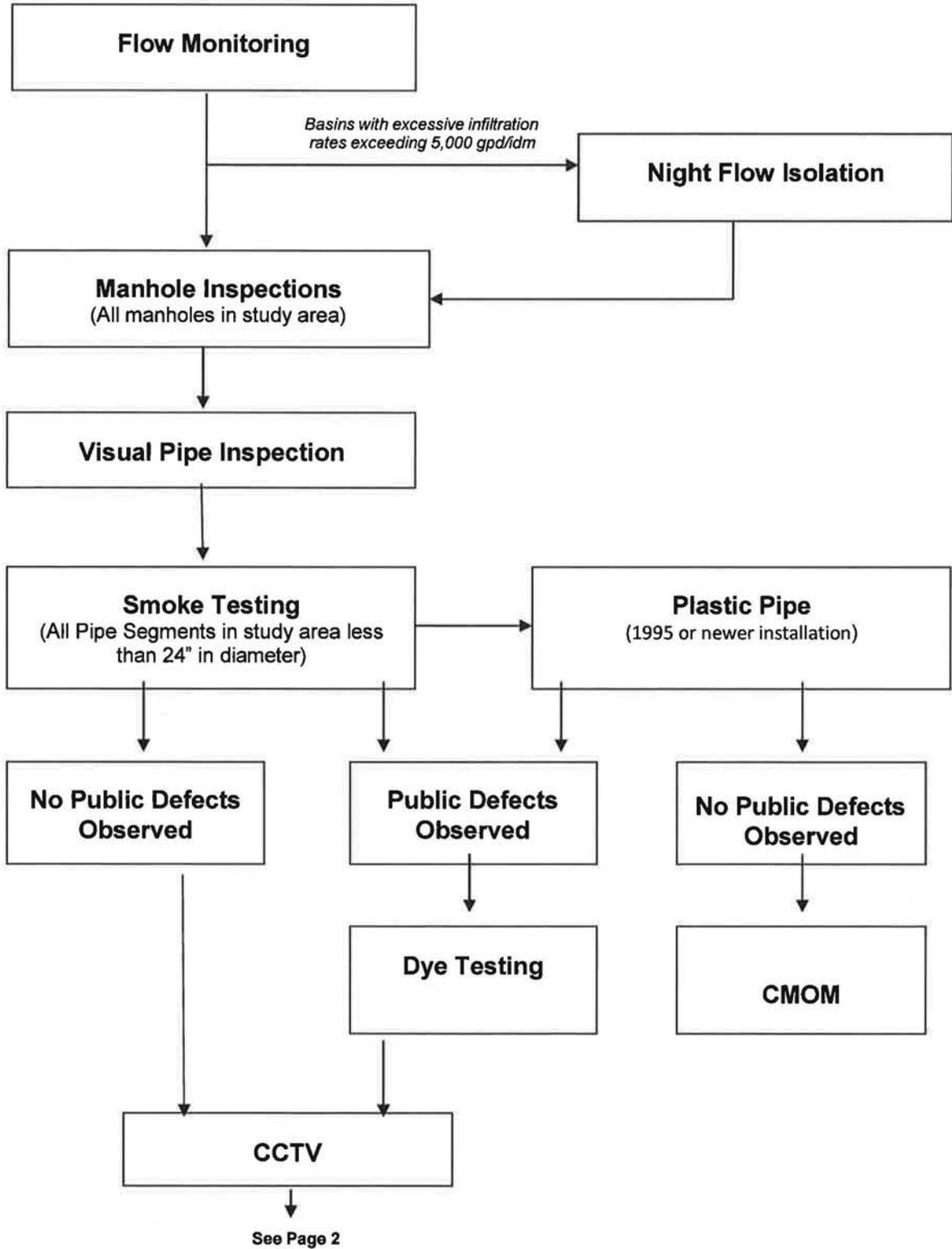
The Consent Decree also requires the City to address the remediation of private service line defects discovered in areas where SSAs were performed prior to Year 2015. Consultant shall review all available information on sewer system investigations previously performed and provide City with any information discovered that would assist the City in addressing defect remediation through its private service line defect remediation program. This effort shall be limited to the following completed assessment projects:

- Sub-Basin 10-4 (December 2002)
- Sub-Basins 22-2 & 22-4 (May 2004)
- Sub-Basin 10-2 (January 2008)
- Basin 12 (March 2010)
- Basins 9 & 11 (August 2010)

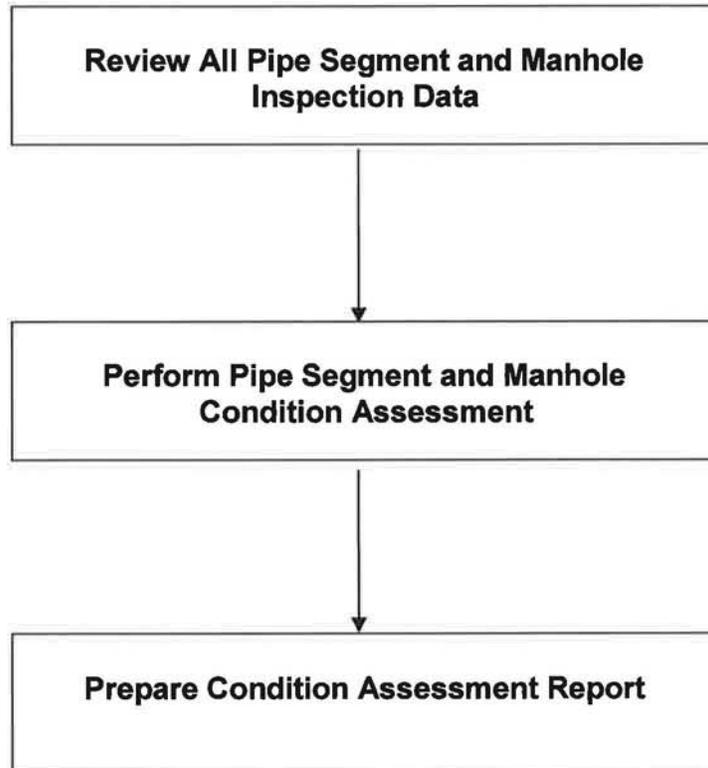
Copies of the final assessment reports will be provided Consultant as needed.

In March 2010 a final report was issued on a sanitary sewer evaluation study conducted within Basin 12. The report documented structural defects observed through the assessment of approximately 119,000 linear feet of gravity sewer and 497 manholes. The report included recommendations for the remediation of significant defects. Under terms of the Consent Decree, the City is required to remediate within 12 years all defects in Basin 12 ranked 4 or 5 under the NASSCO condition rating systems. City is also required to submit a remedial measures plan for Basin 12 with the first annual report due March 31, 2016. Consultant shall review the final report and appendix for Basin 12, reevaluate pipe segment structural findings for conformance with the NASSCO condition rating system, and prepared a remedial measure plan. The plan shall be a separate deliverable from the Final Report documenting Year 2015 SSA activities.

**APPENDIX A**  
**Sanitary Sewer Assessment ("SSA") Process**  
Page 1 of 4



**APPENDIX A**  
**Sanitary Sewer Assessment ("SSA") Process**  
Page 2 of 4



**APPENDIX A**  
**Sanitary Sewer Assessment (“SSA”) Process**  
Page 3 of 4

| <b>Plan, Schedule, and Conduct Sanitary System Assessments</b>  |   |  |
|---|---|--|
| <b>Small Diameter Gravity Sewer Mains<br/>(Less than 24” diameter)</b>  | <b>Large Diameter Gravity Sewer Mains<br/>(Equal to or greater than 24” diameter)</b>   | <b>Manholes</b>  |
| <p><b>Select Inspection Methods</b></p> <ul style="list-style-type: none"> <li>– CCTV (all non-plastic pipe, plastic pipe older than 1995, and newer plastic pipe having defects revealed by other investigations)</li> <li>– Visual inspection methods may include: <ul style="list-style-type: none"> <li>▪ Visual Pipe Segment inspection from full descent entry by trained field personnel</li> </ul> </li> <li>– Smoke testing <ul style="list-style-type: none"> <li>▪ Including concurrent visual inspection of buildings from the public ROW to attempt to ascertain the presence of downspouts and other private property storm drains</li> </ul> </li> <li>– Dye testing</li> <li>– Other techniques (such as new technologies or methods that become available as preapproved by EPA)</li> <li>– All other investigations the City deems necessary to locate sources of I/I that could cause or contribute to SSOs and/or condition defects in WCTS</li> </ul> <p><b>Prioritize pipes for inspection using these criteria:</b></p> <ul style="list-style-type: none"> <li>– The occurrence of dry-weather and wet-weather SSOs;</li> <li>– The nature and extent of customer complaints;</li> <li>– Previous and current flow monitoring studies;</li> <li>– Location of SSOs in low-income census tract areas;</li> <li>– The causes and applicable methods of eliminating SSOs;</li> <li>– Remedial Measures already undertaken or scheduled for implementation;</li> <li>– Field crew work orders; and,</li> <li>– Other relevant information</li> </ul> <p><b>Schedule and conduct inspection activities</b></p> <ul style="list-style-type: none"> <li>– Generally, schedule CCTV after visual Pipe Segment and smoke testing inspection activities are complete.</li> </ul> | <p><b>Inspection Methods</b></p> <ul style="list-style-type: none"> <li>– CCTV, sonar, 360 degree video, laser imaging, physical entry</li> <li>– Other techniques (such as new technologies or methods that become available as preapproved by EPA)</li> <li>– All other investigations the City deems necessary to locate sources of I/I that could cause or contribute SSOs and/or condition defects in WCTS</li> </ul> <p><b>Select and prioritize pipes for inspection using these criteria:</b></p> <ul style="list-style-type: none"> <li>– The occurrence of dry-weather and wet-weather SSOs;</li> <li>– The nature and extent of customer complaints;</li> <li>– Previous and current flow monitoring studies;</li> <li>– Location of SSOs in low-income census tract areas;</li> <li>– The causes and applicable methods of eliminating SSOs;</li> <li>– Remedial Measures already undertaken or scheduled for implementation;</li> <li>– Field crew work orders; and,</li> <li>– Other relevant information</li> </ul> <p><b>Schedule and conduct inspection activities</b></p> | <p><b>Inspection Methods</b></p> <ul style="list-style-type: none"> <li>– Full descent inspection with visual pipe inspection performed at same time.</li> <li>– Other techniques (such as new technologies or methods that become available as preapproved by EPA)</li> </ul> <p><b>Schedule and conduct inspection activities</b></p> <ul style="list-style-type: none"> <li>– Generally manhole inspections are performed throughout the time frame to study a selected basin.</li> </ul> |

| <b>Gravity Sewer Line Condition Assessment</b>  |  |                       |
|---|--|-----------------------|
| <p><b>Perform condition assessment based on these guidelines:</b></p> <ul style="list-style-type: none"> <li>– Prioritize the review of inspection data based on the severity of findings.</li> <li>– Record defects utilizing PACP coding.</li> <li>– Categorize assets based on the following table:</li> </ul> |  |                       |
| Category  | Example Structural Conditions for Each Category  | Likely Outcome        |
| Grade 5   | Pipe segment has failed or will likely fail within the next five years. Pipe segment requires immediate attention. | Remedial Design       |
| Grade 4   | Pipe segment has severe defects with the risk of failure within the next five to ten years.                        | Remedial Design       |
| Grade 3   | Pipe segment has moderate defects. Deterioration may continue, but not for 10 to 20 years.                         | Add into CMOM program |
| Grade 2   | Pipe segment has minor defects. Pipe is unlikely to fail for at least 20 years                                     | Add into CMOM program |

**APPENDIX A**  
**Sanitary Sewer Assessment (“SSA”) Process**  
Page 4 of 4

|         |  |                       |
|---------|--|-----------------------|
| Grade 1 | Pipe segment has minor defects. Failure is unlikely in the foreseeable future. | Add into CMOM program |
|---------|--|-----------------------|

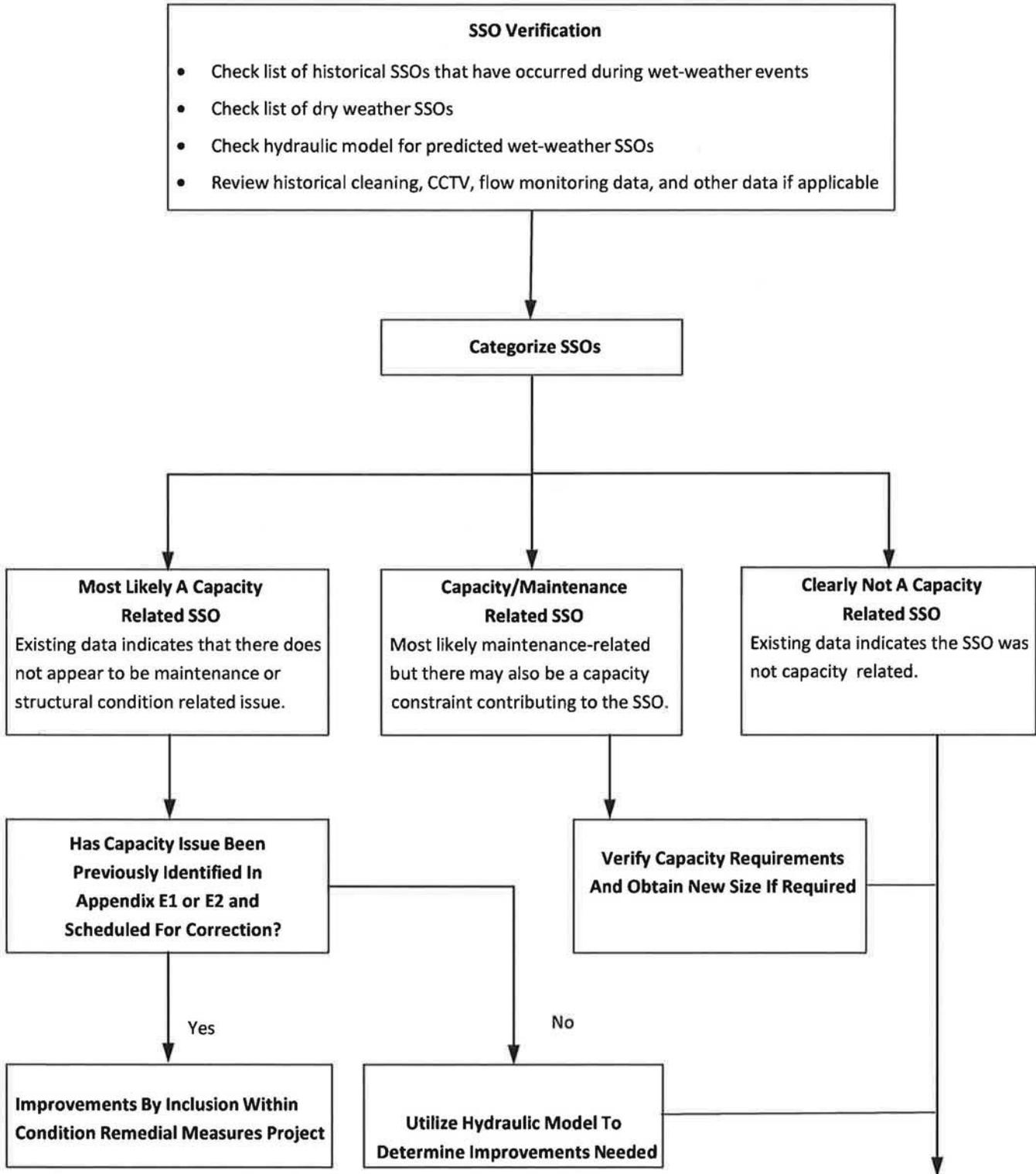
- Perform condition assessment on inspection data and consider appropriate criteria which shall include factors such as the following:
- Type and severity of structural defects
  - Historical operation and maintenance data: Overflows, inspections, cleaning findings, cleaning frequency, previous remediation, customer complaints, and other unique circumstances for each individual asset
  - Site conditions: Access for maintenance and construction, depth, soil type, environmental sensitivity, surface restoration requirements, and other unique circumstances for each individual asset

| <b>Manhole Condition Assessment</b>   |   |                       |
|---|---|-----------------------|
| <b>Perform condition assessment based on these guidelines:</b>  |   |                       |
| <ul style="list-style-type: none"> <li>- Prioritize the review of inspection data based on the severity of findings.</li> <li>- Record Inflow/Infiltration defects, such as pick hole covers, frame seal leaks, infiltration runners, etc and assign estimated values of I/I for each Manhole. Each Manhole which is observed to have I/I defects are added to a remedial design project.</li> <li>- Record MACP structural condition ratings for each component of the Manhole (cover and frame, frame adjustment, corbel, wall, bench, and trough) based on scoring conditions of 1 thru 5. Each Manhole component score is added and averaged. Any Manhole which has any component of 4 or 5, or whose average is above 4 is added to remedial list.</li> <li>- Categorize assets based on the following table:</li> </ul> |   |                       |
| Category  | Example Structural Conditions for Each Category                               | Likely Outcome        |
| Grade 5   | Failure has already occurred or is likely to occur.                           | Remedial Design       |
| Grade 4   | Cracks, deterioration, visible deformities observed.                          | Remedial Design       |
| Grade 3   | Moderate corrosion observed and/or moderate surface damage to material.       | Add into CMOM program |
| Grade 2   | Moderate material degradation noticed, however no visible structural defects. | Add into CMOM program |
| Grade 1   | New manhole with no defect observed.  | Add into CMOM program |

- Perform condition assessment on inspection data and consider appropriate criteria which shall include factors such as the following:
- Type and severity of structural defects
  - Historical operation and maintenance data: Overflows, inspections, cleaning findings, cleaning frequency, previous remediation, customer complaints, and other unique circumstances for each individual asset
  - Site conditions: Access for maintenance and construction, depth, soil type, environmental sensitivity, surface restoration requirements, and other unique circumstances for each individual asset

**APPENDIX D**  
**REMEDIATION DETERMINATION PROCESS**

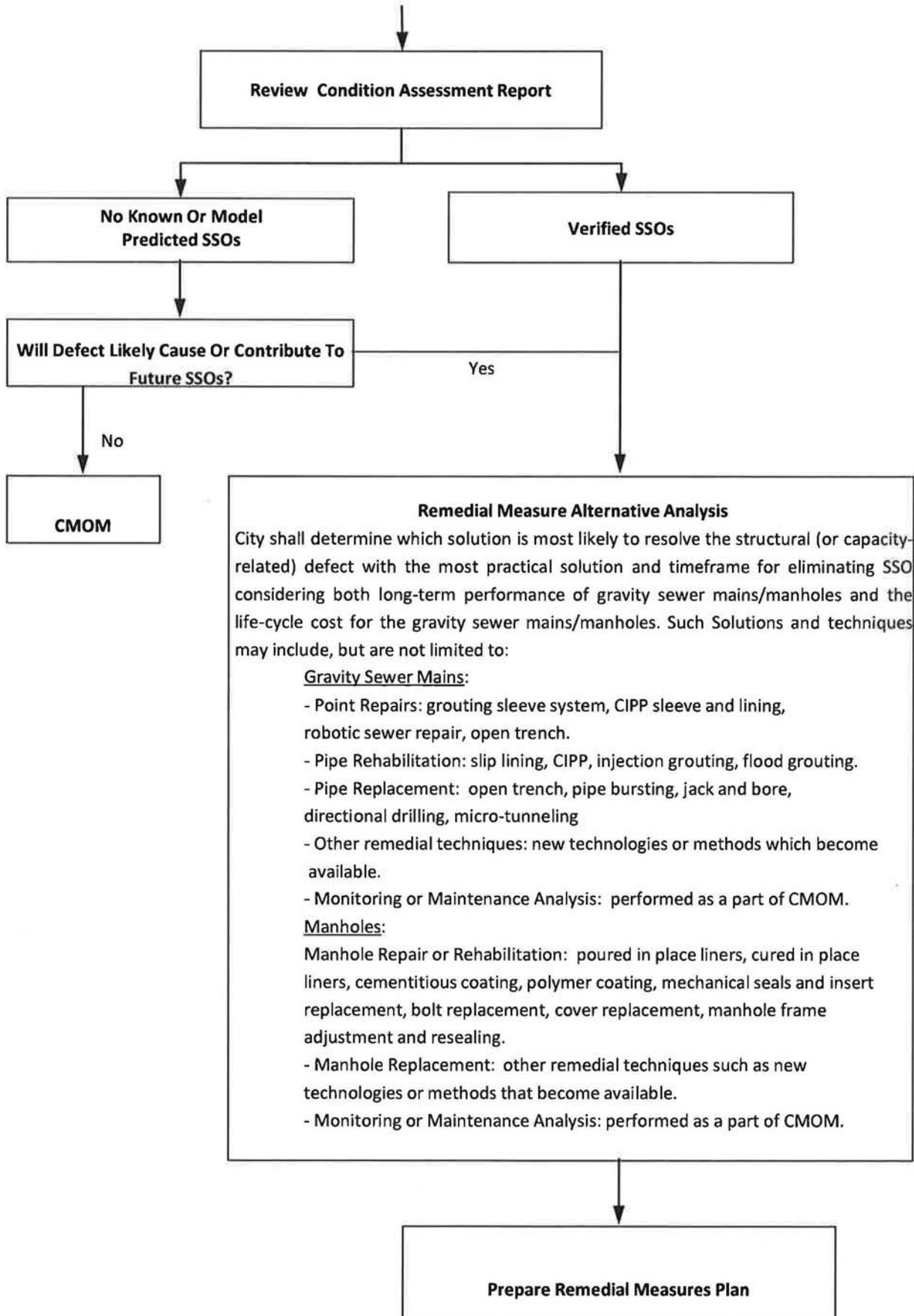
Page 1 of 2



See Page 2

**APPENDIX D  
REMEDIAL DETERMINATION PROCESS**

Page 2 of 2



## Exhibit B

### Compensation Schedule

| <b>Task</b>                       | <b>Description</b>  | <b>Quantity</b> | <b>Unit Cost</b> | <b>Cost (\$)</b>    |
|-----------------------------------|---|-----------------|------------------|---------------------|
| 2.1.1                             | Project Admin   | 1               | \$32,284.00      | 32,284.00           |
| 2.1.2                             | Data Management   | 1               | \$40,764.00      | 40,764.00           |
| 2.1.3                             | Private Service Line Research for 10-4, 22-2, 22-4, 10-2, 12, 9, and 11 | 1               | \$14,444.00      | 14,444.00           |
| 2.1.4                             | Basin 12 Re-Evaluation Ranking (NAASCO)                                 | 1               | \$13,546.00      | 13,546.00           |
| 2.1.5                             | MACP Coding for Sub-Basins P007 and S004                                | 1               | \$15,188.00      | 15,188.00           |
| 2.1.6                             | Manhole Inspection  |                 |                  |                     |
|                                   | Street Access   | 582             | \$101.14/EA      | 58,862.90           |
|                                   | Remote  | 283             | \$140.59/EA      | 39,787.00           |
| 2.1.7                             | Sub-Centimeter Survey of Manholes                                       | 1,308           | \$32.10/EA       | 41,986.80           |
| 2.1.8                             | Rainfall Simulation   |                 |                  |                     |
|                                   | Smoke Testing   | 205,122         | \$0.49/LF        | 101,337.78          |
|                                   | Dyed Water Flooding   | 70              | \$412.97/EA      | 28,908.00           |
| 2.1.9                             | TV Inspection   |                 |                  |                     |
|                                   | Cleaning/TV Inspection  | 182,000         | 1/               | 501,434.00          |
|                                   | Tap Removals for CCTV   | 60              | \$428.00/EA      | 25,680.00           |
|                                   | TV Tape Review  | 182,000         | \$0.39/LF        | 70,980.00           |
| 2.1.10                            | Data Analysis / Reporting   | 1               | \$43,788.00      | 43,788.00           |
| <b>Total Not-to-Exceed Amount</b> |   |                 |                  | <b>1,028,990.48</b> |

1/ Unit prices for cleaning and television inspection prices apply. Assumptions have been made on percentage of heaving cleaning and reverse setups.

### Schedule of Hourly Professional Services Billing Rates

| <b>Employee Classification</b> | <b>Hourly Rate</b> |
|--------------------------------|--------------------|
| Project Director               | \$270              |
| Project Manager                | \$180              |
| Project Engineer               | \$122              |
| Civil Engineer                 | \$95               |
| Field Manager                  | \$94               |
| Field Supervisor               | \$64               |
| Field Technician               | \$55               |
| Data Analyst                   | \$72               |
| Draftsman                      | \$99               |
| Clerical                       | \$92               |

**Direct Costs +7%**

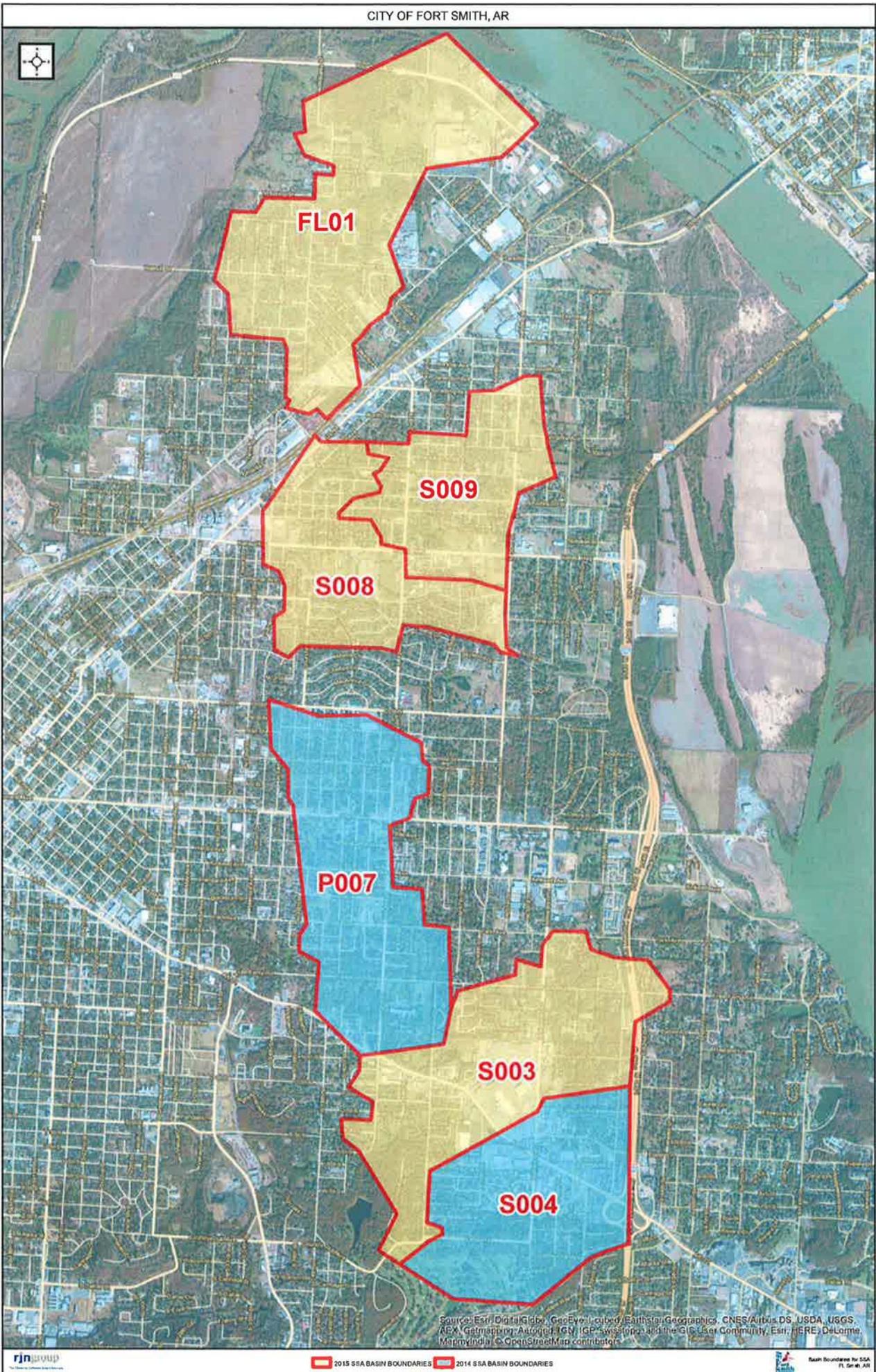


**EXHIBIT C**  
**CITY OF FORT SMITH**  
**Sub-Basins FL01, S003, S008, S009**  
**WASTEWATER COLLECTION SYSTEM**

**SCHEDULE**

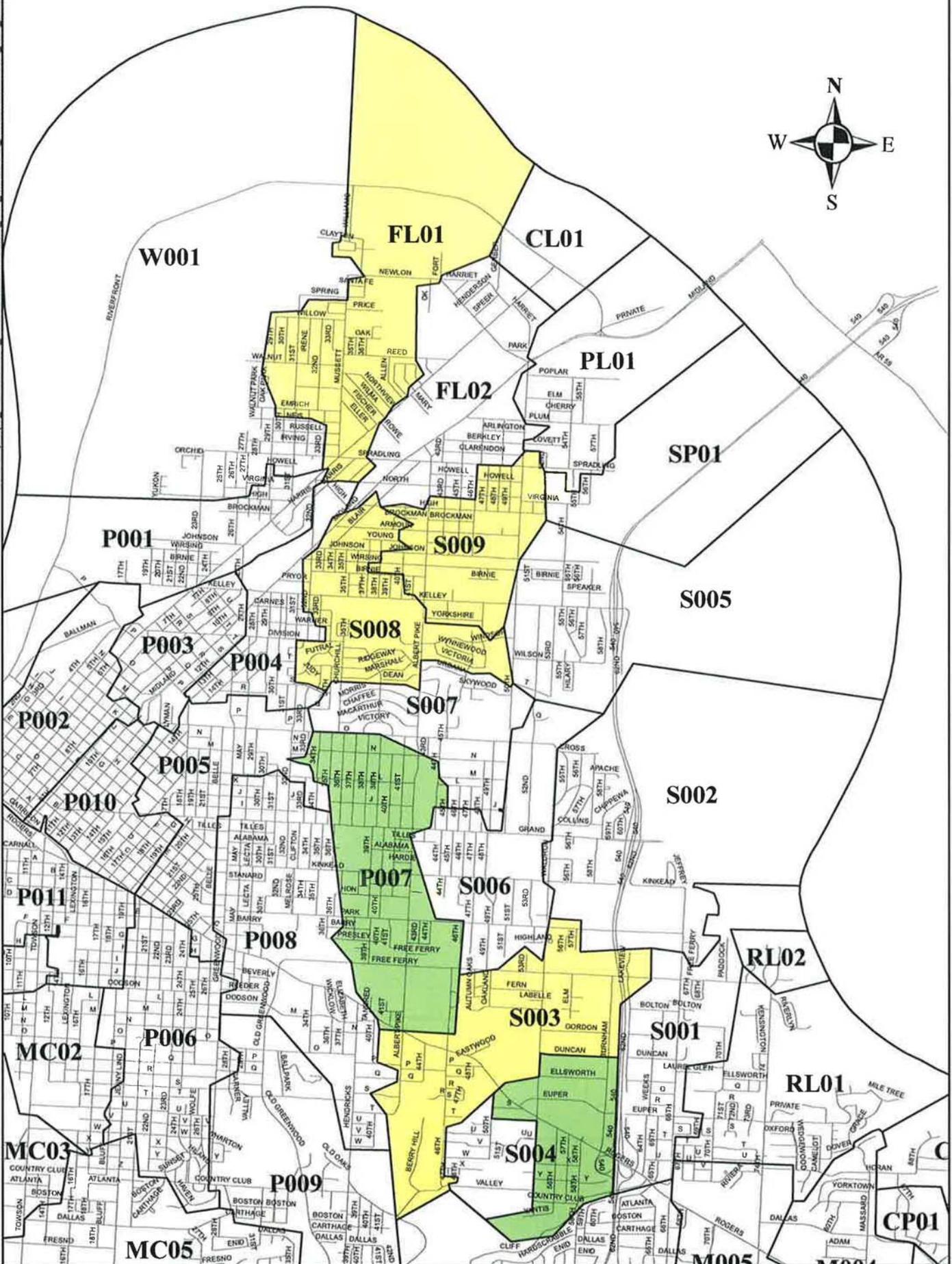
|  |                                    | 2015                           |     |     |     |     |     |     |     |     |     |     |  |
|--|------------------------------------|--------------------------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--|
| ID   | Task Name                          | FEB                            | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC |  |
| 1  | PROJECT ADMINISTRATION             | [Blue bar spanning all months] |     |     |     |     |     |     |     |     |     |     |  |
| 2  | MANHOLE INSPECTION                 | [Blue bar from Feb to Sep]     |     |     |     |     |     |     |     |     |     |     |  |
| 3  | SMOKE TESTING / DYE TESTING        | [Blue bar from May to Aug]     |     |     |     |     |     |     |     |     |     |     |  |
| 4  | CLEANING AND TELEVISION INSPECTION | [Blue bar from Feb to Sep]     |     |     |     |     |     |     |     |     |     |     |  |
| 5  | DATA ANALYSIS/REPORT               | [Blue bar from Mar to Dec]     |     |     |     |     |     |     |     |     |     |     |  |
| PROJECT: FORT SMITH, ARKANSAS<br>Sub-Basins: FL01, S003, S008, S009<br>DATE: 1/16/15 |                                    |                                |     |     |     |     |     |     |     |     |     |     |  |

1/15/2015



# Year 2015 Sanitary Sewer Assessments

O:\UtilityDept\General\DWG\_DATA\Exhibits\JD\2015\_SSA\_PROJECT\_BOUNDARY\2015\_SSA\_BOUNDARY



## **Comprehensive Plan Goal Supported By Wastewater Projects**

- Ensure adequate, well-maintained infrastructure, public safety, and public facilities for all development and prevent development ahead of infrastructure and service provision. (FLU-1.4)
- Implement an infrastructure Asset Management Program as a tool for management of the utility department's water and sewer systems and to track, manage, and schedule necessary facility upgrades and improvements. (TI-5.1.1)
- Ensure that utility and infrastructure systems can meet the city's long-term needs. (TI-5.2)
- Adopt criteria for prioritizing funding to infrastructure-related capital improvement projects. (TI-5.2.4)

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE  
MAYOR TO EXECUTE A CONTRACT WITH DALE CRAMPTON COMPANY  
FOR THE 3900 KELLEY HIGHWAY ROOF RENOVATION

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

SECTION 1: The bid of Dale Crampton Company for the 3900 Kelley Highway  
Roof Renovation, Project Number 14-05-C1, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with Dale Crampton  
Company in the amount of \$297,983.00, for performing said work.

This Resolution adopted this \_\_\_\_\_ day of February 2015.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:



\_\_\_\_\_  
npr

## INTER-OFFICE MEMO

**TO:** Ray Gosack, City Administrator

**DATE:** January 29, 2015

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

**SUBJECT:** 3900 Kelley Maintenance Facility  
Roof Renovations - Project 14-05-C1

The maintenance facility at 3900 Kelley Highway was completed in 1987. The roofing system on the administration building is now experiencing multiple leaks during rain events and in need of renovation. MAHG Architecture was retained to design a replacement roofing system. The roofing system design will utilize the existing roof as an underlying deck with a dense polystyrene insulation layer applied for improved energy efficiency and covered with a single-ply PVC roof membrane. An additional advantage to this design is that it does not require the removal of the existing roof and the interior of the building will not be compromised during a rain event. Funding for the project was made part of the utility department's operations budget.

Three bids for the work were received with Dale Crampton Company being the successful bidder in the amount of \$297,983.00. The bids received were within the budgeted amount. A bid tabulation showing the other bidders and their bid amounts is attached. It should be noted that the bid submitted by Reynolds Construction Company, Inc., was withdrawn as their bid was based upon an alternate roof system which did not meet the specifications.

A Resolution authorizing the Mayor to execute a contract with Dale Crampton Company for the 3900 Kelley Highway Roof Renovation project for an amount of \$297,983.00 is attached. Should you or members of the Board have any questions or desire additional information, please let me know.

attachment

pc: Jeff Dingman

## Bid Tabulation Sheet

### Project Name

Roofing Renovation – Utility Department  
Project Number 14-05

### Bid Opening

January 6, 2015  
2:00 P.M.

### Bids Received

|   |  |
|---|--|
| Dale Crampton Company<br>Fort Smith, Arkansas               | \$ <u>297,983.00</u>                         |
| Harness Roofing<br>Fort Smith, Arkansas                     | \$ <u>319,437.00</u>                         |
| Reynolds Construction Company, Inc.<br>White Hall, Arkansas | *\$ <u>254,115.00</u><br><i>Withdrew Bid</i> |

Bid withdrawn was based upon an alternate roof system which did not meet the specifications related to mil thickness for the PVC roof membrane; roof edge detail for wind uplift prevention; and, standard roof warranty was limited to wind speeds less than 60 mph.

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

**AN ORDINANCE SPECIFYING THE PERSONNEL  
AUTHORITY OF THE CITY ADMINISTRATOR**

---

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

Section 1: Section 2-96 of the Fort Smith Municipal Code (“Code”) is hereby repealed;  
and, the following provision is hereby adopted to be codified as Section 2-43 of the Code:

Sec. 2-43. - Director approval procedure of city administrator personnel action.

Except as otherwise provided in this article, the city administrator shall obtain the approval of the board of directors prior to the employment or discharge of exempt personnel of the city who are heads of departments, city clerk, internal auditor, and the qualified and licensed attorneys at law contracted to provide legal services pursuant to sections 2-111 – 2-113 of this Code as follows:

- (1) The city administrator shall notify all members of the board of directors either orally or in writing of the proposed action, the reasons therefor, and all relevant and pertinent facts bearing upon the decision of either employment or discharge. After notification from the city administrator, there shall be scheduled an executive session at the next regular or special meeting of the board of directors to discuss approval, denial or modification of the city administrator's proposed action.
- (2) Following the board's action, the city administrator shall then notify in person or by telephone the individual subject to the approved action and may confirm the action in writing to the individual.
- (3) Where reasonable and feasible, employees of the city shall be first given an opportunity to resign at the request of the city administrator and the board of directors prior to notice of discharge.
- (4) No director nor the mayor shall communicate the exempt personnel action proposed by the city administrator, except through the city administrator as herein

provided.

Section 2: The Human Resources Policy for Non-Uniformed Employees (2011), adopted by Ordinance No. 85-11, is amended to replace the current language in Section II. B. with the following:

B. The City Administrator will nominate, to the Board of Directors, individuals for appointment and will make recommendations to the Board of Directors for termination of individuals in the following Exempt positions: Deputy City Administrator, City Clerk, Director of Sanitation, Director of Engineering, Director of Finance, Director of Human Resources, Director of Street & Traffic Control, Director of Utilities, Fire Chief, Police Chief, Director of Parks & Recreation, Director of Information Technology Systems, Director of Transit, Director of the Convention Center, Director of Development Services, Internal Auditor. The appointment and removal of persons in all other Exempt positions will be determined by the City Administrator without the necessity of approval of the Board of Directors. Pursuant to A.C.A. § 16-17-108, the Sebastian County District Court -Fort Smith District Court Judges shall appoint a qualified elector to serve as District Court Clerk.

In all other respects, the Human Resources Policy approved by Ordinance No. 85-11, as amended, shall remain in effect.

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF February, 2015.

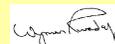
APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

Approved as to form:



\_\_\_\_\_  
City Attorney  
Publish 1 time

## James, Heather

---

**From:** Gard, Sherri  
**Sent:** Friday, January 30, 2015 10:16 AM  
**To:** Board Info Group  
**Cc:** NewsReleases  
**Subject:** Agenda Item Added to the February 3, 2015 Regular Meeting  
**Attachments:** ORD. 35-13.pdf

Section 2-31(3) of the Fort Smith Municipal Code states, *“An item of business may be placed on the agenda at least forty-eight (48) hours prior to the time of the meeting of consideration by four (4) members of the board upon notice to the city clerk of the name of the proposed directors and the specific subject of the items of business to be considered. The city clerk shall immediately notify the directors, the city administrator and the mayor of the specific subject of the addition to the agenda.”*

Pursuant to the above, Director Kevin Settle phoned my office and requested an **ordinance repealing personnel authority granted to the City Administrator via Ordinance No. 35-13** (attached) be placed on the February 3, 2015 regular meeting agenda.

All remaining directors were contacted with Directors Lau, Good, Lorenz and Catsavis concurring with the request. Messages were left with Directors Pennartz and Hutchings; however, no response has been received as of yet.

Placement requires the concurrence of four (4) directors; therefore and since five (5) directors have conveyed concurrence, the ordinance will be added the February 3, 2015 regular meeting agenda.

***Sherri Gard, CMC***  
***City Clerk***  
***City of Fort Smith, Arkansas***  
***479-784-2207 (phone)***  
***479-784-2256 (fax)***

ORDINANCE NO. 35-13

**AN ORDINANCE DELEGATING PERSONNEL  
AUTHORITY TO THE CITY ADMINISTRATOR**

---

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

Section 1: Section 2-43 of the Fort Smith Municipal Code (“Code”) is hereby repealed; Sections 2-96 and 2-97 of the Code are hereby renumbered 2-97 and 2-98, respectively; and, the following provision is hereby adopted to be codified as Section 2-96 of Article IV of the Code:

**Sec. 2-96. - Personnel authority of city administrator.**

(a) Except as otherwise provided by law, except as provided otherwise in this Article, and except for his or her own job position, the city administrator shall have full power and responsibility concerning the employment, disciplining, and termination of employment of all officials and non-uniformed employees of the city, including, but not limited to, heads of city departments, the fire chief, and the police chief, according to the budgeting of positions and levels of compensation established from time to time by the board of directors.

(b) The board of directors reserves to itself power and responsibility of employment, discipline and termination with reference to the city’s internal auditor, and the board acknowledges the authority of the judges of the Sebastian County District Court with reference to the district court clerk.

Section 2: The Human Resources Policy for Non-Uniformed Employees (2011), adopted by Ordinance No. 85-11, is amended to substitute the following as Section II. B.:

B. The Board of Directors will appoint, discipline, and remove the individual

employed in the position of Internal Auditor. The appointment and removal of persons in all other Non-Exempt and Exempt positions will be determined by the City Administrator without the necessity of approval by the Board of Directors.

In all other respects, the Human Resources Policy approved by Ordinance No. 85-11 shall remain in effect.

PASSED AND APPROVED THIS 20<sup>th</sup> DAY OF August, 2013.

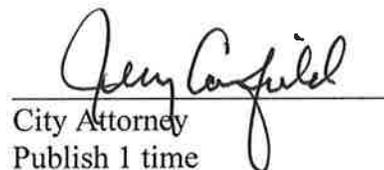
APPROVED:

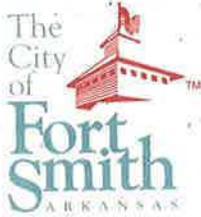
  
Mayor

ATTEST:

  
City Clerk

Approved as to form:

  
City Attorney  
Publish 1 time



January 26, 2015

TO: Members of the Board of Directors  
Members of the Animal Services Advisory Board

RE: Appointments:

The terms of Ms. Nicole Morgan and Ms. Carole Hunter of the Animal Services Advisory Board will expire April 3<sup>rd</sup>, 2015. 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 February 27<sup>th</sup>, 2015. 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](http://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  
(501) 785-2801  
Administrative Offices FAX (501) 784-2407



January 12, 2015

TO: Members of the Board of Directors  
Members of the Civil Service Commission

RE: Appointments:

The terms of Mr. Sam Sexton and Mr. Robert Cooper of the Civil Service Commission will expire March 31<sup>st</sup>, 2015. 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 February 10<sup>th</sup>, 2015. 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](http://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  
(501) 785-2801  
Administrative Offices FAX (501) 784-2407

Printed on 100% Recycled Paper

February 3, 2015 Regular Meeting

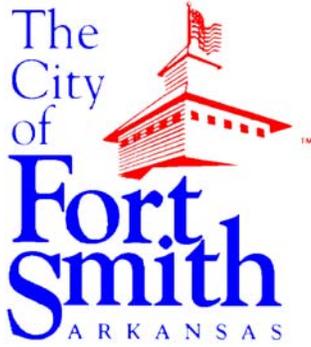
211

# February 2015

| February 2015 |    |    |    |    |    |    |
|---------------|----|----|----|----|----|----|
| Su            | Mo | Tu | We | Th | Fr | Sa |
| 1             | 2  | 3  | 4  | 5  | 6  | 7  |
| 8             | 9  | 10 | 11 | 12 | 13 | 14 |
| 15            | 16 | 17 | 18 | 19 | 20 | 21 |
| 22            | 23 | 24 | 25 | 26 | 27 | 28 |

| March 2015 |    |    |    |    |    |    |
|------------|----|----|----|----|----|----|
| Su         | Mo | Tu | We | Th | Fr | Sa |
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| 8          | 9  | 10 | 11 | 12 | 13 | 14 |
| 15         | 16 | 17 | 18 | 19 | 20 | 21 |
| 22         | 23 | 24 | 25 | 26 | 27 | 28 |
| 29         | 30 | 31 |    |    |    |    |

|             | Sunday       | Monday   | Tuesday  | Wednesday                                   | Thursday  | Friday    | Saturday  |
|-------------|--------------|--|--|---|---|-----------|-----------|
| Feb 1 - 7   | <b>Feb 1</b> | <b>2</b>   | <b>3</b><br>11:30am Planning Com. S.S. (Creekmore)<br>6:00pm Board of Directors (FSM Public Schools Serv. Cntr.)                                       | <b>4</b>                                    | <b>5</b><br>12:00pm Housing Assistance Bd. (Main Library)<br>6:00pm Historic District Com. (220 North 7 Street) | <b>6</b>  | <b>7</b>  |
|             | <b>8</b>     | <b>9</b><br>11:00am Property Owners Appeal Bd./TENATIVE (Planning Conf. Rm.) | <b>10</b><br>12:00pm Study Session (Main Library)<br>5:30pm Planning Com. (Creekmore)  | <b>11</b><br>12:00pm Parks Com. (Creekmore) | <b>12</b><br>12:00pm Oak Cemetery Com. (Creekmore)  | <b>13</b> | <b>14</b> |
| Feb 8 - 14  | <b>15</b>    | <b>16</b>  | <b>17</b><br>10:00am CBID (Area Agency)<br>4:30pm Library Board of Trustees (Main Library)<br>6:00pm Bd. of Directors (FSM Public Schools Serv. Cntr.) | <b>18</b>                                   | <b>19</b><br>12:00pm Transit Adv. Com. (6821 Jenny Lind Rd.)  | <b>20</b> | <b>21</b> |
|             | <b>22</b>    | <b>23</b>  | <b>24</b><br>12:00pm Study Session (Main Library)<br>4:00pm A & P Com. (Miss Laura's)<br>5:30pm Airport Com. (Airport)                                 | <b>25</b>                                   | <b>26</b><br>5:30pm Historic District S.S. (220 North 7 Street)   | <b>27</b> | <b>28</b> |
| Feb 15 - 21 |              |  |  |   |   |           |           |
| Feb 22 - 28 |              |  |  |   |   |           |           |



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 – Tracy Pennartz  
At Large Position 6 – Kevin Settle  
At Large Position 7 – Don Hutchings

**AGENDA ~ Summary**  
**Fort Smith Board of Directors**  
**REGULAR MEETING**  
**February 3, 2015 ~ 6:00 p.m.**  
**Fort Smith Public Schools Service Center**  
**3205 Jenny Lind Road**

**THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT ACCESS CHANNEL 214 AND ONLINE AT <http://www.ustream.tv/channel/city-of-fort-smith-board-of-directors-meetings>**

**INVOCATION & PLEDGE OF ALLEGIANCE**

Reverend Don Brewer, St. Luke Lutheran Church

**ROLL CALL**

- All present
- Mayor Sandy Sanders presiding

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

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

Information available by viewing rebroadcast of the meeting on the City Access Channel 214, the City website or <http://www.ustream.tv/channel/city-of-fort-smith-board-of-directors-meetings>

**APPROVE MINUTES OF THE JANUARY 20, 2015 REGULAR MEETING**

Approved as written

**ITEMS OF BUSINESS:**

1. Items regarding the Steel Horse Rally:
  - A. Consideration of Mayor’s veto of Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund (*Steel Horse Rally scheduled for May 1 & 2, 2015*)  
Veto upheld – 4 in favor (Lorenz, Catsavis, Settle & Hutchings), 3 opposed (Lau, Good & Pennartz)

- B. Ordinance authorizing the Mayor to execute an agreement with the Steel Horse Rally, Inc. for certain services for inhabitants of the City of Fort Smith ~ *Settle/Catsavis placed on agenda at the January 13, 2015 study session* ~  
No action taken due to veto of Ordinance No. 9-15 (Item No. 1A)
2. Items regarding property located at 8225 and 8227 Texas Road:
- A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (8225 & 8227 Texas Road)  
Approved 7 in favor, 0 opposed / Ordinance No. 12-15
- B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Extra-Territorial Jurisdiction Low Density Residential to Residential Attached / Rezoning: from Extra-Territorial Jurisdiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by classification located at 8225 and 8227 Texas Road*)  
Approved 7 in favor, 0 opposed / Ordinance No. 13-15
3. Ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*Setback exceptions for corner lots*)  
Approved 7 in favor, 0 opposed / Ordinance No. 14-15
4. Consent Agenda
- A. Resolution authorizing the installation of speed tables on Cliff Drive (\$30,000.00 / Engineering Department / Not Budgeted – Sales Tax Program) ~ *Settle/Lorenz placed on agenda at the January 27, 2015 study session* ~  
Approved 6 in favor, 1 opposed (Lau) / Resolution No. R-18-15
- B. Resolution authorizing acquisition of real property interests for Town Branch Drainage Improvements, Phase III, Project No. 11-06-B (\$7,500.00 / Engineering Department / Budgeted – Street Sales Tax Fund)  
Approved 7 in favor, 0 opposed / Resolution No. R-19-15
- C. Ordinance to abandon a public utility easement located in Commercial Park South, Phase II, an addition to the City of Fort Smith, Sebastian County, Arkansas  
Approved 7 in favor, 0 opposed / Ordinance No. 15-15
- D. Resolution authorizing agreements for easements for the Greg Smith Riverwalk  
Approved 7 in favor, 0 opposed / Resolution No. R-20-15

- E. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas, concerning administration and funding for the Homeland Security Grant Program (\$125,590.00 Grant Revenue / Police Department / Not Budgeted – Homeland Security)  
Approved 7 in favor, 0 opposed / Resolution No. R-21-15
- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the rehabilitation of the Lee Creek facility's horizontal Kaplan s-turbine (\$343,764.00 / Utility Department / 2014-2015 Budgeted – Operating Budget)  
Approved 6 in favor, 1 opposed (Settle) / Ordinance No. 16-15
- G. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with Year 2015 sewer system assessments (\$1,028,990.48 / Utility Department / Budgeted – 2014 Sales and Use Tax Bonds)  
Approved 6 in favor, 1 opposed (Settle) / Resolution No. R-22-15
- H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Dale Crampton Company for the 3900 Kelly Highway roof renovation (\$297,983.00 / Utility Department / Budgeted – Operating Budget)  
Approved 7 in favor, 0 opposed / Resolution No. R-23-15
5. Ordinance specifying the personnel authority of the City Administrator ~ Directors Settle, Lau, Good, Lorenz & Catsavis placed on agenda 1/30/2015 ~ Tabled 5 in favor, 2 opposed (Lau and Settle) pending further discussion at a future study session

**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 214, the City website or <http://www.ustream.tv/channel/city-of-fort-smith-board-of-directors-meetings>

**ADJOURN**  
7:18 p.m.

# **MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING**

**TUESDAY ~ FEBRUARY 3, 2015 ~ 6:00 P.M.**

## **FORT SMITH PUBLIC SCHOOLS SERVICE CENTER**

The meeting was called to order by Mayor Sandy Sanders, presiding. Invocation was given by Reverend Don Brewer of St. Luke Lutheran Church, followed by the Pledge of Allegiance. On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, Mike Lorenz, George Catsavis, Tracy Pennartz, Kevin Settle and Don Hutchings. The Mayor declared a quorum present.

Mayor Sanders inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

The minutes of the January 20, 2015 regular meeting was presented for approval. Settle, seconded by Pennartz, moved approval of the minutes as written. The members present all voting aye, the Mayor declared the motion carried.

Mayor Sanders and City Administrator Ray Gosack advised they have been participating in the University of Arkansas at Fort Smith (UAFS) Mentoring Program. They recognized UAFS staff member Rick Goins, who heads the mentoring program, conveying appreciation for his efforts in providing such a valuable tool for students. They further recognized UAFS student, Minzhi Hickerson, and UAFS graduate Brad Andrews, whom they have recently been mentoring.

**February 3, 2015 Regular Meeting**

With regard to the time limit policy for persons wishing to address the Board, the Mayor communicated that five (5) minutes per side would be granted for controversial items with three (3) minutes for rebuttal per side, and two (2) minutes for comments only.

Item No. 1 consisted of the following items pertaining to the Steel Horse Rally:

- A. Consideration of Mayor's veto of Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund *(Steel Horse Rally scheduled for May 1 & 2, 2015)*
- B. Ordinance authorizing the Mayor to execute an agreement with the Steel Horse Rally, Inc. for certain services for inhabitants of the City of Fort Smith ~ *Settle/Catsavis placed on agenda at the January 13, 2015 study session ~*

Administrator Gosack briefed the Board on the item advising Mayor Sanders vetoed Ordinance No. 9-15 authorizing the appropriation of funds from the General Fund for the Steel Horse Rally scheduled for May 1 & 2, 2015. The ordinance was adopted by the Board of Directors at the January 20, 2015 regular meeting. Per Section 2-34(a) of the Fort Smith Municipal Code, "...a veto by the mayor may be overridden by the affirmative vote of five (5) or more members of the board of directors." If an affirmative vote of five (5) or more members of the Board is not received, the Mayor's veto will be upheld.

Item No. 1B is an agreement that's validity hinges on the action taken on Item No. 1A. If the veto is overridden and funds appropriated, the Board will need to consider the service agreement with Steel Horse Rally, Inc., which specifies the services to be provided by the organization and payment to be made by the City for said services. If the veto is upheld, the service agreement

**February 3, 2015 Regular Meeting**

will be irrelevant and no action necessary since no funding would be made available.

The following individuals were present to address the Board:

- Dennis Snow, representing Steel Horse Rally, Inc.  
Fort Smith, Arkansas

Re: Spoke in favor of the item and expressed gratitude to the Board for passage of the ordinance at the January 20, 2015 regular meeting. He alleged such was never about the subject funds citing he “never expected it to be approved”. The event will generate tax dollars; therefore, the intent was to put forth an effort to obtain City funding merely to help the event be even larger out of the gate. The subject funds are intended for advertising in multiple states to get the message out to bring in the largest possible crowd.

- Keith Gray, volunteer for the veteran’s in Fort Smith  
Mountainburg, AR

Re: Spoke in favor of the item alleging the return on investment for the city will be measurable with sales tax revenues. More importantly, such will also spotlight veteran’s service organizations and the return on said investment will provide much needed recognitions to veterans for their service.

Mayor Sanders conveyed his support of the Steel Horse Rally; however, he simply cannot justify the use of tax dollars for what should be a private sector effort such as Bikes, Blues and Barbeque in Fayetteville. The Board of Directors and staff devoted a great amount of time and effort to establish the 2015 Budget, whereby every single department had funding requests reduced. During the budget process, approximately \$90,000 in additional income was identified and presented to the Board for consideration; however, the Board denied the proposed revenue increases, which creates a revenue issue with the 2015

***February 3, 2015 Regular Meeting***

Budget as originally adopted. Furthermore, the City has a process for organizations to participate in an extensive application process to receive funds from the City, which includes a thorough review by the Outside Agency Review Panel. Such review resulted in approximately \$145,800 for approximately 20 non-profit organizations to receive City funding for worthwhile causes and events, which is a reduction of \$16,200 from last year. He expressed concern with allocating the subject funds when multiple organizations were required to participate in the extensive process to receive funding from the City. Concern was also conveyed that the ordinance sets an unhealthy precedent citing such has already prompted contact by other organizations requesting funding for their event, also without participation in the aforementioned process. A great deal of thought and evaluation was put into the veto alleging is in the best overall interest of the City. Although, his desire is for the veto to be upheld, he also reiterated and conveyed much support that the Steel Horse Rally is a great success.

Director Lorenz expressed his opinion that a precedent has already been set and provided the Board with a list of events from the Finance Department from the last ten (10) years that have received contributions from the City. Such list excludes the outside agency funding. He announced the Steel Horse Rally has the full support of the Board and all want the event to succeed. Much appreciation was extended to all those in attendance to show support of the event and also conveyed heartfelt gratitude to the veterans for their service.

Director Hutchings spoke in favor of providing funding for the event citing he wants the event to take place and succeed. He also conveyed much gratitude

***February 3, 2015 Regular Meeting***

to all those in attendance to support the event, as well as Mr. Snow for his efforts and Mayor Sanders for his leadership.

Director Settle expressed his desire for the City to help fund the event citing such is in line with the Board's goals. Regarding the comments of Mr. Gray, he conveyed much confidence that the event will result in a substantial "return on investment" over many years to come.

Director Good conveyed his support of the event; however, he spoke in opposition to utilizing taxpayer dollars citing organizations can also request funding from the Community Development Advisory Committee (CDAC) and the Advertising and Promotion Commission. Due to the subject funding request, he too has been contacted by an organization that intends to request funding from the City; therefore, he expressed much concern that such will, in fact, set a precedent for future requests.

Director Catsavis expressed gratitude to Mr. Snow, conveyed support of both the event and City funding, as well as gratitude to the veterans in attendance. He further questioned if a lesser amount would prompt a more favorable approval from the Board to provide City funds for the event whereby Mayor Sanders confirmed such would not sway his initial opposition to utilizing taxpayer dollars for the event.

Lorenz, seconded by Catsavis moved to override the Mayor's veto. The members voted as follows: ayes – Lorenz, Catsavis, Settle and Hutchings; nays – Lau, Good and Pennartz. The Mayor declared the motion defeated citing such did not receive the required five (5) affirmative votes to override the veto.

**February 3, 2015 Regular Meeting**

Regarding Item No. 1B, no action was taken due to the Mayor's veto being upheld (Item No. 1A).

Item No. 2 consisted of the following items pertaining to property located at 8225 and 8227 Texas Road:

- A. Ordinance accepting certain territory into the city of Fort Smith, Arkansas (8225 & 8227 Texas Road)
- B. Ordinance amending the Master Land Use Plan map and rezoning identified property and amending the zoning map (*Master Land Use Plan: from Extra-Territorial Jurisdiction Low Density Residential to Residential Attached / Rezoning: from Extra-Territorial Jurisdiction Open-1 (ETJ O-1) to Residential Single Family Duplex Medium/High Density (RSD-3) by classification located at 8225 and 8227 Texas Road*)

Director of Development Services Wally Bailey briefed the Board on Item No. 2A advising such is per the request of Billy M. and Aretta Browder. The purpose for the annexation is to allow access to the City of Fort Smith sewer system. The subject area consists of 4.8 acres on the east side of Texas Road. In accordance with Arkansas law, a petition for annexation was filed at the County Court of Sebastian County. The Court found that the petition had been properly prepared and filed. The Sebastian County Court issued an Order of Annexation on December 11, 2014.

Item No. 2B amends the Master Land Use Plan map and zoning classifications for the subject property. The Planning Commission held a public hearing on January 13, 2015 with no individual present to speak in opposition. The Planning Commission approved the Master Land Use Plan amendment with eight (8) in favor, zero (0) opposed. The Planning Commission unanimously

***February 3, 2015 Regular Meeting***

amended the rezoning request to make approval subject to the Board of Director's approval of the petition to annex said property and ultimately approved the amended rezoning request with eight (8) in favor, zero (0) opposed.

Director Pennartz expressed concern and inquired what would happen if the existing sewer line is an inadequate size to connect to the sewer system.

Mr. Bailey advised when an application for a plumbing permit is requested, such is reviewed by the Utility Department technicians to ensure the connection is adequate. If not, the matter must be addressed by the property owner prior to connection to the City's main.

Director Settle inquired if the proposed zoning coincides with the existing land use whereby Mr. Bailey confirmed such.

Lau, seconded by Hutchings, moved adoption of Item No. 2A. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 12-15.

Lau, seconded by Good, moved adoption of Item No. 2B. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried and the ordinance was adopted and given Ordinance No. 13-15.

**February 3, 2015 Regular Meeting**

Item No. 3 was an ordinance amending the 2009 Unified Development Ordinance of the City of Fort Smith (*Setback exceptions for corner lots*)

Mr. Bailey briefed the Board on the item advising such addresses issues regarding setback exceptions for corner lots. Prior to the UDO, corner lots were allowed to use a reduced setback on one (1) of the adjoin streets, which is known as the exterior side yard setback. The UDO requires lots to have two (2) front yard setbacks, which allows for setback continuity of buildings constructed on both streets. Lots platted prior to the effective date of the UDO were not always platted with enough property to allow for house or duplex to be constructed and meet the increased setback requirements on both streets. The proposed amendment will add a setback exception to 27-40(C) of the UDO, that will allow residential lots platted prior to the effective date of the UDO the option to use the 15 foot exterior side yard setback which was the exterior side yard setback for residential lots. Such will not apply to multi-family developments. The Planning Commission held a public hearing on January 13, 2015 and the amendment was approved with eight (8) in favor, zero (0) opposed.

Lorenz, seconded by Catsavis, moved adoption of the ordinance. The motion included suspending the rule to allow the three (3) full readings of the ordinance to be by caption and for the readings to occur on the same date. The City Clerk read the ordinance for its readings and the members all voting affirmatively, the Mayor declared the motion carried. Catsavis, seconded by Hutchings, moved adoption of Section 5 the emergency clause. The members all voting affirmatively, the Mayor declared the motion carried and the ordinance

**February 3, 2015 Regular Meeting**

and emergency clause were adopted with the ordinance given Ordinance No. 14-15.

The Consent Agenda (Item No. 4) was introduced for consideration, the items being as follows:

- A. Resolution authorizing the installation of speed tables on Cliff Drive (\$30,000.00 / *Engineering Department / Not Budgeted – Sales Tax Program*) ~ *Settle/Lorenz placed on agenda at the January 27, 2015 study session ~*
- B. Resolution authorizing acquisition of real property interests for Town Branch Drainage Improvements, Phase III, Project No. 11-06-B (\$7,500.00 / *Engineering Department / Budgeted – Street Sales Tax Fund*)
- C. Ordinance to abandon a public utility easement located in Commercial Park South, Phase II, an addition to the City of Fort Smith, Sebastian County, Arkansas
- D. Resolution authorizing agreements for easements for the Greg Smith Riverwalk
- E. Resolution authorizing the execution of a memorandum of understanding between the City of Fort Smith, Arkansas and Sebastian County, Arkansas, concerning administration and funding for the Homeland Security Grant Program (\$125,590.00 *Grant Revenue / Police Department / Not Budgeted – Homeland Security*)
- F. Ordinance declaring an exceptional situation and waiving the requirements of competitive bidding for the rehabilitation of the Lee Creek facility's horizontal Kaplan s-turbine (\$343,764.00 / *Utility Department / 2014-2015 Budgeted – Operating Budget*)
- G. Resolution authorizing the Mayor to execute an agreement with RJN Group, Inc. for providing engineering services associated with Year 2015 sewer system assessments (\$1,028,990.48 / *Utility Department / Budgeted – 2014 Sales and Use Tax Bonds*)

**February 3, 2015 Regular Meeting**

- H. Resolution accepting the bid of and authorizing the Mayor to execute a contract with Dale Crampton Company for the 3900 Kelly Highway roof renovation (\$297,983.00 / Utility Department / Budgeted – Operating Budget)

Regarding Item No. 4A, Director Catsavis inquired how many speed tables are being installed and the ability to remove if such is requested in the future. Due to the cost, he further inquired if fewer speed tables would address the speeding issue.

Director of Engineering Stan Snodgrass advised the proposed authorizes the installation of six (6) speed tables on Cliff Drive between South 30<sup>th</sup> Street and Old Greenwood Road. The proposed is essentially a pilot program and will be reevaluated after six (6) to twelve (12) months to allow for community feedback on the effectiveness and desirability of the speed tables before further installations are considered. Regarding the number of speed tables, such can be reduced; however and in order to obtain the best results of effectiveness, staff recommends the proposed number of speed tables remain intact.

Regarding Item No. 4E, Director Lau questioned the necessity of the items included in the grant, specifically the robot and watercraft. Due to such, he requested confirmation that the funds cannot be utilized to purchase other items of more necessity to the department.

Police Chief Kevin Lindsey advised the funds are from a Homeland Security Grant; therefore, very specific and restrictive on what can be purchased with said funds. He further explained the necessity of the watercraft citing the Police Department does not currently maintain such and has to use the Fire

**February 3, 2015 Regular Meeting**

Department's watercraft when such is necessary. When two (2) departments must utilize the same watercraft, such tends to hamper either departments protocol and availability of use. With the anticipated development along the riverfront, he conveyed much certainty the watercraft will prove to be a much needed asset.

Regarding the aforementioned watercraft, Director Pennartz inquired if such will require additional personnel or training of current personnel, and if approval to utilize the river is required from the Corps of Engineers.

Chief Lindsey confirmed no additional personnel will be required; however, training will most certainly be scheduled for existing personnel. With regard to approval to utilize the watercraft in the Arkansas River, he also confirmed no such approval is required.

Director Catsavis inquired of the abilities and benefits of the robots whereby Chief Lindsey advised such will only enhance the safety of the officers and provided multiple instances regarding such.

Regarding Item No. 4F, Director Lau inquired if the subject company is qualified to service the s-turbines and questioned the necessity of waiving of the complete bidding requirements.

Director of Utilities Steve Parke advised the subject company was utilized to identify the routine maintenance required on the s-turbines and was identified, and utilized, as the top qualifier in the proposals evaluation process. Because they are the firm who disassembled the s-turbine for the maintenance and identified the necessary rehabilitation, it is in the best interest for the firm to

**February 3, 2015 Regular Meeting**

perform the rehabilitation. Mr. Parke further provided in-depth briefing on the procedure utilized on such project.

Regarding Item No. 4G, Director Settle questioned if proposals from other companies were considered.

Mr. Parke advised due to the time constraints of the consent decree, the subject firm is recommended due to them being the most educated. Due to time constraints mandated by the consent decree, no other firms were considered because there is no time for other firms to get oriented. Although, no other firms were considered this year, other companies have been considered in the past.

Director Pennartz inquired if there is a precedent given to local or in-state firms, provided they're qualified to do the work.

Mr. Gosack advised preference to local firms is unlawful; however, the Board identified said issue as a legislative priority and is currently working with the Arkansas Municipal League on draft legislation to get such introduced in the legislature.

Mr. Parke added that the RJN Group has retained a local office in Fort Smith since 2009 and currently employs multiple Fort Smith residents.

Hutchings, seconded by Pennartz, moved adoption of all consent agenda items. The members all voted affirmatively with the exception of Director Lau voting "no" on Item No. 4A, Director Settle voting "no" on Items No. 4F and 4G. The Mayor declared the motion carried and the ordinances and resolutions were adopted with the ordinances given Ordinance No. 15-15 and 16-15, respectively, and the resolutions given Resolution No. R-18-15 through R-23-15 respectively.

**February 3, 2015 Regular Meeting**

Item No. 5 was an ordinance specifying the personnel authority of the City Administrator ~ Directors Settle, Lau, Good, Lorenz & Catsavis placed on agenda 1/30/2015 ~

Administrator Gosack briefed the Board on the item was placed on the agenda at the request and concurrence of the above noted Board members, pursuant to Section 2-31(3) of the Fort Smith Municipal Code:

*“An item of business may be placed on the agenda at least forty-eight (48) hours prior to the time of the meeting of consideration by four (4) members of the board upon notice to the city clerk of the name of the proposed directors and specific subject of the items of business to be considered. The city clerk shall immediately notify the directors, the city administrator and the mayor of the specific subject of the addition to the agenda.”*

The following individuals were present to address the Board:

- David Harris  
Fort Smith, Arkansas

Re: The citizens of Fort Smith elect members of the Board of Directors to act on their behalf; therefore, he spoke in favor of the item.

- Jack Swink  
Fort Smith, Arkansas

Re: Rather than conveying support or opposition to the item, he spoke in favor of changing the form of government.

Mayor Sanders requested multiple times for Mr. Swink to speak either for or against the subject item. Mr. Swink refused and continued to speak in favor of changing the form of government; therefore, the Mayor requested the sergeant at arms to escort Mr. Swink to his seat. Prior to completion of the aforementioned request, Mr. Swink left the podium.

- Don Bales  
Bonanza, Arkansas

**February 3, 2015 Regular Meeting**

Re: Expressed discontent with the action taken with Mr. Swink alleging a change in the form of government is directly related to the subject ordinance.

After the Mayor requested he, too, speak either for the against the subject ordinance, Mr. Bales stated, *"I'm in favor of giving the hire/fire authority back to the citizens"*

There was extensive discussion with multiple members of the Board conveying their opinion on the subject matter. It was determined that additional discussion was warranted; however, Director Pennartz inquired if a legal liability exists for individual directors as the ordinance is now and if it is repealed.

City Attorney Jerry Canfield advised of two (2) possible bases of liability. The first is under State law whereby if it can be proven that an individual acted intentionally to hurt someone, there would be a base for liability. He knows of no issue on an acting Board member. The second is under Federal law whereby if it was proven that someone acted on the base of race or sex, there could be a base for liability. The intentional violation of both instances would be a difficult to prove in court.

Hutchings, seconded by Pennartz, moved to table the item to the earliest possible study session. The members voted as follows: ayes – Good, Lorenz, Catsavis Pennartz and Hutchings; nays – Lau and Settle. The Mayor declared the motion carried and the item was tabled to the next available study session.

Mayor Sanders opened the Officials Forum with the following comments offered:

- Mayor Sanders

**February 3, 2015 Regular Meeting**

Re: Reminded all the first Fort Smith Marthon will take place this coming Sunday, February 8, 2015, and advised such meets a Board goal of hosting a big event.

➤ Director Pennartz

Re: Congratulated Southside High School on recent national accolades.

➤ Director Settle

Re: 1. Commended Southside High School upon their recent win and advancement in the Science Bowl competition. Her further congratulated Ramsey Junior High for placing 4<sup>th</sup> in their Science Bowl competition.

2. Congratulated the University of Arkansas Fort Smith (UAFS) men's and women's basketball teams for their 1<sup>st</sup> place win at a recent conference.

3. Invited all to the upcoming games on at 5:30 p.m., Thursday, February 12, 2015 at the Stubblefield Center and 6:00 p.m., Tuesday, February 10, 2015 at Blue Lion where there will be an award ceremony for the women's volley ball team.

There being no further business to come before the Board, Catsavis moved that the meeting adjourn. The motion was seconded by Lorenz, and the members all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:18 p.m.

APPROVED:

  
MAYOR

ATTEST:

  
CITY CLERK