Mayor – Sandy Sanders

Acting City Administrator – Jeff Dingman

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
April 19, 2016 ~ 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 APRIL 5, 2016 REGULAR MEETING

ITEMS OF BUSINESS:

1. Ordinance amending Section 14-52(C) of the Fort Smith Municipal Code for the purpose of amending the requirements for parking and screening of vehicles on residentially zoned property ♦

2. Ordinance ordering the owners of a certain dilapidated and substandard structure to demolish same, authorizing the City Administrator to cause the demolition of such structure to occur, and for other purposes *(2910 Russell Street)* ♦

3. Ordinance adopting the 2016 amendments to the sanitary sewer system pre-treatment regulations and permits ordinance codified in Division 2 of Article VI of Chapter 25 of the Fort Smith Code of Ordinances ♦

4. Ordinance amending Ordinance No. 10-96 as previously amended granting a non-exclusive franchise to Elva Stoufer, d/b/a Non-Ambulatory Transportation Service, Inc.

5. Consent Agenda

   A. Resolution authorizing the Mayor to execute an amendment to the agreement with the River Valley Sports Complex adjusting the date of completion *~ Settle/Good placed resolution on agenda at the April 12, 2016 study session ~* ♦

   B. Resolution accepting the bid and authorizing the Mayor to execute a contract with Advanced Workzone Service, LLC for the construction of the Blue Lion Bikeway - Sharrows *($37,775.00 / Parks Department / Budgeted – 1/8 Cent Sales Tax)* ♦

   C. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Transportation Alternatives Program Funds ♦

   D. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Recreational Trails Funds ♦

   E. Resolution authorizing the Mayor to enter into an agreement with the Western Arkansas Tennis Association for operation of the Tennis Center at Creekmore Park

OFFICIALS FORUM ~ presentation of information requiring no official action

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

- Mayor
- Directors
- City Administrator

EXECUTIVE SESSION

Appointments: Advertising and Promotion Commission (1) and Planning Commission (1)

ADJOURN

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTION 14-52 SUBSECTION (C) OF THE FORT SMITH MUNICIPAL CODE FOR THE PURPOSE OF AMENDING THE REQUIREMENTS FOR PARKING AND SCREENING OF VEHICLES ON RESIDENTIALLY ZONED PROPERTY

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

SECTION 1: Section 14-52 (C) of the Fort Smith Municipal Code is amended by adding a new subparagraph (5) to read as follows:

(5) When a residential lot is platted on a cul-de-sac and where the lot has a reduced frontage because of the radius of the street, the maximum improved area for parking vehicles is limited to fifty (50) percent of the gross front or exterior side yard land area.

SECTION 2: Emergency clause. It is found and determined that the adoption of this amendment to the requirements for parking of vehicles on residentially zoned property in the Fort Smith Municipal Code is necessary so that the protection of the health, safety and welfare of the inhabitants of the City requires the amendments be effective, and the amendments are hereby made effective, as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS _____DAY OF APRIL, 2016.

APPROVED:

_____

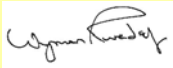
Mayor

ATTEST:

_____

City Clerk

Approved as to form:



Publish 1 Time

Memorandum

To: Jeff Dingman, Acting City Administrator
From: Wally Bailey, Director of Development Services
Date: April 13, 2016
Subject: Residential Parking – Code Amendment

The current municipal code states that "the improved area for parking vehicles in a front yard shall be limited to forty (40) percent of the gross front or exterior side yard land area." Recently the Property Owner Appeals Board (POAB) reviewed a variance from the maximum improved area. This application was to allow a larger driveway for a single family house with a three (3) car garage which is located on a cul-de-sac lot. The variance was from forty (40%) percent to fifty (50%).

This variance request revealed an obvious unintended consequence with the current ordinance. Driveways for single family homes and duplexes constructed on the pie shaped lot of a cul-de-sac are difficult to make comply with the municipal code requirement.

Lots on the radius of a cul-de-sac have limited property in the front yard because of the shape of the lot. Attached are copies from a subdivision plat that shows the size and shape of lots on the radius of a cul-de-sac. *See exhibits 1A and 1B.*

Homebuilders have attempted to comply with the regulations as evidenced in the photographic *exhibit 2A and 2B*. As you can see from the photographs, the shape of the driveway is promoting wheel ruts beside the driveway. *Exhibit 3* is a photograph of the driveway that was installed with the POAB variance from 40% to 50% lot coverage.

The issue of providing special consideration for lots located on the radius of a cul-de-sac already exists in the Fort Smith Municipal Code. Section 27-404 (c) (5) allows these lots to have a reduced front yard setback of twenty (20) feet regardless of the front yard setback for the specific zoning classification of the property. *See exhibit 4.*

I presented the POAB with this information and a proposed amendment that allows for the improved area to be increased from forty (40) percent to fifty (50) percent for platted lots on the radius of a cul-de-sac. The POAB voted unanimously to support the proposed code amendment. I also asked the Greater Fort Smith Association of Homebuilders for their review and comments on the proposed amendment. The GFSAHB President, Rocky Walker, submitted a letter in support of the recommendation. *See exhibit 5.* A copy of the proposed amendment in context with section 14-52 (c) is enclosed as *exhibit 6.*

I have prepared an ordinance amending the Fort Smith Municipal Code section 14-52 (c).

Please feel free to contact me if you have any questions.

Exhibit 1A

PLAT CERTIFIED CORRECT:

Douglas R. Whitlock
Professional Surveyor
Arkansas No. 1369

CERTIFICATE OF AUTHORIZATION
MICKLE-WAGNER-COLEMAN, INC.
CO.3 NO. 1507
No. 86
ARKANSAS

PLANNING COMMISSION APPROVAL
Date May 14, 2014
Chairman
Secretary

FILED
MAY 14 2014
SHARON BROOKS
Circuit Clerk & Recorder
BY D.C.

FILED FOR RECORD this 14th Day of May, 2014, at 4:39 O'clock P. M.
Clerk and Ex-Officio Recorder SHARON BROOKS
by D.C.

THIS PLAT FILED for the purpose of placing on record

The BOROUGH at MIDDLETON
Lots 1 Thru 36 and Tract A

The right-of-way as shown on this plat is hereby dedicated to the City of Fort Smith ("City") for public use. The easements shown on this plat are hereby dedicated to the City for Utility, drainage, access and other purposes. Any easement designated as a "utility easement" is dedicated to the City for the installation, operation and maintenance of City owned utilities and utilities, including cable TV, operated by utility companies having a franchise agreement with the City. The City and City franchised utility companies shall have access through and along designated easements for their personnel and equipment at all times with the authority to cut down and keep trimmed from the dedicated easements trees, hedges and shrubs that may interfere with or endanger such utilities. In the event that fencing of individual lots is desired, gates that provide free ingress and egress to, and within, the dedicated easement shall be provided. Easements designated "certs" easements" are provided for the purpose of trimming tree limbs which extend into the easement; the easement begins twelve feet above the ground and extends vertically upward.

ALLOTTERS: RYE HILL DEVELOPERS PHASE I, LLC.

Richard B. Griffin, Operating Manager

STATE OF ARKANSAS
COUNTY OF SEBASTIAN: Sworn and subscribed before me this 12th Day of May, 2014
Notary Public
My Commission Expires 12/15/18

JANA JETTON
NOTARY PUBLIC
SEBASTIAN COUNTY, ARKANSAS
My Commission Expires 12-15-18

LEGEND

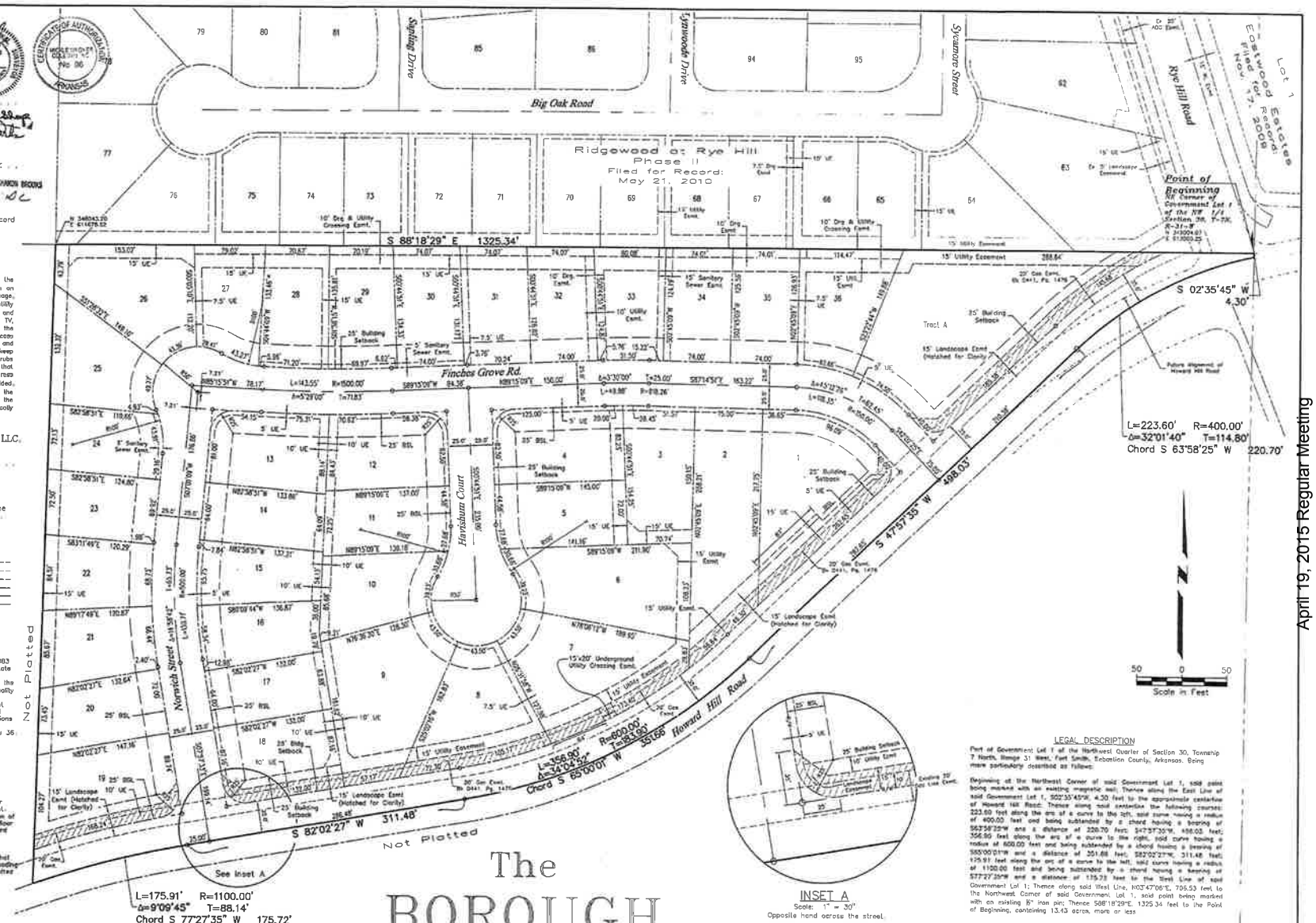
UE	Utility Easement
D/E	Drainage Easement
SS/E	Sanitary Sewer Easement
R/W	Right-of-Way
BSL	Building Setback Line
	Lot Line

NOTES:
1. 1/2" Iron Pins Set At Property Corners.
2. All Right of Way Return Radii 25.0'.
3. All Distances along Curves are Chord Distances Unless Otherwise Noted.
4. Basis of Bearings: Bearings are Grid, AR North Zone, NAD83
5. Basis of Coordinates: Coordinates are NAD83, Arkansas State Plane, North Zone, U.S. Feet
6. Tract A is not a residential building lot. It is intended for the operation and maintenance of a storm detention/water quality facility.
7. Section 27-503-19 of the City of Fort Smith Development Code requires sidewalks on one side of internal residential street. The Developer hereby designates the sidewalk locations as follows:
   Along the street frontage of Lots 4 thru 6 and 19 thru 36
8. Recommended minimum finished floor elevations are as follows:

Lot	Min. Finished Floor Elev.*
32	494.8
33	494.9

*The recommended minimum finished floor elevations shown are for guidance only, and are not to be considered a restrictive covenant. The elevations are 1.0' or more above the 100 year flood elevation of the drainageway on, or adjacent to the lot in question. Finished floor elevations are based on a structure set at the minimum front yard setback; changing the building location will also change the recommended finished floor elevations.

Setting a structure at the elevation shown is not an assurance that flooding will not occur since improper site grading can lead to flooding during a 100-year event; a professional engineer should be consulted to prepare a site specific grading plan.



INSET A
Scale: 1" = 30'
Opposite hand across the street.

LEGAL DESCRIPTION

Part of Government Lot 1 of the Northwest Quarter of Section 30, Township 7 North, Range 31 West, Fort Smith, Sebastian County, Arkansas. Being more particularly described as follows:

Beginning at the Northwest Corner of said Government Lot 1, said point being marked with an existing magnetic nail; Thence along the East Line of said Government Lot 1, S02°35'45"W, 4.30 feet to the approximate centerline of Howard Hill Road; Thence along said centerline the following courses: 223.60 feet along the arc of a curve to the left, said curve having a radius of 400.00 feet and being subtended by a chord having a bearing of S63°58'25"W and a distance of 220.70 feet; S47°57'35"W, 498.03 feet; 356.00 feet along the arc of a curve to the right, said curve having a radius of 600.00 feet and being subtended by a chord having a bearing of S65°00'01"W and a distance of 351.66 feet; S82°02'27"W, 311.48 feet; 175.91 feet along the arc of a curve to the left, said curve having a radius of 1100.00 feet and being subtended by a chord having a bearing of S77°27'35"W and a distance of 175.72 feet to the West Line of said Government Lot 1; Thence along said West Line, N03°47'06"E, 705.53 feet to the Northwest Corner of said Government Lot 1, said point being marked with an existing 5/8" iron pin; Thence S88°18'29"E, 1325.34 feet to the Point of Beginning, containing 13.43 acres, more or less

The BOROUGH at MIDDLETON

Lots 1 thru 36 and Tract A, Part of the Northwest Quarter, Section 30, T-7-N, R-31-W
Fort Smith, Sebastian County, Arkansas

Owner & Developer
Rye Hill Developers Phase I, LLC.
610 Towson Avenue
Fort Smith, Arkansas 72901

MICKLE-WAGNER-COLEMAN, INC.
Engineers Surveyors Consultants
P.O. Box 1507 Fort Smith, Arkansas
Scale: 1" = 30' May 2014

mid farms ph 1 -02- plat.dwg

F1968

Exhibit 1B

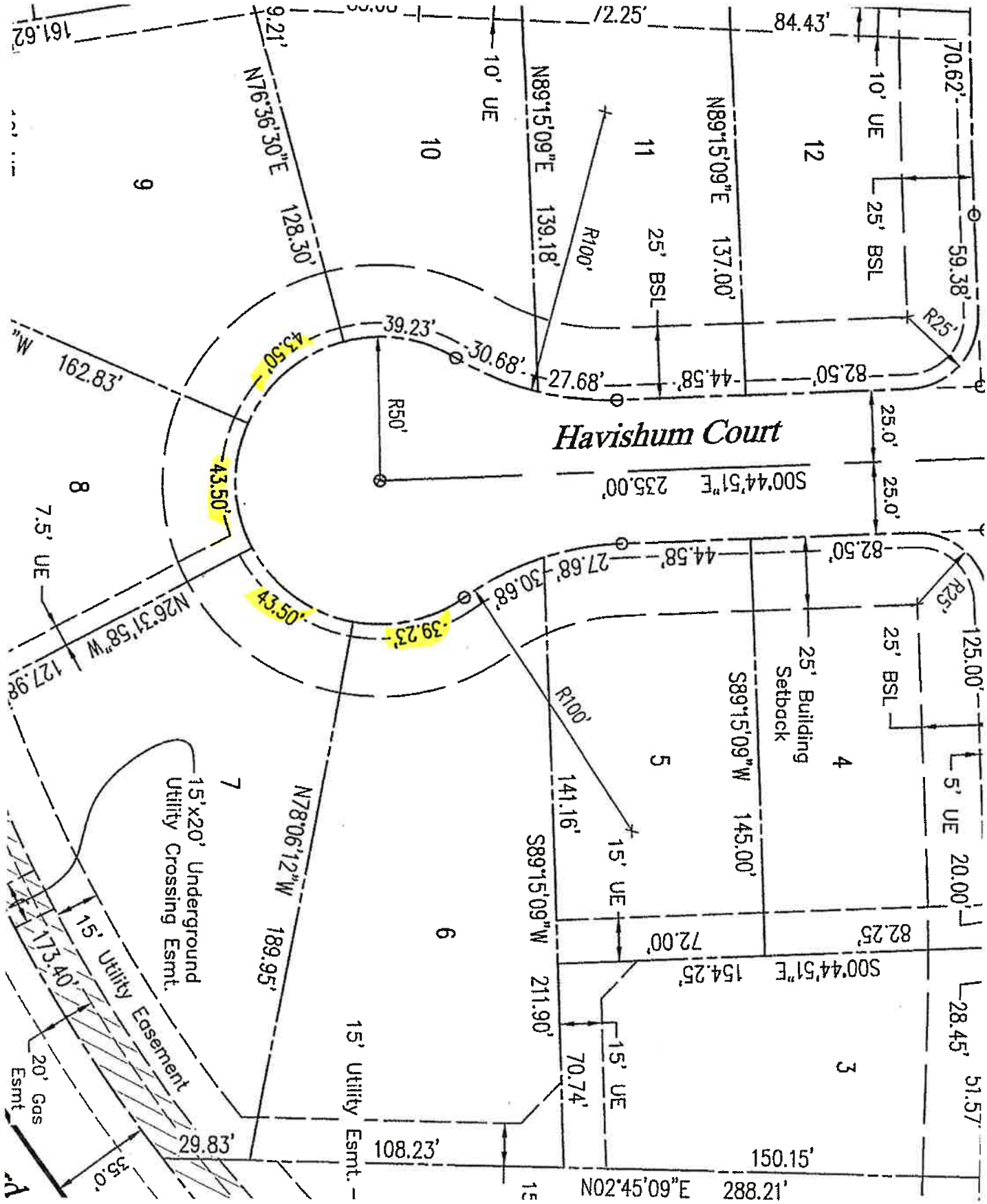

Havishum Court
S00°44'51"E 235.00'
25.0'
25.0'
82.50'
44.58'
27.68'
30.68'
39.23'
43.50'
R50'
R100'
R25'
59.38'
70.62'
84.43'
72.25'
10' UE
25' BSL
N89°15'09"E 137.00'
N89°15'09"E 139.18'
N76°36'30"E 128.30'
161.62'
9.21'
162.83'
N26°31'58"W 127.98'
7.5' UE
125.00'
20.00'
5' UE
25' Building Setback
S89°15'09"W 145.00'
141.16'
S89°15'09"W 211.90'
15' UE
72.00'
82.25'
154.25'
S00°44'51"E
28.45'
51.57'
70.74'
N78°06'12"W 189.95'
15' Utility Easement
15' Utility Esmt.
108.23'
150.15'
N02°45'09"E 288.21'
29.83'
35.0'
20' Gas Esmt
15'x20' Underground Utility Crossing Esmt.
173.40'
1
2
3
4
5
6
7
8
9
10
11
12

Exhibit 2A

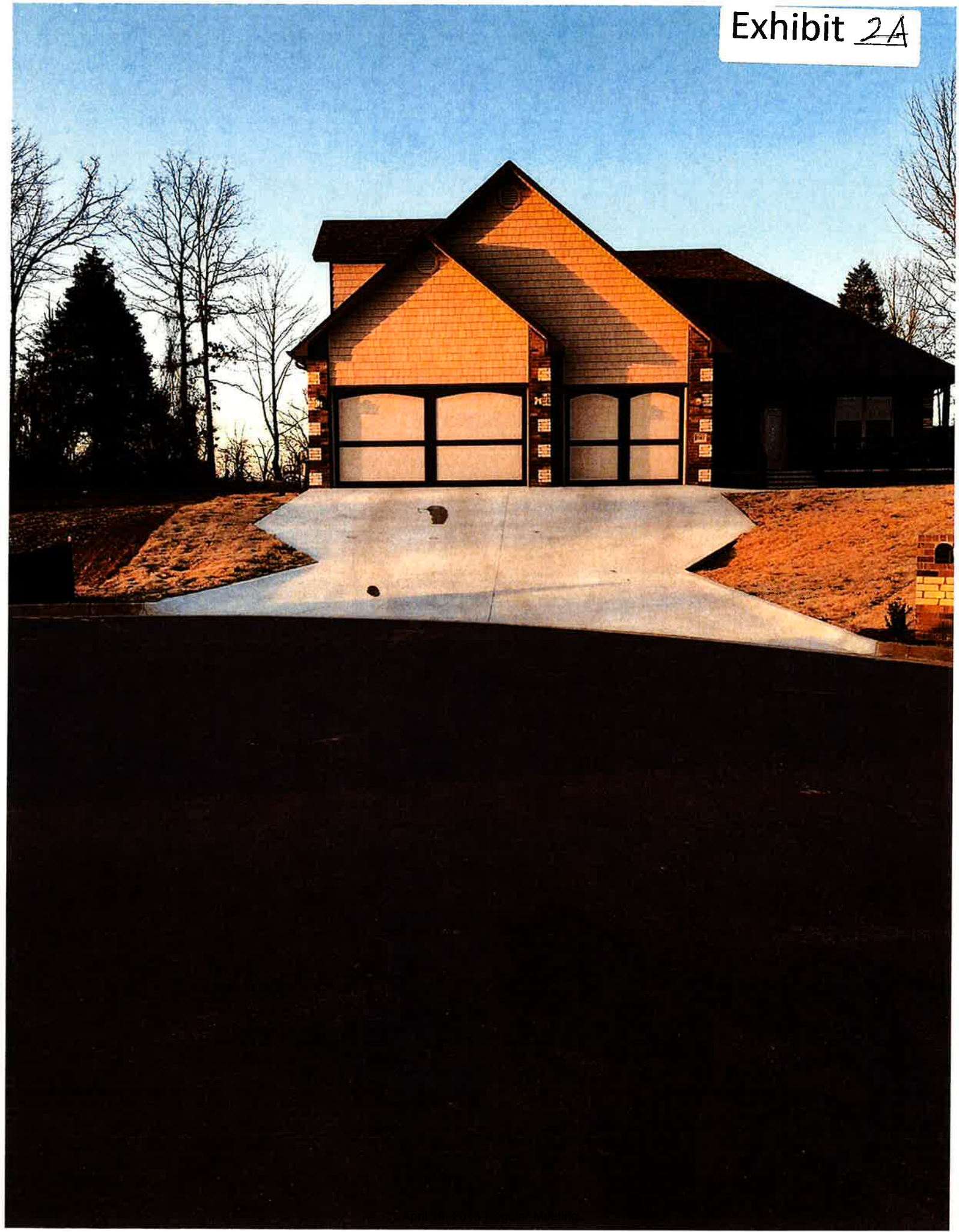


Exhibit 2B

Exhibit 3

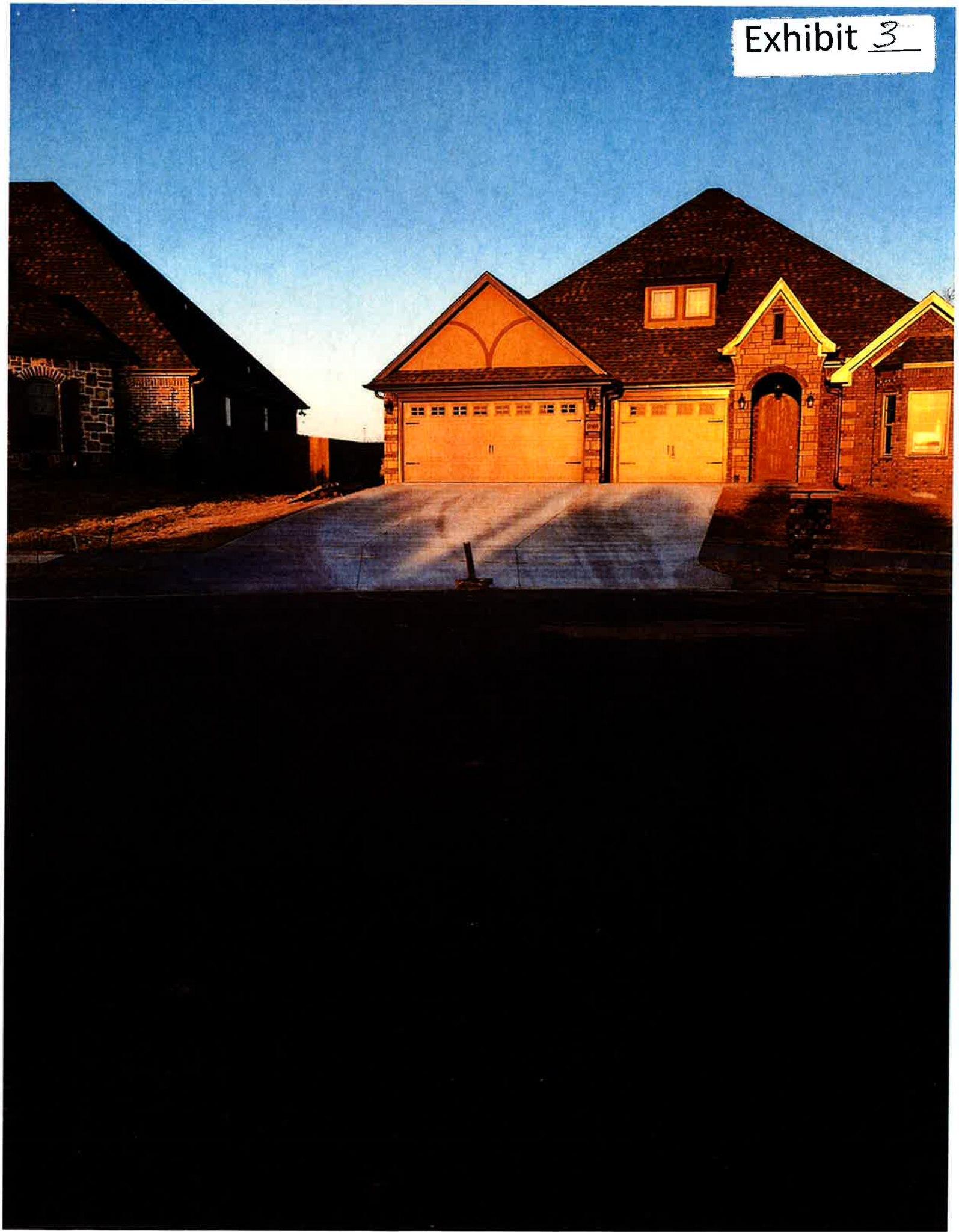


Exhibit 4

Fort Smith Municipal Code (UDO) Section 27-404 (c) (5)

All residential lots on a cul-de-sac street that have frontage on the radius of the cul-de-sac are permitted to have a front yard setback of twenty (20) feet.

Exhibit 5

Greater Ft. Smith Association of Homebuilders

City of Ft. Smith

Mr. Mayor, Mr. Administrator, City Directors, Dept. of Planning

To whom it may concern,

The Greater Ft. Smith Association of Homebuilders has always taken pride in our city and very much appreciate the great working relationship that City officials have had towards development and residential construction. The issue of parking coverage on cul-de-sac lots versus green space especially with a three-car garage has been difficult to attain as seen in some of the convoluted solutions that one can see in the example photos. The spirit of the code is very important as seen in common sense neighborhood design requirements. A simple straight forward solution as seen in this Municipal Code Section 14-52(c) amendment of 40% to 50% of concrete coverage is best aesthetically and easier on all parties concerned. That is why the Greater Ft. Smith Association of Homebuilders supports this change. Thank you for continuing due diligence on behalf of the citizens of Ft. Smith and making our city a great place to do business as we all look forward to the future.

Sincerely,

Rocky Walker

2016 President GFSAHB

Exhibit 6

Fort Smith Municipal Code Section 14-52 (c)

- It shall be unlawful for the operator of any vehicle to cause the vehicle to be parked or stored on an unimproved surface on the front yard or exterior side yard of any one- or two-family dwelling structure or on any portion of an adjacent or contiguous undeveloped property. The improved surface shall consist of concrete, asphalt, or brick pavers. The improved area for parking vehicles in a front yard shall be limited to forty (40) percent of the gross front or exterior side yard land area. The following exemptions shall apply:

(1)

Each one or two-family dwelling structure shall be permitted one (1) exempt parking space located on the property. The size of the exempt parking space shall not exceed nine (9) feet by nineteen (19) feet and shall be contiguous to the property's driveway. If the exempt parking is not maintained with adequate grasses, plants, or landscaping materials to prevent the area from becoming rutted or muddy and thereafter is identified as being in violation of this provision, the property owner shall be required to pave the designated parking area in accordance with the provisions of this chapter.

(2)

An existing gravel, loose aggregate, rock, or SB2 driveway shall be permitted to remain unless it deteriorates so that more than fifty (50) percent of the surface is composed of dirt, grass and weeds. An existing driveway of the gravel, loose aggregate, rock or SB2 may be expanded with similar material but not to exceed the forty (40) percent of the gross front or exterior side yard land area.

(3)

A vehicle may be parked for twenty-four (24) hours on an unimproved surface in conjunction with a family or social gathering. This exemption shall be used no more than once within a seven-day period.

(4)

A vehicle may be parked up to seven (7) days on an unimproved surface by visitors in connection with a vacation or other family occasion, i.e., a wedding or funeral.

(5) When a residential lot is platted on a Cul-de-sac and where the lot has a reduced frontage because of the radius of the street, the maximum improved area for parking vehicles is limited to fifty (50) percent of the gross front or exterior side yard land area.

2

ORDINANCE NO._____

AN ORDINANCE ORDERING THE OWNERS OF A CERTAIN DILAPIDATED AND SUBSTANDARD STRUCTURE TO DEMOLISH SAME, AUTHORIZING THE CITY ADMINISTRATOR TO CAUSE THE DEMOLITION OF SUCH STRUCTURE TO OCCUR, AND FOR OTHER PURPOSES.

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

SECTION 1: It is hereby determined by the Board of Directors that the hereinafter described tract of real property, and the improvements located there, are dilapidated, unsafe and otherwise detrimental to the public health and constitute structural, fire and health hazards:

Street Address: **2910 RUSSELL STREET - LOTS 5 & 6, BLOCK 18; BONNEVILLE #2 ADDITION**

SECTION 2: The owners of the tract of real property described in Section 1 are hereby ordered to remove or raze the improvements located on the said tract of property and to remedy the unsightly and unsanitary conditions otherwise located on said tract of real property within thirty (30) days from the date of this ordinance.

SECTION 3: With reference to any tract identified in Section 1 as to which compliance with the direction of Section 2 has not occurred within thirty (30) calendar days from the date of passage of this ordinance, the City Administrator is hereby authorized to execute a contract, based on the bid(s) accepted on the date of this action or at a later date, for the removal or razing of the described improvements on the tract of real property.

SECTION 4: The provisions of this ordinance are hereby declared to be severable to the extent that a decision by any court of competent jurisdiction determining that any portion of this ordinance or any application thereof is unconstitutional, invalid or otherwise illegal shall not affect the constitutionality, validity or legality of the other provisions and/or applications of the ordinance.

SECTION 5: Emergency Clause. It is hereby found and declared by the Board of Directors that the dilapidated, unsanitary condition of the tracts of real property and improvements described herein constitute an immediate menace to the health, welfare and safety of the citizens of the City so that an emergency is hereby declared and that this ordinance shall be effective from and after the date of its passage.

This Ordinance adopted this _____day of_____2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form

_____
Publish 1 Time

To: Jeff Dingman, Acting City Administrator

From: Jimmie Deer, Building Official

Date: April 11, 2016

Subject: Unsafe Structures

The following structures have been damaged and/or deteriorated to a condition that has caused the Building Safety Division to post them as unsafe structures. The property and the improvements, thereon are now, and for several months prior hereto, have been dilapidated, unsafe, unsightly, unsanitary, obnoxious and detrimental to the public welfare and are found to be in violation of the Ordinances of the City of Fort Smith.

The property descriptions and owner are:

2910 Russell Street– Lots 5&6, Block 18; Bonneville#2 Addition

Owners: Obert & Elva Kuykendall
C/O Barbara Miller
4508 N. 30th Street
Fort Smith, AR 72904

The owners of these properties have been notified according to the procedures outlined in Section 16-88 of the Fort Smith Municipal Code. The property owners were notified by certified mail and posting the same letters on the buildings. The letter or notice contains information concerning the appeal procedure outlined in Section 16-91 of the Fort Smith Municipal Code. The Code specifies that they must file any appeals within fifteen (15) days from the date of service. The owner(s) of the subject properties did not file an appeal within the fifteen (15) day period nor have they requested an appeal hearing since that dead line has passed.

2910 Russell Street – The structure has had no water usage since before 2003. Staff has an open Property Maintenance case open on this structure and has been working with the owners to try and get something done but to no avail. Due to the condition of the structure and no action taken by the owners unsafe notices were posted on the property and letters sent out by certified mail on March 3, 2016 and the letters were claimed by the owners. I spoke with the owner's daughter on March 8, 2016 and Ms. Miller stated for the City to continue with unsafe action due to no funds available for them to take care of property. As of today the owners have taken no action to obtain permits to repair or demolish the structure.

Therefore, I am recommending this matter be referred to the Board of Directors for their review. An Ordinance will be prepared that will order the property owners to demolish or repair the buildings within thirty (30) calendar days and if such work has not occurred, the staff will be authorized to have the structures removed.

This property clean up action satisfies the Future Fort Smith Comprehensive Plan Goal HN-1 to "*preserve, protect, and revitalize Fort Smith's neighborhoods*".

Public GIS Viewer
City of Fort Smith GIS

2910
2016/03/04

2910
2016/03/04

02/19/2016

02/19/2016

02/19/2016

02/19/2016

02/19/2016

02/19/2016

02/19/2016

02/19/2016

2910
02/19/2016

02/19/2016

02/19/2016

02/19/2016

10/30/2015

10/30/2015

10/30/2015

01/14/2016

01/14/2016

ORDINANCE NO.___ **3**

AN ORDINANCE ADOPTING THE 2016 AMENDMENTS TO THE SANITARY SEWERY SYSTEM PRETREATMENT REGULATIONS AND PERMITS ORDINANCE CODIFIED IN DIVISION 2 OF ARTICLE VI OF CHAPTER 25 OF THE FORT SMITH CODE OF ORDINANCES

WHEREAS, it is necessary to amend sections of the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance to provide clarity, to comply with Federal and State requirements and to remove conflicts with other provisions of the Municipal Code; and,

WHEREAS, three (3) copies of 2016 Amendments to the Sanitary Sewer System Pretreatment Regulations and Permits 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;

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

SECTION 1: The 2016 Amendments to the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance are hereby adopted.

SECTION 2: The codifier of the Municipal Code shall codify the 2016 Amendments by substituting the 2016 Amendments for the existing sections of Division 2 of Article VI of Chapter 25 of the Fort Smith Municipal Code.

SECTION 3: It is hereby found and determined that the adoption of the 2016 Amendments to the Sanitary Sewer System Pretreatment Regulations and Permits Ordinance is necessary to alleviate an emergency created by incomplete regulations which could adversely

affect the City's protection of the health, safety and welfare of the inhabitants of the City. Therefore, it is determined that the 2016 Amendments should be, and are, hereby adopted effective as of the date of approval of this Ordinance.

PASSED AND APPROVED THIS____DAY OF April, 2016.

APPROVED:

_____

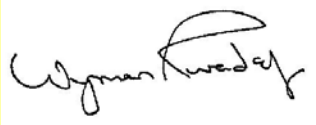
Mayor

ATTEST:

_____

City Clerk

Approved as to form:



_____

Publish One Time

City of Fort Smith
Utility Department

Memorandum

To: Jeff Dingman, Acting City Administrator

From: Lance McAvoy, Deputy Director of Operations LAm

Date: April 12, 2016

Subject: Pretreatment Regulation and Permits Ordinance

As previously mentioned in a memorandum forwarded to you by Steve Parke on February 3, 2016, and a memorandum sent to you on March 17, 2016, the City is required to revise its pretreatment ordinance.

As part of the National Pollutant Discharge Elimination System (NPDES) permits issued for the "P" Street and Massard wastewater treatment plants, the City is required to have an approved pretreatment program. The City has maintained an approved program since the mid 1980's. The program's main components include:

- Industrial User Pretreatment Ordinance (Ordinance);
- Standard Operating Procedures (SOPs);
- Enforcement Response Plans (ERP);
- Industrial User Permits (Permits); and
- Funding and resources to operate the required pretreatment program.

In 2005 EPA published the Pretreatment Streamlining Rule which required cities to update their Ordinance, SOPs, ERP, Permits, and to look again at their adequacy of funding and resources to operate the required pretreatment program. Our Ordinance 80-11 was developed in coordination with the Arkansas Department of Environmental Quality (ADEQ) to meet the requirements of the Streamlining Rule, and upon their approval, was adopted in 2012.

In September 2015, ADEQ's pretreatment program audit determined the City's current Ordinance did not comply with the requirements of the Streamlining Rule. Staff drafted a new Ordinance for ADEQ's review and approval. After addressing several comments from ADEQ's State Pretreatment Coordinator, ADEQ agreed that the draft ordinance met the Streamlining Rule requirements.

On February 3, 2016, a copy of the proposed revisions to the Pretreatment Ordinance was forwarded to you by Steve Parke. Through additional reviews by the City Attorney and ADEQ, the attached "2016 Amendments to the Sanitary Sewer System Pretreatment Regulation and Permits Ordinance Codified in Division 2, Article VI of Chapter 25 of the Fort Smith Municipal Code" has been approved by both parties as meeting both state and federal law and all requirements set forth in the Pretreatment Streamlining Rule.

Some of the major changes addressed by the Ordinance include:

- Removal of specific values for Technically Based Local Limits (TBLLs) for certain pollutants to give the City more flexibility and reduce the need to amend the Ordinance due to treatment plant upgrades,
- Allowing Best Management Practices to be utilized in place of certain costly pollutant testing, thus saving industries money;
- Incorporation of new federally required language for compliance;
- Allowing the use of general permits in certain circumstances; and
- Clarification of permittee's rights and defense against permit violations.

The public notice for the Board of Directors' consideration to adoption the amendment during the April 19, 2016, Board of Directors meeting was published on the March 19, 2016, in the "Times Record". Staff also sent copies of the 2016 Amendments to all permitted industries for their review.

As of this date, two industries contacted staff for additional information and to obtain a better understanding of the ordinance. A meeting was conducted on Thursday, April 7, 2016, with one of the aforementioned industries and, to staff's knowledge, all of the questions pertaining to the ordinance were answered. There have been no additional questions or comments received.

Please contact me should you or any member of the Board have any questions or need additional information.

attachment

2016 Amendments to the Sanitary Sewer System Pretreatment Regulation and Permits Ordinance Codified in Division 2, Article VI of Chapter 25 of the Fort Smith Municipal Code

DIVISION 2. - PRETREATMENT REGULATIONS AND PERMITS

Sec. 25-206. - General Provisions.

(a) This division sets forth uniform standards and requirements for users of the Publicly Owned Treatment Works (POTW) for the City of Fort Smith, Arkansas, and enables the City to comply with all applicable federal and state laws, including Clean Water Act (33 United States Code (U.S.C.) §1251 et seq.) and the General Pretreatment Regulations (40 CFR 403). The objectives of this ordinance are:

(1) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will interfere with its operation;

(2) To prevent the introduction of pollutants into the Publicly Owned Treatment Works that will pass through the Publicly Owned Treatment Works, inadequately treated, into receiving waters, or otherwise be incompatible with the Publicly Owned Treatment Works;

(3) To protect both Publicly Owned Treatment Works personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(4) To promote reuse and recycling of industrial wastewater and sludge from the Publicly Owned Treatment Works;

(5) To provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the Publicly Owned Treatment Works; and

(6) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements, and any other Federal or State laws to which the Publicly Owned Treatment Works is subject.

This ordinance shall apply to all Users of the Publicly Owned Treatment Works. The ordinance authorizes the issuance of individual wastewater discharge permits or general permit; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires User reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(b) Administration

Except as otherwise provided herein, City Administrator shall administer, implement, and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon City Administrator may be delegated by City Administrator to a duly authorized City employee.

(c) Abbreviations

The following abbreviations, when used in this ordinance, shall have the designated meanings:

BOD	Biochemical Oxygen Demand
BMP	Best Management Practice
BMR	Baseline Monitoring Report

CFR	Code of Federal Regulations
CIU	Categorical Industrial User
COD	Chemical Oxygen Demand
EPA	U.S. Environmental Protection Agency
gpd	gallons per day
IU	Industrial User
mg/L	milligrams per liter
NAICS	North American Industry Classification System
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works
RCRA	Resource Conservation and Recovery Act
SIU	Significant Industrial User
SIC	Standard Industrial Classification
SNC	Significant Noncompliance
TSS	Total Suspended Solids
U.S.C.	United States Code

(d) Unless a provision explicitly states otherwise, the following terms and phrases, as used in this ordinance, shall have the meanings hereinafter designated.

(1) *Act or "the Act*." The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.

(2) *Approval Authority*. Refers to the Director of Arkansas Department of Environmental Quality (ADEQ) or a delegated representative.

(3) *Authorized or Duly Authorized Representative of the User*.

a. If the User is a corporation:

i. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

ii. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

c. If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

d. The individuals described in paragraphs a. through c., above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Control Authority.

(4) *Biochemical Oxygen Demand or BOD*. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at twenty (20) degrees centigrade, usually expressed as a concentration (e.g., mg/L).

(5) *Best Management Practices or BMPs* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in Section 25-207 (a) and (b). BMPs include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs may also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

(6) *Categorical Pretreatment Standard or Categorical Standard*. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

(7) *Categorical Industrial User*. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

(8) *City*. The City of Fort Smith, Arkansas.

(9) *City Administrator*. The person designated by the City to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this division. The term includes a Duly Authorized Representative of the City Administrator.

(10) *Chemical Oxygen Demand or COD*. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

(11) *Composite sample.* The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time, as specified by the Control Authority.

(12) *Control Authority*. The City Administrator for Fort Smith, Arkansas, or his or her designated agent.

(13) *Daily Maximum*. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

(14)*Daily Maximum Limit*. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

(15)*Domestic waste.* Liquid and water-carried waste generated by a typical household or waste comprised of waste equivalent to that generated by a typical household. This does not include waste from commercial or industrial processes whether generated at a household or other premises.

(16)*Fats, Oils, and Greases or FOG*. Any fats, oil and grease, weather petroleum-based, mineral-oil-based, animal-based or vegetable-based.

(17)*Environmental Protection Agency or EPA*. The U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said agency.

(18)*Existing Source*. Any source of discharge that is not a "New Source."

(19)*Garbage.* Solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

(20)*Grab Sample*. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

(21)*Indirect Discharge or Discharge*. The introduction of pollutants into the POTW from any nondomestic source regulated under section 307(b)(c) or (d) of the Act.

(22)*Industrial user.* A source of indirect discharge.

(23)Industrial wastes. The liquid wastes from industrial manufacturing processes, trade or business, as distinct from sanitary sewage.

(24)*Inspector.* The person or persons duly authorized by the Control Authority to inspect and approve the installation of the building sewers and their connections to the public sewer system.

(25)*Instantaneous Limit*. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(26)*Interference*. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent State or local regulations: section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D

of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

(27) *Local Limit*. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

(28) *May.* Discretionary or permissive.

(29) *Medical Waste*. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(30) *Monthly Average*. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

(31) *Monthly Average Limit*. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

(32) *National Pollutant Discharge Elimination System (NPDES) permit.* A permit issued to a POTW or other discharger pursuant to §402 of the Act.

(33) *New Source*.

a. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

   i. The building, structure, facility, or installation is constructed at a site at which no other source is located; or

   ii. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or

   iii. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

b. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraph a. ii., or a. iii. above but otherwise alters, replaces, or adds to existing process or production equipment.

c. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

i. Begun, or caused to begin, as part of a continuous onsite construction program:

1. any placement, assembly, or installation of facilities or equipment; or

2. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

ii. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(34)*Noncontact Cooling Water*. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

(35)*North American Industry Classification System (NAICS).* The standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB) and adopted in 1997 to replace the Standard Industrial Classification (SIC) system.

(36)*Pass Through*. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit, including an increase in the magnitude or duration of a violation.

(37)*Person*. Any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, and local governmental entities.

(38)*pH*. A measure of the acidity or alkalinity of a solution, expressed in standard units.

(39)Pharmaceutical drug, also referred to as medicine, medication or medicament. Any chemical substance intended for use in the medical diagnosis, cure, treatment, or prevention of disease.

(40)*Pollutant*. Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

(41)*Pollution Prevention (P2).* Waste reduction prior to recycling, treatment, or disposal. Pollution prevention means "source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate the creation of pollutants through: Increased

efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation

(42)*Pretreatment*. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

(43)*Pretreatment Requirements*. Any substantive or procedural requirement related to pretreatment imposed on a User, other than a Pretreatment Standard.

(44)*Pretreatment Standards or Standards*. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, narrative BMPs and Local Limits.

(45)*Prohibited Discharge Standards or Prohibited Discharges*. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 25-207(a) of this ordinance.

(46)*Properly shredded garbage.* The wastes from the preparation, cooking, dispensing of food that has been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (½) inch in dimension.

(47)*Publicly Owned Treatment Works or POTW*. A treatment works, as defined by section 212 of the Act (33 U.S.C. § 1292), which is owned by the City. This definition includes any devices or systems used in the storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

(48)*Sanitary sewer.* A sewer in which sewage is carried, and to which storm, surface and groundwaters are not intentionally admitted.

(49)*Septic Tank Waste*. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(50)*Sewage*. Human excrement and gray water (household showers, dishwashing operations, etc.).

(51)*Shall.* Mandatory.

(52)*Significant Industrial User (SIU)*. Except as provided in paragraph c. of this definition, a Significant Industrial User is:

a. An Industrial User subject to categorical Pretreatment Standards; or

b. An Industrial User that:

i. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);

ii. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

iii. Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.

c. Upon a finding that a User meeting the criteria in paragraph b. of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

(53) *Slug Load or Slug Discharge*. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 25-207(a) of this ordinance. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

(54) *Standard Industrial Classification (SIC) Code.* A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

(55) *Storm drain (sometimes termed "storm sewer").* A sewer, which carries storm and surface water and drainage, but excludes sewage and untreated industrial wastes, other than noncontact cooling water.

(56) *Storm Water*. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

(57) *Surcharge.* A service charge in addition to the normal monthly rate which shall be assessed to the industrial users who discharge into the city system wastewater having a BOD concentration in excess of 250 milligrams per liter or a TSS concentration in excess of 250 milligrams per liter.

(58) *Total Suspended Solids or Suspended Solids*. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering.

(59) *Toxic pollutant.* Any pollutant or combination of pollutants listed as toxic in regulations promulgated by EPA under §307 (33 U.S.C. §1317) of the Act.

(60) *User or Industrial User*. Any person or entity, who contributes, causes or permits the contribution of wastewater into the city's POTWs.

(61) *Wastewater*. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

(62) *Wastewater Treatment Plant or Treatment Plant*. That portion of the POTW which is designed to provide treatment of municipal sewage and compatible industrial waste.

Sec. 25-207. - General sewer use requirements.

(a) Prohibited discharge standards.

(1) *General prohibitions*. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass-through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or requirements.

(2) *Specific prohibitions*. No user shall introduce or cause to be introduced, directly or indirectly, any pollutant or wastewater which will interfere with the operation or performance of the POTW, or will have an adverse effect on the receiving stream, or will violate any of the provisions of this article. These general provisions apply to all users of the city's POTWs whether or not the user is subject to National Categorical Pretreatment Standards or any other National, State, or local Pretreatment Standards or requirements. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than one hundred forty (140) degrees F (sixty (60) degrees C) using the test methods specified in 40 CFR 261.21;

b. Wastewater having a pH less than six (6.0) or more than eleven (11.0), or otherwise causing corrosive structural damage to the POTW or equipment;

c. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in Interference [but in no case solids greater than one-half inch (1/2”) in any dimension];

d. Pollutants, including chlorine and oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause Interference with the POTW;

e. Wastewater having a temperature greater than one hundred fifty (150) degrees F (sixty-five (65) degrees C), or which will inhibit biological activity in the treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four (104) degrees F (forty (40) degrees C);

f. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through;

g. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

h. Trucked or hauled pollutants, except at discharge points designated by the Control Authority in accordance with Section 25-208(d) of this ordinance;

i. Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

j. Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating [the City's] NPDES permit;

k. Wastewater containing any radioactive wastes or isotopes except in compliance with applicable State or Federal regulations;

l. Storm Water, surface water, ground water, roof runoff, subsurface drainage, non-contact cooling water, swimming pool filter backwash, swimming pool water, condensate, deionized water, or unpolluted industrial process waters into any sanitary sewer but such waters shall be discharged into such sewers as are specifically designated as storm sewer or into a natural outlet. The discharge into any storm sewer or into natural outlet of any waters, which may have a deleterious effect upon the receiving stream, is prohibited.

m. Sludges, screenings, or other residues from the pretreatment of industrial wastes;

n. Medical Wastes or pharmaceutical drugs (also referred to as medicine or medication), except as specifically authorized by Control Authority in an individual wastewater discharge permit;

o. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test;

p. Detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW;

q. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/L;

r. Any substance that may cause the POTW's effluent, or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the ACT, any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or Arkansas State criteria applicable to the sludge management method being used;

s. In no case shall a slug load have a flow rate or concentration or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times

the average twenty-four (24) hour concentration, quantities, or flow during normal operation;

t. Non-flushable wipes, non-dispersible wipes, and non-biodegradable wipes including, but not limited to, baby wipes, paper towels, dusting wipes, cleaning wipes, and disposable mop heads.

(3) *Rejection or control of waste discharge*. If any waters or wastes are discharged or are proposed to be discharged into the public sewers, which waters contain the substances or possess the characteristics enumerated in the preceding subsections and which, in the judgment of the Control Authority may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Control Authority may (1) reject the wastes, (2) require pretreatment to an acceptable condition for discharge in the public sewers, and/or (3) require control over the quantities and rates of discharge.

(4) Pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(b) *National Categorical Pretreatment Standards*. The Federal Categorical Pretreatment Standards set forth in 40 CFR Chapter 1, Subchapter N, Parts 405 through 471 are hereby incorporated. In cases where this division imposes more stringent requirements, or where no EPA guidelines exist, the provisions of this section shall apply.

Upon promulgation of the Federal Categorical Pretreatment Standards for a particular subcategory of user, the federal standard, if more stringent than limitations imposed under this division for sources in that subcategory, shall immediately supersede the specific limitations imposed under this division.

(1) Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Control Authority may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(2) When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the Control Authority shall impose an alternate limit using the combined wastestream formula in accordance with 40 CFR 403.6(e).

(c) *Local limits*. To protect against pass through and interference, no Industrial User may discharge or cause to be discharged into the POTW any wastewater pollutant concentration exceeding the Technically Based Local Limits (TBLLs) developed from time to time by the City as required by City of Fort Smith's tracking NPDES permit No. AR0021750, 40 CFR 403.5 (c) and approved by the Approval Authority. TBLLs based on calculated Maximum Allowable Industrial Loadings are located in the City's Pretreatment Program, Section 4. At the discretion of the Control Authority, TBLLs may be imposed and shall apply at the "monitoring point" described in the individual industrial wastewater discharge permits. All concentration limits for metals shall be in terms of "total" metals unless otherwise indicated. At the discretion of the Control Authority, mass limitations may be imposed in addition to or in place of concentration based TBLLs. The Control Authority may also develop BMPs in individual wastewater discharge permits, to implement specific pollutant limitations. Such BMPs shall be considered Local Limits and Pretreatment

Standards. When new Local Limits are implemented or revised, the Control Authority will provide individual notice to parties who have requested such notice and an opportunity to respond, as set forth by 40 CFR 403.5 (c)(3).

(d) *City's Right of Revision*. The City reserves the right to establish, by ordinance or in individual wastewater discharge permits or in general permits, more stringent standards or requirements on discharges to the POTW consistent with the purpose of this ordinance.

(e) *Dilution*. No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the Federal Categorical Pretreatment Standards, or in any other pollutant-specific limitation developed by the city or state. The Control Authority may impose mass limitations on Users who are using dilution to meet applicable Pretreatment Standards or Requirements, or in other cases when the imposition of mass limitations is appropriate.

Sec. 25-208. - Pretreatment of Wastewater.

(a) *Pretreatment Facilities*. Users shall provide wastewater treatment as necessary to comply with this ordinance and shall achieve compliance with all categorical Pretreatment Standards, Local Limits, and the prohibitions set out in Section 25-207(a) of this ordinance within the time limitations specified by EPA, the State, or the Control Authority, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the Control Authority for review, and shall be acceptable to the Control Authority before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Control Authority under the provisions of this ordinance.

(b) *Additional Pretreatment Measures*

(1) Whenever deemed necessary, the Control Authority may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of this ordinance.

(2) The Control Authority may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit or a general permit may be issued solely for flow equalization.

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Control Authority, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the Control Authority, shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the User at their expense.

(4) FOG Control Devices. Facilities generating fats, oils, or greases as a result of food manufacturing, processing, preparation, or food service are not subject to the pretreatment requirements of this division; however such facilities shall comply with all applicable requirements for FOG Control Devises.

(5) Sampling and measurement manhole. When required by the Control Authority, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Control Authority. The manhole shall be installed by the owner at the owner's expense and shall be maintained by the owner so as to be safe and accessible at all times.

(6) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(7) Upon a finding by the Control Authority of the necessity for proper operation of the wastewater facility of an IU the IU shall have a licensed wastewater treatment operator on duty at all times when treating and discharging regulated wastewater to the POTW. Said operator shall meet the license or level of operator qualifications deemed necessary for proper treatment per Arkansas Pollution Control and Ecology Commission's Regulation #3.

(c) *Accidental Discharge/Slug Discharge Control Plans*. The Control Authority shall evaluate whether each SIU needs an accidental discharge/slug discharge control plan or other action to control Slug Discharges. The Control Authority may require any User to develop, submit for approval, and implement such a plan or take such other action that may be necessary to control Slug Discharges. Alternatively, the Control Authority may develop such a plan for any User. An accidental discharge/slug discharge control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the Control Authority of any accidental or Slug Discharge, as required by Section 25-212(f) of this ordinance; and

(4) Procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(d) *Hauled Wastewater*. Hazardous waste will not be accepted by truck or liquid waste hauler at the POTW.

(1) Septic tank waste may be introduced into the POTW only at locations designated by the Control Authority, and at such times as are established by the Control Authority. Such waste shall not violate Section 25-207 of this division or any other requirements established by the

Control Authority. The Control Authority shall require septic tank waste haulers to obtain individual septic tank truck discharge permits.

(2) The Control Authority may require haulers of industrial waste to obtain individual wastewater discharge permits. The Control Authority may require generators of hauled industrial waste to obtain individual wastewater discharge permits. The Control Authority also may prohibit the disposal of hauled industrial waste which are known or reasonably suspected to contain pollutants which could result in pass through or interference. The discharge of hauled industrial waste is subject to all other requirements of this ordinance.

If the industrial waste is from a categorical user, the hauled wastewater must include analytical reports proving it meets the required limitations of its respective category.

(3) Domestic waste haulers and industrial waste haulers may discharge loads only at locations designated by the Control Authority. No load may be discharged without prior consent of the Control Authority. The Control Authority may collect samples of each hauled load to ensure compliance with applicable Standards. The Control Authority may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(4) Domestic waste haulers and industrial waste haulers must provide a to the Control Authority waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(5) Any waste not deemed domestic by the City will be handled on a case by case basis at the discretion of the Control Authority.

Sec. 25-209. - Septic Tank Truck Discharge Permit

(a) All persons owning vacuum or "septic tank" pump trucks, or other liquid transport trucks, who wish to discharge septic tank, portable toilet, seepage pit, interceptor or cesspool contents, industrial liquid waste or other liquid wastes to the POTW shall first have a valid Septic Tank Truck Discharge Permit. All applicants for the Septic Tank Truck Discharge Permit shall complete the application form, pay the appropriate permit fee, receive a copy of this division governing discharge of wastes to sewer and shall agree, in writing, to abide by this division and all other applicable environmental regulations.

(b) Trucks hauling industrial waste shall discharge only after reporting the source and composition of the waste to the POTW at the authorized discharge site. The Control Authority may deny discharge rights in the event the waste is in violation of the provisions of this division. Trucks hauling only septic tank, portable toilet, seepage pit, interceptor or cesspool contents are exempted from the above reporting requirement. However, discharge of these wastes is also restricted to a site(s) authorized by the Control Authority.

(c) Additionally, the septic tank truck hauler must maintain a daily log of operations, which shall include the date and time of the pumping event, name of business or individual requesting service, exact physical address, estimated or measured volume, type of waste discharged, and discharge ticket number. The approximate volume of each load is to be logged at the time of

service in this log. At the end of each quarter, (March, June, September and December) copies of such log are to be forwarded to the Control Authority by the 15th day of the following month (April, July, October and January).

Sec. 25-210. - Individual Wastewater Discharge Permit and General Permit Application

(a) *Wastewater Analysis*. When requested by the Control Authority, a User must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The Control Authority is authorized to prepare a form for this purpose and may periodically require Users to update this information.

(b) Individual Wastewater Discharge Permit and General Permit Requirement

(1) No Significant Industrial User shall discharge wastewater into the POTW without first obtaining an individual wastewater discharge permit or a general permit from the Control Authority, except that a Significant Industrial User that has filed a timely application pursuant to Section 25-210 (c) of this division may continue to discharge for the time period specified therein.

(2) The Control Authority may require other Users to obtain individual wastewater discharge permits or general permits as necessary to carry out the purposes of this ordinance.

(3) Any violation of the terms and conditions of an individual wastewater discharge permit or a general permit shall be deemed a violation of this division and subjects the wastewater discharge permittee to the sanctions set out in Sections 25-216 through 25-217 of this division. Obtaining an individual wastewater discharge permit or a general permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

(c) *Individual Wastewater Discharge and General Permitting: Existing Connections*. Any User required to obtain an individual wastewater discharge permit or a general permit who was discharging wastewater into the POTW prior to the effective date of this ordinance and who wishes to continue such discharges in the future, shall, within ninety (90) days after said date, apply to the Control Authority for an individual wastewater discharge permit or a general permit in accordance with Section 25-210 (e) of this ordinance, and shall not cause or allow discharges to the POTW to continue after one hundred eighty (180) days of the effective date of this ordinance except in accordance with an individual wastewater discharge permit or a general permit issued by the Control Authority.

(d) *Individual Wastewater Discharge and General Permitting: New Connections*. Any User required to obtain an individual wastewater discharge permit or a general permit who proposes to begin or recommence discharging into the POTW must obtain such permit prior to the beginning or recommencing of such discharge. An application for this individual wastewater discharge permit or general permit, in accordance with Section 25-210 (e), must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(e) Individual Wastewater Discharge and General Permit Application Contents

(1) All Users required to obtain an individual wastewater discharge permit or a general permit must submit a permit application. Users that are eligible may request a general permit under

Section 25-210 (f). The Control Authority may require Users to submit all or some of the following information as part of a permit application:

a. Identifying Information.

   i. The name and address of the facility, including the name of the operator and owner.

   ii. Contact information, description of activities, facilities, and plant production processes on the premises;

b. Environmental Permits. A list of any environmental control permits held by or for the facility.

c. Description of Operations.

   i. A comprehensive description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and the SIC code(s) of the operation(s) carried out by such User. The process description shall include the facility's treatment processes. A qualified professional must certify to the accuracy of this process narrative.

   ii. A comprehensive schematic process diagram, which indicates points of discharge to the POTW from the regulated processes through treatment to an identified discharge/sampling point. A qualified professional must certify to the accuracy of this schematic.

   iii. NAICS codes of all manufacturing processes being conducted at the facility

   iv. Types of wastes generated, and a list of all raw materials and chemicals (not trade names) used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

   v. Number and type of employees, hours of operation, and proposed or actual hours of operation;

   vi. Each product produced by type, amount, process or processes, and rate of production.

   vii. Type and amount of raw materials processed (average and maximum per day).

   viii. Comprehensive site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, chemical storage areas, and appurtenances by size, location, and elevation, and all points of discharge.

d. Time and duration of discharges;

e. The location for monitoring all wastes covered by the permit;

f. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Section 25-208(b)(2) (40 CFR 403.6(e)).

g. Measurement of Pollutants.

i. The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

ii. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the Control Authority, of regulated pollutants in the discharge from each regulated process.

iii. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

iv. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 25-212(j) of this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Control Authority or the applicable Standards to determine compliance with the Standard.

v. Sampling must be performed in accordance with procedures set out in Section 25-212(k) of this division.

h. Pollution Prevention (P2) activities such as source reduction, waste minimization, environmental management systems, water and energy conservation.

i. Any request to be covered by a general permit based on Section 25-210(f).

j. Any other information as may be deemed necessary by the Control Authority to evaluate the permit application.

(2) Incomplete or inaccurate applications will not be processed and will be returned to the User for revision.

(f) Wastewater Discharge Permitting: General Permits

(1) At the discretion of the Control Authority, the Control Authority may use general permits to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:

a. Involve the same or substantially similar types of operations;

b. Discharge the same types of wastes;

c. Require the same effluent limitations;

d. Require the same or similar monitoring; and

e. In the opinion of the Control Authority, are more appropriately controlled under a general permit than under individual wastewater discharge permits.

(2) To be covered by the general permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the

location for monitoring all wastes covered by the general permit, and any other information the POTW deems appropriate.

(3) The Control Authority will retain a copy of the general permit, documentation to support the POTW's determination that a specific SIU meets the criteria in Section 25-210(f)(1)(a.) to (e.) and applicable State regulations, and a copy of the User's written request for coverage for three (3) years after the expiration of the general permit.

(4) The Control Authority may not control an SIU through a general permit where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Wastestream Formula (Section 25-208(b)(2)).

(g) Application Signatories and Certifications

(1) All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitted false information, including the possibility of fine and imprisonment for knowing violations."

(2) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the Control Authority prior to or together with any reports to be signed by an Authorized Representative.

(h) *Individual Wastewater Discharge and General Permit Decisions*. The Control Authority will evaluate the data furnished by the User and may require additional information. Within ninety (90) days of receipt of a complete permit application, the Control Authority will determine whether to issue an individual wastewater discharge permit or a general permit. The Control Authority may deny any application for an individual wastewater discharge permit or a general permit.

Sec. 25-211. - Individual Wastewater Discharge Permit and General Permit Issuance Process

(a) I*ndividual Wastewater Discharge and General Permit Duration*. An individual wastewater discharge permit or a general permit shall be issued for a specified time period, not to exceed five (5) years from the effective date of the permit. An individual wastewater discharge permit or a general permit may be issued for a period less than five (5) years, at the discretion of the Control Authority. Each individual wastewater discharge permit or a general permit will indicate a specific date upon which it will expire.

(b) Individual Wastewater Discharge Permit and General Permit Contents. An individual wastewater discharge permit or a general permit shall include such conditions as are deemed reasonably necessary by the Control Authority to prevent Pass Through or Interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, protect the public, facilitate sludge management and disposal, and protect against damage to the POTW.

(1) Individual wastewater discharge permits and general permits must contain:

a. A statement that indicates the wastewater discharge permit issuance date, expiration date and effective date;

b. A statement that the wastewater discharge permit is nontransferable without prior notification to the Control Authority in accordance with Section 25-211(e) of this ordinance, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

c. Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards;

d. Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or best management practice) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;

e. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State, or local law;

f. Requirements to control Slug Discharge, if determined by the Control Authority to be necessary.

(2) Individual wastewater discharge permits or general permits may contain, but need not be limited to, the following conditions:

a. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

b. Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

c. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges;

d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

e. The unit charge or schedule of User charges and fees for the management of the wastewater discharged to the POTW;

f. Requirements for installation and maintenance of inspection and sampling facilities and equipment, including flow measurement devices;

g. A statement that compliance with the individual wastewater discharge permit or the general permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State Pretreatment Standards, including those which become effective during the term of the individual wastewater discharge permit or the general permit;

h. Other conditions as deemed appropriate by the Control Authority to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations; and

i. A licensed wastewater operator as deemed necessary on duty at all times of treatment and discharge of regulated wastewater discharge to the City's collection system (per Section 25-208(b)(7)).

(c) *Permit Appeal Process*: A permittee may petition the Control Authority to reconsider the terms of a wastewater discharge permit or a general permit within thirty (30) days of notice of issuance of the discharge permit.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the individual wastewater discharge permit or a general permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the individual wastewater discharge permit or a general permit.

(3) The effectiveness of the individual wastewater discharge permit or a general permit shall not be stayed pending the appeal.

(4) If the Control Authority fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an individual wastewater discharge permit or a general permit, not to issue an individual wastewater discharge permit or a general permit, or not to modify an individual wastewater discharge permit or a general permit shall be considered final administrative actions for purposes of judicial review.

(d) Permit Modification

(1) The Control Authority may modify an individual wastewater discharge permit for good cause, including, but not limited to, the following reasons:

a. To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;

b. To address significant alterations or additions to the User's operation, processes, or wastewater volume or character since the time of the individual wastewater discharge permit issuance;

c. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

d. Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel, the receiving waters or to the POTW's beneficial use of biosolids;

e. Violation of any terms or conditions of the individual wastewater discharge permit;

f. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;

g. Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 40 CFR 403.13;

h. To correct typographical or other errors in the individual wastewater discharge permit; or

i. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 25-211(e).

(2) The Control Authority may modify a general permit for good cause, including, but not limited to, the following reasons:

a. To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements;

b. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

c. To correct typographical or other errors in the individual wastewater discharge permit; or

d. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with Section 25-211(e).

(e) *Individual Wastewater Discharge Permit and General Permit Transfer*. Individual wastewater discharge permits or coverage under general permits may be transferred to a new owner or operator only if the permittee gives at least thirty (30) days advance notice to the Control Authority and the Control Authority approves the individual wastewater discharge permit or the general permit coverage transfer. The notice to the Control Authority must include a written certification by the new owner or operator which:

(1) States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

(2) Identifies the specific date on which the transfer is to occur; and

(3) Acknowledges full responsibility for complying with the existing individual wastewater discharge permit or general permit.

Failure to provide advance notice of a transfer renders the individual wastewater discharge permit or coverage under the general permit void as of the date of facility transfer.

(f) *Individual Wastewater Discharge Permit and General Permit Revocation*. The Control Authority may revoke an individual wastewater discharge permit or coverage under a general permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the Control Authority of significant changes to the wastewater prior to the changed discharge;

(2) Failure to provide prior notification to the Control Authority of changed conditions pursuant to Section 25-212(e) of this ordinance;

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

(4) Falsifying self-monitoring reports and certification statements;

(5) Tampering with monitoring equipment;

(6) Refusing to allow the Control Authority timely access to the facility premises and records;

(7) Failure to meet effluent limitations;

(8) Failure to pay fines;

(9) Failure to pay sewer charges;

(10) Failure to meet compliance schedules;

(11) Failure to complete a wastewater survey or the wastewater discharge permit application;

(12) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or

(13) Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit or the general permit or this ordinance.

Individual wastewater discharge permits or coverage under general permits shall be voidable upon cessation of operations or transfer of business ownership. All individual wastewater discharge permits or general permits issued to a User are void upon the issuance of a new individual wastewater discharge permit or a general permit to that User.

(g) *Individual Wastewater Discharge Permit and General Permit Reissuance*. A User with an expiring individual wastewater discharge permit or general permit shall apply for individual wastewater discharge permit or general permit reissuance by submitting a complete permit application, in accordance with Section 25-210(e) of this ordinance, a minimum of ninety (90) days prior to the expiration of the User's existing individual wastewater discharge permit or general permit.

(h) Regulation of Waste Received from Other Jurisdictions

(1) If another municipality, or User located within another municipality, contributes wastewater to the POTW, the Control Authority shall enter into an intermunicipal agreement with the contributing municipality.

(2) Prior to entering into an agreement required by paragraph (1), above, the Control Authority shall request the following information from the contributing municipality:

a. A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality;

b. An inventory of all Users located within the contributing municipality that are discharging to the POTW; and

c. Such other information as the Control Authority may deem necessary.

(3) An intermunicipal agreement, as required by paragraph (1), above, shall contain the following conditions:

a. A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this ordinance and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 25-207(c) of this ordinance. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the City's ordinance or Local Limits;

b. A requirement for the contributing municipality to submit a revised User inventory on at least an annual basis;

c. A provision specifying which pretreatment implementation activities, including individual wastewater discharge permit or general permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the Control Authority; and which of these activities will be conducted jointly by the contributing municipality and the Control Authority;

d. A requirement for the contributing municipality to provide the Control Authority with access to all information that the contributing municipality obtains as part of its pretreatment activities;

e. Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;

f. Requirements for monitoring the contributing municipality's discharge;

g. A provision ensuring the Control Authority access to the facilities of Users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the Control Authority; and

h. A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

Sec. 25-212. - Reporting Requirements

(a) Baseline Monitoring Reports

(1) Within either one hundred eighty (180) days after the effective date of a categorical Pretreatment Standard, or the final administrative decision on a category determination

under 40 CFR 403.6(a)(4), whichever is later, existing Categorical Industrial Users currently discharging to or scheduled to discharge to the POTW shall submit to the Control Authority a report which contains the information listed in paragraph (2), below. At least ninety (90) days prior to commencement of their discharge, New Sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard, shall submit to the Control Authority a report which contains the information listed in paragraph (2), below. A New Source shall report the method of pretreatment it intends to use to meet applicable categorical Standards. A New Source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(2) Users described above shall submit the information set forth below.

a. All information required in Section 25-210(e)(1)(a.), Section 25-210(e)(2), Section 25-210(e)(3)(a.), and Section 25-210(e)(1)(f.).

b. Measurement of pollutants.

i. The User shall provide the information required in Section 25-210(e)(1)(g.)(i.) through Section 25-210(e)(1)(g.)(iv.).

ii. The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

iii. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards.

Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

iv. Sampling and analysis shall be performed in accordance with Section 25-212(j);

v. The Control Authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

vi. The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

c. *Compliance Certification*. A statement, reviewed by the User's Authorized Representative as defined in Section 25-206(d)(3) and certified by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

d. *Compliance Schedule*. If additional pretreatment and/or O&M will be required to meet the Pretreatment Standards, the shortest schedule by which the User will provide such additional pretreatment and/or O&M must be provided.

The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 25-212(b) of this ordinance.

e. Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 25-212(n)(1) of this ordinance and signed by an Authorized Representative as defined in Section 25-206(d)(3).

(b) *Compliance Schedule Progress Reports*. The following conditions shall apply to the compliance schedule required by Section 25-212(a)(2)(d.) of this ordinance:

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(2) No increment referred to above shall exceed nine (9) months;

(3) The User shall submit a progress report to the Control Authority no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and

(4) In no event shall more than nine (9) months elapse between such progress reports to the Control Authority.

(c) *Reports on Compliance with Categorical Pretreatment Standard Deadline*. Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the Control Authority a report containing the information described in Section 25-210(e)(1)(a.-g.) and 25-212(a)(2)(b.) of this ordinance. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 25-207(b)(1), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 25-212(n) of this ordinance. All sampling will be done in conformance with Section 25-212(k).

(d) Periodic Compliance Reports

(1) All Significant Industrial Users must, at a frequency determined by the Control Authority submit no less than twice per year (January thru June (report due in July) and July thru December (report due in January)) reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User.

(2) All periodic compliance reports must be signed and certified in accordance with Section 25-212(n) of this ordinance.

(3) All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

(4) If a User subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Control Authority, using the procedures prescribed in Section 25-212(k) of this ordinance, the results of this monitoring shall be included in the report.

(e) *Reports of Changed Conditions*. Each User must notify the Control Authority of any significant planned changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

(1) The Control Authority may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 25-210(e) of this ordinance.

(2) The Control Authority may issue an individual wastewater discharge permit or a general permit under Section 25-211(g) of this ordinance or modify an existing wastewater discharge permit or a general permit under Section 25-211(d) of this ordinance in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow or production changes of +/- 20% and the discharge of any previously unreported pollutants.

(f) Reports of Potential Problems

(1) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the Control Authority of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

(2) Within five (5) days following such discharge, the User shall, unless waived by the Control Authority, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance.

(3) Significant Industrial Users are required to notify the Control Authority immediately of any changes at its facility affecting the potential for a Slug Discharge.

(g) *Reports from Unpermitted Users*. All Users not required to obtain an individual wastewater discharge permit or general permit shall provide appropriate reports to the Control Authority as the Control Authority may require.

(h) *Notice of Violation/Repeat Sampling and Reporting*. If sampling performed by a User indicates a violation, the User must notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within thirty (30) days after becoming aware of the violation.

(i) Notification of the Discharge of Hazardous Waste

(1) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 25-212(e) of this ordinance. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards under the self-monitoring requirements of Sections 25-212(a), (c), and (d) of this ordinance.

(2) Dischargers are exempt from the requirements of paragraph (1), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification.

Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the Control Authority, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(4) In the case of any notification made under this Section, the User shall certify that it has a program in place (BMP) to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(5) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this ordinance, a permit issued thereunder, or any applicable Federal or State law.

(j) *Analytical Requirements*. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Control Authority or other parties approved by EPA. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

All independent laboratories performing analyses for Users, including, but not limited to, self-monitoring, periodic reports on continuing compliance, baseline monitoring reports and/or split sample verification, shall be certified by the ADEQ Laboratory Certification Program for the specific analysis being performed. The Control Authority reserves the right to reject any analysis performed by an independent laboratory that is not duly certified for a particular analysis.

(k) *Sample Collection*. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(1) Except as indicated in paragraph (2) and (3) below, the User must collect wastewater samples using twenty-four (24) hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Control Authority. Where time-proportional composite sampling or grab sampling is authorized by [the City], the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by Control Authority, as appropriate. In addition, grab samples may be required to show

compliance with Instantaneous Limits. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

(2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

(3) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 25-212(a) and 25-212(c), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by paragraphs Section 25-212(d) (40 CFR 403.12(e) and 403.12(h)), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements. All sample collection and analysis reports are required to include a complete chain of custody for the sample.

(l) *Date of Receipt of Reports*. Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(m) *Recordkeeping*. Users subject to the reporting requirements of this ordinance shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this ordinance, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 25-207(c). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; a complete chain of custody for the sample; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or [the City], or where the User has been specifically notified of a longer retention period by the Control Authority.

(n) Certification Statements

(1) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 25-210(g); Users submitting baseline monitoring reports under Section 25-212(a)(2)(e.); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 25-212(c); and Users submitting periodic compliance reports required by Section 25-212(d)(1). The following certification statement must be signed by an Authorized Representative as defined in Section 25-206(d)(3):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for

gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Sec. 25-213. - Compliance Monitoring

(a) Right of Entry: Inspection and Sampling. The Control Authority shall have the right to enter the premises of any User to determine whether the User is complying with all requirements of this ordinance and any individual wastewater discharge permit or general permit optional or order issued hereunder. Users shall allow the Control Authority ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(1) Where a User has security measures in force which require proper identification and clearance before entry into its premises, the User shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Control Authority shall be permitted to enter without delay for the purposes of performing specific responsibilities.

(2) The Control Authority shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.

(3) The Control Authority may require the User to install monitoring equipment necessary to determine compliance with the previsions of this ordinance. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually by a certified technician to ensure their accuracy. Calibration records shall be made available to the Control Authority upon request.

(4) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the Control Authority and shall not be replaced. The costs of clearing such access shall be borne by the User.

(5) Unreasonable delays in allowing Control Authority access to the User's premises shall be a violation of this ordinance.

(b) *Search Warrants*. If the Control Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the Control Authority may seek issuance of a search warrant from the District Court of Sebastian County, Arkansas, Fort Smith Division.

Sec. 25-214. - Confidential Information

Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits, general permits, optional and monitoring programs, and from the Control Authority's inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate under the provisions of the Arkansas Freedom of Information Act, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

Sec. 25-215. - Publication of Users in Significant Noncompliance

The Control Authority shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 25-206(d)(25);

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 25-206(d)(25) multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Section 25-207 (Daily Maximum, long term average, Instantaneous Limit, or narrative standard) that the Control Authority determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Control Authority's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or a general permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

Sec. 25-216. - Administrative Enforcement Remedies

(a) *Notification of Violation*. When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may serve upon that User a written Notice of Violation. Within five (5) business days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the User to the Control Authority. Submission of such a plan in no way relieves the User of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in this Section shall limit the authority of the Control Authority to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

(b) *Consent Orders*. The Control Authority may enter into Consent Orders, assurances of compliance, or other similar documents establishing an agreement with any User responsible for noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 25-216(d) and 25-216(e) of this ordinance and shall be judicially enforceable.

(c) *Show Cause Hearing*. The Control Authority may order a User which has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, to appear before the Control Authority and show cause why the proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the User show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) business days prior to the hearing. Such notice may be served on any Authorized Representative of the User as defined in Section 25-205(d)(3) and required by Section 25-210(g). A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the User.

(d) *Compliance Orders*. When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders

also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(e) *Cease and Desist Orders*. When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the Control Authority may issue an order to the User directing it to cease and desist all such violations and directing the User to:

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

(3) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(f) Administrative Penalties

(1) When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may issue administrative penalties to such User in an amount not to exceed one thousand dollars ($ 1,000.00). Such administrative penalties shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines shall be assessed for each day during the period of violation.

(2) Users desiring to dispute such penalties must file a written request with the Control Authority to reconsider the fine within ten (10) working days of being notified of the penality. The Control Authority shall convene a hearing on the request. The hearing may be continued from session to session. The Control Authority shall issue a determination on the request within ten (10) working days after the completion of the hearing.

(3) Issuance of an administrative penalties order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(g) *Emergency Suspensions*. The Control Authority may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge, which reasonably appears to present, or cause an imminent or substantial endangerment to the health or welfare of persons. The Control Authority may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(1) Any User notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Control Authority may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Control Authority may allow the User to recommence its discharge when the User has demonstrated to the satisfaction of the Control Authority that the period of endangerment has passed, unless the termination proceedings in Section 25-216(h) of this ordinance are initiated against the User.

(2) A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Control Authority prior to the date of any show cause or termination hearing under Sections 25-216(c) or 25-216(h) of this ordinance.

Nothing in this Section shall be interpreted as requiring a hearing prior to any Emergency Suspension under this Section.

(h) *Termination of Discharge*. In addition to the provisions in Section 25-211(f) of this ordinance, any User who violates the following conditions is subject to discharge termination:

(1) Violation of individual wastewater discharge permit or general permit conditions;

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(3) Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(4) Refusal of reasonable access to the User's premises for the purpose of inspection, monitoring, or sampling; or

(5) Violation of the Pretreatment Standards in Section 25-207 of this ordinance.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 25-216(c) of this ordinance why the proposed action should not be taken. Exercise of this option by the Control Authority shall not be a bar to, or a prerequisite for, taking any other action against the User.

Sec. 25-217. - Judicial Enforcement Remedies

(a) *Injunctive Relief*. When the Control Authority finds that a User has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement, the Control Authority may petition the Circuit Court of Sebastian County, Arkansas, Fort Smith Division through the City's Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the individual wastewater discharge permit, the general permit, order, or other requirement imposed by this ordinance on activities of the User. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

(b) Civil Penalties.

(1) A User who has violated, or continues to violate, any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement shall be liable to the City for a maximum civil penalty of one thousand dollars ($1,000) per violation, per day. In the case of a monthly or other long term average discharge limit, penalties shall accrue for each day during the period of the violation.

(2) Any action to collect an assessed civil penalty may be initiated in a court of competent jurisdiction only after a majority vote of the Board of Directors to pursue such action.

(3) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the User's violation, corrective actions by the User, the compliance history of the User, and any other factor as justice requires.

(4) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a User.

(c) Criminal Prosecution.

(1) A User who willfully or negligently violates any provision of this ordinance, an individual wastewater discharge permit, or a general permit or order issued hereunder, or any other Pretreatment Standard or Requirement shall, upon conviction, be guilty of a misdemeanor, and shall be subject to a fine of at least one thousand dollars ($1,000) per violation, per day.

(2) A User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a fine of at least one thousand dollars ($1,000) per violation, per day.

(3) A User who knowingly makes any false statements, representations, or certifications in any application, record, report, plan, or other documentation filed, or required to be maintained, pursuant to this ordinance, individual wastewater discharge permit, or general permit or order issued hereunder, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this ordinance shall, upon conviction, be punished by a fine at least one thousand dollars ($1,000) per violation, per day.

(4) Such action may be initiated in a court of competent jurisdiction only after a majority vote of the Board of Directors to pursue such action.

(d) *Remedies Nonexclusive*. The remedies provided for in this ordinance are not exclusive. The Control Authority may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with Control Authority's Enforcement Response Plan. However, the Control Authority may take other action against any User when the circumstances warrant. Further, the Control Authority is empowered to take more than one enforcement action against any noncompliant User.

(e) *Water Supply Severance*. Whenever a User has violated or continues to violate any provision of this ordinance, an individual wastewater discharge permit, a general permit, or order issued

hereunder, or any other Pretreatment Standard or Requirement, water service to the User may be severed following notice and a hearing as provided in section 25-216(c).

Sec. 25-218. - Affirmative Defenses to Discharge Violations

(a) Upset

(1) For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (3), below, are met.

(3) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and the User can identify the cause(s) of the upset;

b. The facility was at the time being operated in a prudent and workman like manner and in compliance with applicable operation and maintenance procedures; and

c. The User has submitted the following information to the Control Authority within twenty-four (24) hours of becoming aware of the upset if this information is provided orally, a written submission must be provided within five (5) days:

i. A description of the indirect discharge and cause of noncompliance;

ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance; and

iv. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(4) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(b) *Prohibited Discharge Standards*. A User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 25-207(a)(1) of this ordinance or the specific prohibitions in Sections 25-207(a)(2)(c.) through 25-207(a)(2)(t.) of this ordinance if it can prove that it did not know, or have reason to know, that its discharge,

alone or in conjunction with discharges from other sources, would cause Pass Through or Interference and that either:

(1) A Local Limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the Pass Through or Interference; or

(2) No Local Limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of Interference, was in compliance with applicable sludge use or disposal requirements.

(c) Bypass

(1) For the purposes of this Section,

a. "Bypass" means the intentional diversion of wastestreams from any portion of a User's treatment facility.

b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) A User may allow any bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (3) and (4) of this Section.

(3) Bypass Notifications

a. If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, at least ten (10) business days before the date of the bypass, if possible.

b. A User shall submit oral notice to the Control Authority of an unanticipated bypass that exceeds applicable Pretreatment Standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Control Authority may waive the written report on a case by case basis if the oral report has been received within twenty-four (24) hours.

(4) Bypass Prohibited; Exceptions

a. Bypass is prohibited, and the Control Authority may take an enforcement action against a User for a bypass, unless:

i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

iii. The User submitted notices as required under paragraph (C) of this section.

b. The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the three conditions listed in paragraph (4)(a.) of this Section.

Sec. 25-219. - Miscellaneous Provisions

(a) Pretreatment Charges and Fees. The Control Authority may adopt fees for reimbursement of costs of setting up and operating the city's pretreatment program which may include:

(1) Fees for wastewater discharge permit application including the cost of processing such applications;

(2) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users.

In the event that the Control Authority determines that an outside laboratory should be utilized for the analysis of any parameter, the actual cost of analysis by the outside laboratory shall be borne by the industrial user.

(3) Fees for reviewing and responding to accidental discharge procedures and construction;

(4) Fees for filing appeals;

(5) Fees to recover administrative and legal costs (not included in Section 25-219(a)) associated with the enforcement activity taken by the Control Authority to address IU noncompliance; and

(6) Other fees as the Control Authority may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this division and are separate from all other fees, fines, and penalties chargeable by the Control Authority.

(b) Surcharge

(1) Any significant industrial user generating discharge which exhibits none of the characteristics of wastes prohibited in Section 25-207 but which has an average concentration of total suspended solids (TSS) or biochemical oxygen demand (BOD) surcharge parameters in excess of 250 mg/L the allowed strengths during a twenty-four (24) hour period, may be required to obtain a discharge permit. Such discharge may, however, be accepted by the POTW for treatment in accordance with High Strength Surcharge requirements and costs as defined in the City’s current rate ordinance(s).

(2) The Control Authority reserves the right to review and approve any waters or industrial waste entering the city's sewer system or proposed to be discharged into the system having an average daily flow greater than ten percent (10%) of the design flow capacity of the plant which will treat the waste. In the event the city's measurement discloses such flow in excess of such capacity, the city shall be under no obligation to receive such flow in excess of ten percent (10%) of designed capacity and the city's published rate shall not apply to such excess. An owner affected hereby shall be promptly notified of such determination by the Control Authority. A special contract, at the city's option, may be made with the user to accommodate such excess flow.

(c) *Severability*. If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

(d) *Conflicts*. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this article, are hereby repealed to the extent of the inconsistency or conflict.

PROOF OF PUBLICATION
STATE OF ARKANSAS
COUNTY OF SEBASTIAN

I **Radonna Taylor,** do solemnly swear that I am **Inside Sales Manager** of the **Times Record,** a daily newspaper having a second class mailing privilege, and being not less than four pages of five columns each, published at a fixed place of business and at fixed daily intervals continuously in the City of Fort Smith, Sebastian County, Arkansas, for more than a period of twelve months, circulated and distributed from an established place of business to subscribers and readers generally of all classes, in the city and county aforesaid, for a definite price for each copy, or a fixed price per annum, which was fixed at what is considered the value of the publication based upon the news service value it contains, that at least fifty percent of the subscribers thereto have paid cash for their subscription to the newspaper or its agents or through recognized news dealers, over a period of at least six months and that said newspaper published an average of more than forty percent news matter. The newspaper is circulated in the counties of Crawford, Franklin, Johnson, Logan, Polk, Scott and Sebastian in Arkansas.
I further certify that the legal notice hereto attached in the matter of:

RE: PO 5625 PUBLIC NOTICE

ORDER 754345
COST 94.50

Was published in the regular daily issue of said newspaper for consecutive insertions as Follows:

First Run: 3-19-16
Second Run:
Third Run:
Fourth Run:

Radonna Taylor
(Signature)

Sworn before me on the 23 day of March 2016

My Commission expires 1-11-2023

Johnnie L Swaim
Notary Public

JOHNNIE L SWAIM
Sebastian County
Commission Number 12391360
Notary Public - Arkansas
My Commission Expires January 11, 2023

PUBLIC NOTICE

Notice is hereby given that the City of Fort Smith Board of Directors will consider adoption of amendments to the Sanitary Sewer System Pretreatment Regulation and Permits Ordinance at its regular meeting on April 19, 2016. Said meeting will be held at 6:00 p.m. at the Fort Smith Public Schools Service Center, Building "B", 3205 Jenny Lind Road. As required by law, three (3) copies if the amendments entitled "2016 Amendments to the Sanitary Sewer System Pretreatment Regulation and Permits Ordinance Codified in Division 2, Article VI of Chapter 25 of the Fort Smith Municipal Code" are available for public inspection and review in the Fort Smith City Clerk's Office during normal working hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., Room 303, 623 Garrison Avenue.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE NO. 10-96 AS PREVIOUSLY AMENDED GRANTING A NON-EXCLUSIVE FRANCHISE TO ELVA STOUFER, D/B/A NON-AMBULATORY TRANSPORTATION SERVICE, INC.

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

SECTION 1: Section 1 of Ordinance No. 10-96 is hereby amended to read as follows:

There is hereby granted to Non-Ambulatory Transportation Services, Inc. (Elva Stoufer), 1101 Burnham Road, Fort Smith, Arkansas, a non-exclusive franchise for the operation of a non-ambulatory transportation service to serve handicapped and elderly persons within the city of Fort Smith, Arkansas.

SECTION 2: Section 1(c) of Ordinance No. 10-96 is hereby amended to extend the non-exclusive franchise previously granted to David J. Stoufer, Sr. and Elva Stoufer, d/b/a Non-Ambulatory Transportation Service, Inc. to Elva Stoufer *(David J. Stoufer, Sr. is now deceased)* d/b/a Non-Ambulatory Transportation Service, Inc., for a period of five (5) years beginning on May 1, 2016.

SECTION 3: It is hereby determined that the franchise authorized by this Ordinance is to provide for the transportation of elderly and handicapped citizens and to preserve the health, safety, and welfare of the City of Fort Smith and its inhabitants; therefore, an emergency is declared and this Ordinance shall be in full force and effective on May 1, 2016.

PASSED AND APPROVED this 19th day of April, 2016.

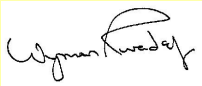
APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

Approved as to form:



_____
City Attorney
Publish one time

MEMORANDUM
April 15, 2016

TO: Jeff Dingman, Acting City Administrator

FROM: Sherri Gard, City Clerk

RE: Non-Ambulatory Transportation Franchise - Elva Stoufer

Since 1986, the City of Fort Smith has granted a non-exclusive franchise to David & Elva Stoufer to operate Non-Ambulatory Transportation Service, Inc., which serves handicapped and elderly persons living within Fort Smith. The existing franchise will expire April 30, 2016. Mr. Stoufer passed away a few years ago; however, Ms. Stoufer has submitted a letter requesting the franchise be continued for an additional five (5) years effective May 1, 2016.

The company provides a vital service to citizens in the community who require specialized transportation. Ms. Stoufer has consistently provided my office with a copy of current liability insurance on an annual basis as required by the franchise agreement.

The attached ordinance has been prepared extending the non-exclusive franchise for a period of five (5) years to April 30, 2021. As required by law, a public notice has been published advising three (3) copies of the proposed ordinance has been on file in the City Clerk's Office for public inspection and review prior to Board consideration.

If you or members of the Board have any questions, please let me know.

6.

ORDINANCE NO. 10-96

AN ORDINANCE GRANTING TO NON-AMBULATORY TRANSPORTATION SERVICE, INC. A NON-EXCLUSIVE FRANCHISE TO OPERATE A TRANSPORTATION SERVICE FOR HANDICAPPED & ELDERLY PERSONS

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

SECTION 1: There is hereby granted to Non-Ambulatory Transportation Service, Inc. (David J. Stoufer, Sr. and Elva Stoufer), 1101 Burnham Road, Fort Smith, Arkansas, a non-exclusive franchise for the operation of a non-ambulatory transportation service to serve handicapped and elderly persons within the City of Fort Smith, Arkansas.

(a) The operator of said service shall provide and maintain in full force and effect, during the entire term of this franchise, public liability insurance providing for a limit of not less than one hundred thousand dollars ($100,000.00) for all damages arising out of bodily injury to or death of one person, and subject to the same limit for each person, a total limit of not less than three hundred thousand dollars ($300,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident, and property damage liability insurance providing for a limit of not less than twenty-five thousand dollars ($25,000.00) for all damages arising out of injury to or destruction of property in any one accident. Proper certificates establishing the existence of such insurance shall be furnished to the City Administrator.

(b) The operator of said service may charge up to the following maximum rates for service:

$5.00 plus 50¢ per mile for each one-way trip with a $10.00 minimum for each one-way trip.

(c) This non-exclusive franchise shall be effective for a period of five (5) years beginning on the effective date of this ordinance.

(d) Provided that after the effective date of this ordinance that the operator may, after giving thirty (30) days written notice to the City Clerk, modify the rates established by subsection (b) of this section. The notice shall state the effective date of the proposed rate modification which in no event

shall be less than thirty (30) days from the date of filing and such proposed modification shall go into effect upon the stated effective date unless the City shall have given written notice to the operator prior to that date that it intends to hold a public hearing to determine whether or not such rate modification should be permitted.

(e) The operator shall post in a conspicuous place on all vehicles used in the transportation service the rates currently being charged by the operator. It shall be unlawful for the operator to charge any rate in excess of those posted.

In the event of being convicted of violating the provision of subsection (e), the operator shall be fined in a sum not to exceed twenty-five dollars ($25.00) per each violation.

(f) The City has made no requirements regarding the staffing of vehicles used in the service, and the City notifies the public and the franchisee that the franchisee should take all reasonable precautions to be able to serve handicapped and elderly persons using the transportation service, and that the transportation service should decline service to those persons who cannot be responsibly handled by the facilities and personnel available.

SECTION 2: The rights and privileges herein granted to Non-Ambulatory Transportation Service, Inc., shall not be assigned or otherwise transferred without the prior approval of the Board of Directors of the City of Fort Smith, Arkansas.

PASSED AND APPROVED this 6 day of February, 1996.

APPROVED:

Mayor

ATTEST:

Cindy Rumler

City Clerk

Approved as to form and as to effectiveness.

Publish 1 Time

5A

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT AGREEMENT WITH THE RIVER VALLEY SPORTS COMPLEX ADJUSTING THE DATE OF COMPLETION

WHEREAS, the City of Fort Smith and the River Valley Sports Complex (the "Seller") entered into an Agreement Regarding Construction and Purchase of River Valley Sports Complex for the development of a tournament quality eight-field sports complex on city-owned real property in the Chaffee Crossing area of Fort Smith, such Agreement being effective March 4, 2014 and authorized by Resolution No. R-20-14; and

WHEREAS, such Agreement sets forth specific performance milestones for the disbursement of a maximum of $1.6 million from the City to the Seller, and sets a specific date for substantial completion of the project of June 10, 2015 with the project being ready for public use by July 1, 2015; and

WHEREAS, such Agreement was modified in May, 2015 as authorized by Resolution No. R-96-15, which in part established a new date of substantial completion of March 18, 2016 and ready for public use by March 31, 2016; and

WHEREAS, the City and the Seller have agreed to issue an Amendment Agreement in order to adjust the performance payment schedule and to establish a new date for completion.

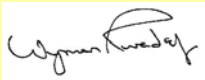
NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that the Mayor is authorized to execute the attached Amendment Agreement with the River Valley Sports Complex for the purpose of the establishment of a new date of substantial completion of July 22, 2016 and ready for public use date of July 31, 2016.

This Resolution adopted this _____ day of April, 2016.

_____
Mayor

ATTEST:

APPROVED AS TO FORM:



_____
City Clerk

_____
City Attorney, npr

AMENDMENT TO AGREEMENT REGARDING
CONSTRUCTION AND PURCHASE OF
RIVER VALLEY SPORTS COMPLEX

This Amendment Agreement made and entered into this _____ day of April, 2016 between the City of Fort Smith, Arkansas (the "City") and River Valley Sports Complex (the "Seller").

WHEREAS, the City and the Seller entered into the "Agreement Regarding Construction and Purchase of River Valley Sports Complex" for the development of a tournament quality eight-field sports complex on city-owned real property in the Chaffee Crossing area of Fort Smith, such Agreement being effective March 4, 2014 and authorized by Resolution No. R-20-14; and

WHEREAS, such Agreement set forth specific performance milestones for the disbursement of a maximum of $1.6 million from the City to the Seller, and sets a specific date for substantial completion of the project of June 10, 2015 with the project being ready for public use by July 1, 2015; and

WHEREAS, such Agreement was modified in May, 2015 as authorized by Resolution No. R-96-15, which in part established a new date of substantial completion of March 18, 2016 and ready for public use by March 31, 2016; and

WHEREAS, the City and the Seller have agreed to further amend the Agreement by declaring a new date for substantial completion of the project,

NOW, THEREFORE, the Parties agree to and authorize this Amendment Agreement, which modifies the date of substantial completion as follows:

Section 1. Time. Seller agrees that the Sports Complex will be substantially completed by July 22, 2016. It is agreed that the Sports Complex will be fully developed and ready for use by July 31, 2016.

Section 2. The provisions herein are the only amendments to the Agreement Regarding Construction and Purchase of River Valley Sports Complex. All other provisions of said Amended Agreement as authorized by Resolution No. R-96-15 remain in full force and effect.

IN WITNESS WHEREOF, this Amendment Agreement is executed as of the date set forth above.

SELLER – RIVER VALLEY SPORTS COMPLEX

By: _____

Attest: _____

OWNER – CITY OF FORT SMITH, ARKANSAS

By: _____
Mayor

Attest: _____
City Clerk

Memo

To: Honorable Mayor & Members of the Board of Directors

From: Jeff Dingman, Acting City Administrator

Date: 4/15/2016

Re: River Valley Sports Complex Agreement Amendment

As discussed at the April 12, 2016 study session, the River Valley Sports Complex developers have proposed an adjustment to the completion date for the project to build a tournament quality eight-field sports complex on City-owned property at Chaffee Crossing. The project was originally authorized in March, 2014 via Resolution No. R-20-14 and committed a maximum of $1.6 million to the project. A subsequent amendment was approved in May, 2015 via Resolution No. R-96-15 modifying the draw schedule and date of completion, with no additional funds. This proposed third amendment modifies the date of completion, still with no additional funds requested or approved.

At the study session, the Board (Directors Settle/Good) placed approval of a 90-day project extension on the April 19 regular meeting agenda.

Attached is a Resolution authorizing the Mayor to execute an Amendment Agreement that establishes a new date of substantial completion for the project of July 22, 2016, which 94 days from the April 19 meeting. It further provides that the complex will be ready for public use by July 31, 2016. No additional funding is involved, the maximum cost to the City remains at $1.6 million, which is funded through the 1/8 – cent general sales and use tax that funds the Parks & Recreation Capital Improvement Program. To date, $620,000 of that amount has been disbursed according to the agreed upon draw schedule.

Please contact me if you have additional questions regarding this agenda item.

5B

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE BID AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH ADVANCED WORKZONE SERVICE, LLC FOR THE CONSTRUCTION OF THE BLUE LION BIKEWAY – SHARROWS

_____

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

SECTION 1: The bid of Advanced Workzone Service, LLC for the construction of the Blue Lion Bikeway – Sharrows is hereby accepted.

Section 2: The Mayor is hereby authorized to execute a contract with Advanced Workzone Service, LLC for an amount not to exceed $37,775.00, for performing the project identified in Section 1.

This Resolution adopted this _____ day of April, 2016.

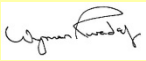
APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM



_____npr

PARKS RECREATION
FORT SMITH

Memo:

April 15, 2016

To: Jeff Dingman, Acting City Administrator
From: Doug Reinert, Director of Parks and Recreation DSR
Re: Blue Lion Bikeway – Sharrow Contract

The Parks and Recreation Commission and Trails and Greenways Committee has been instrumental in assisting with the location of sharrows throughout the trails master plan to help make it continuous and connected. The Blue Lion Bikeway Sharrows were highly requested by UAFS students to provide a corridor to downtown Fort Smith.

The project consists of installation of shared lane bicycle marking (sharrow) on the road along with associated signage along the route. The route will run along A & B Streets, North 15th Street, to North E Street down to Blackburn Avenue then Lecta Avenue will connect Kinkead and Park Avenue, a small portion of Barry Avenue will be marked, then Kinkead and Park Avenue are connected again on North 51st Street, then the route goes along Park Avenue and North on North 66th Street.

The Blue Lion Bikeway Sharrows will serve as a pilot run for sharrows and we hope to hear positive feedback. The Trails and Greenways Committee are in the process of prioritizing the sharrows and we hope to move forward on additional sharrows in the near future.

The project was publicized and bid out on April 5, with two bids being received. Advanced Workzone Services, LLC was the low bid of $37,775.00. Attached is a letter of recommendation and the certified bid tab from our project engineer, Hawkins Weir Engineers, Inc.

This project is in alignment with the goals of the Comprehensive Plan policy IT-1.3.1, TI-1.5.1, TI-1.6.1, TI-3.1 and TI-3.3.1. I recommend approval of the resolution. If you have any questions regarding the sharrows please feel free to contact me.

Attachments

HAWKINS • WEIR
ENGINEERS, INC.
Engineering Client Success

April 5, 2016

RECEIVED
APR 07 2016
Fort Smith
Parks & Recreation

Mr. Doug Reinert
Fort Smith Parks & Recreation Department
3301 South M Street
Fort Smith, Arkansas 72903

Re: Blue Lion Bikeway – Sharrows
Fort Smith Project No. 15-01-S

Dear Mr. Reinert:

Two (2) bids were received Tuesday, April 5, 2016, for the referenced project. Enclosed is a copy of the certified bid tabulation. The low bid was submitted by Advanced Workzone Services, LLC for a total contract price of $37,775.00. This low bid is less than the Engineer's estimate of $70,470.00. Therefore, we recommend that a construction contract for the referenced project be awarded to the low bidder, Advanced Workzone Services, LLC, for a total contract price of **$37,775.00**.

If you have any questions or require any additional information, please do not hesitate to call.

Sincerely,

HAWKINS-WEIR ENGINEERS, INC.

Barry K. McCormick

Barry K. McCormick, P.E.

BKM/cnc
Enclosure: Certified Bid Tabulation

110 So. 7th Street • P.O. Box 648 • Van Buren, AR 72957 • Ph: (479) 474-1227 • (479) 474-8531
211 Natural Resources Drive • Little Rock, AR 72205 • Ph: (501) 374-4846 • Fax: (501) 374-4886
www.hawkins-weir.com

15-01-S/DR040516BM.docx

Blue Lion Bikeway - Sharrows
Fort Smith Parks and Recreation Department
Tabulation of Bids Received on April 5, 2016, 10:00 a.m.
Project No. 15-01-S

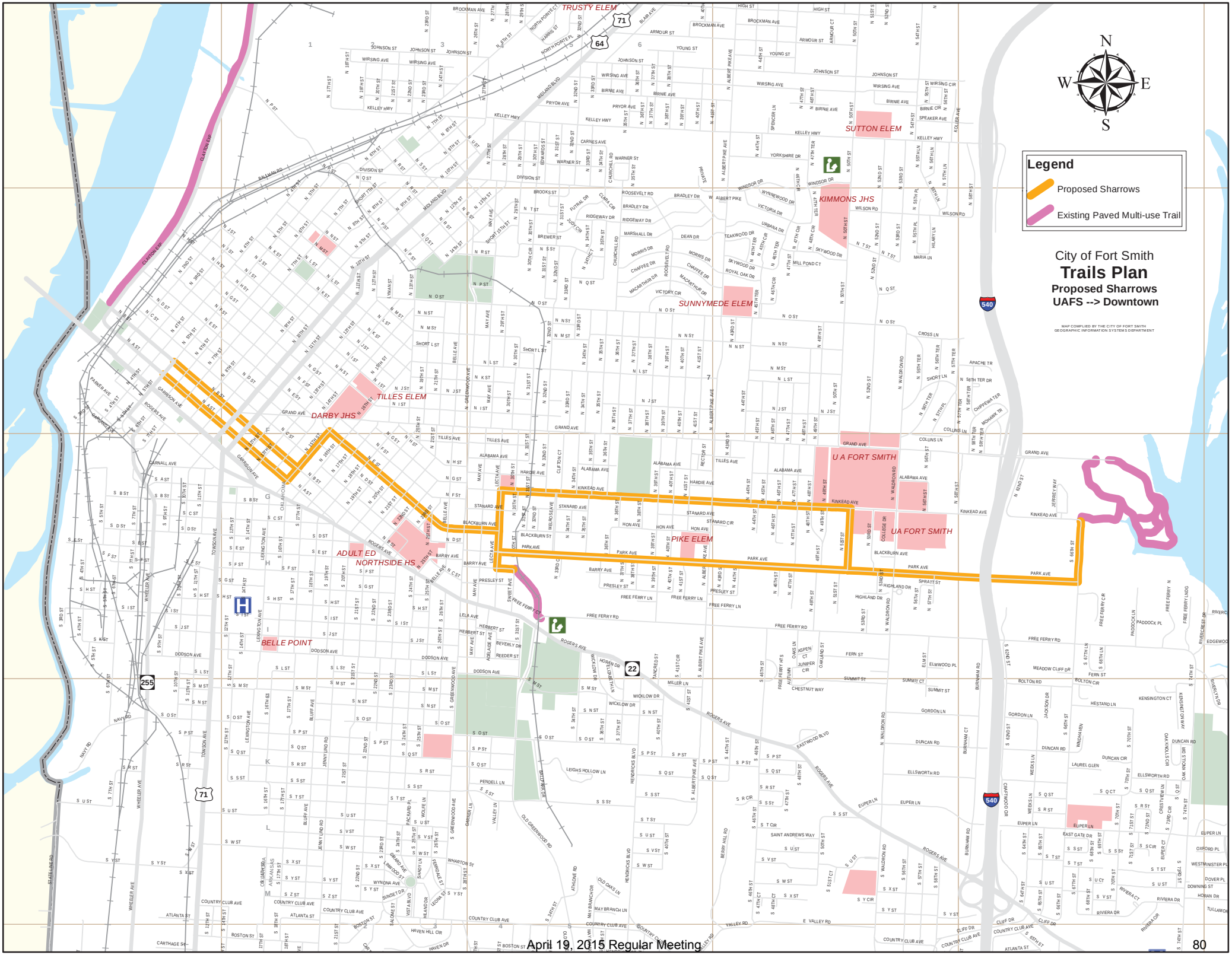
	SCHEDULE I			Engineer's Estimate		Advanced Workzone Services, LLC		Time Striping, Inc.	
Item#	Description	Quantity	Unit	Unit Cost	Bid	Unit Cost	Bid	Unit Cost	Bid
1.	Performance and Payment Bond	1	LS	$1,800.00	$1,800.00	$2,500.00	$2,500.00	$750.00	$750.00
2.	Maintenance of Traffic and Traffic Control	1	LS	$6,300.00	$6,300.00	$2,500.00	$2,500.00	$1,000.00	$1,000.00
3.	Site Preparation	1	LS	$3,000.00	$3,000.00	$100.00	$100.00	$1,000.00	$1,000.00
4.	Traffic Paint Pavement Marking (Bikeway Sharrow Emblems)	305	EA	$150.00	$45,750.00	$75.00	$22,875.00	$85.00	$25,925.00
5.	Traffic Signs	240	SF	$18.00	$4,320.00	$15.00	$3,600.00	$25.00	$6,000.00
6.	Sign Post	62	EA	$150.00	$9,300.00	$100.00	$6,200.00	$150.00	$9,300.00
	TOTAL BID - SCHEDULE I				$70,470.00		$37,775.00		$43,975.00

I hereby certify that this tabulation is a true and accurate representation of all bids received.

Barry K. McCormick

Barry K. McCormick, P.E.
Hawkins-Weir Engineers, Inc.
Arkansas License No. 7243

STATE OF ARKANSAS
REGISTERED PROFESSIONAL ENGINEER
No. 7243
4/5/2016
BARRY K. McCORMICK


TRUSTY ELEM
SUTTON ELEM
KIMMONS JHS
SUNNYMEDE ELEM
TILLES ELEM
DARBY JHS
U A FORT SMITH
UA FORT SMITH
PIKE ELEM
ADULT ED
NORTHSIDE HS
BELLE POINT
N
W
E
S
Legend
Proposed Sharrows
Existing Paved Multi-use Trail
City of Fort Smith
Trails Plan
Proposed Sharrows
UAFS --> Downtown
MAP COMPILED BY THE CITY OF FORT SMITH
GEOGRAPHIC INFORMATION SYSTEMS DEPARTMENT

5C

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF CITY OF FORT SMITH
TO UTILIZE FEDERAL-AID TRANSPORTATION ALTERNATIVES PROGRAM FUNDS

_____

WHEREAS the Board of Directors understand Federal-aid Transportation Alternatives Program Funds are available at 80% federal participation and 20% local match to develop or improve the Chaffee Crossing Trail, and

WHEREAS City of Fort Smith understands that Federal-aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS this project, using federal funding, will be open and available for use by the general public and maintained by the applicant for the life of the project.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS THAT:

SECTION 1: City of Fort Smith will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION 2: The Mayor is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

SECTION 3: The Board of Directors pledge its full support and hereby authorizes the City of Fort Smith to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

This Resolution adopted this _____ day of April, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM

_____npr

5D

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE WILLINGNESS OF CITY OF FORT SMITH
TO UTILIZE FEDERAL-AID RECREATIONAL TRAILS FUNDS

_____

WHEREAS the Board of Directors understand Federal-aid Recreational Trails Funds are available at 80% federal participation and 20% local match/in kind labor to develop or improve the Chaffee Crossing Trail, and

WHEREAS City of Fort Smith understands that Federal-aid Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

WHEREAS this project, using federal funding, will be open and available for use by the general public and maintained by the applicant for the life of the project.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS THAT:

SECTION 1: City of Fort Smith will participate in accordance with its designated responsibility, including maintenance of this project.

SECTION 2: The Mayor is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of the above stated project.

SECTION 3: The Board of Directors pledge its full support and hereby authorizes the City of Fort Smith to cooperate with the Arkansas State Highway and Transportation Department to initiate action to implement this project.

This Resolution adopted this _____ day of April, 2016.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM

_____npr

Memo:

April 15, 2016

To: Jeff Dingman, Acting City Administrator
From: Doug Reinert, Director of Parks and Recreation DSR
Re: Arkansas Recreational Trails Program and Transportation Alternative Program Funding

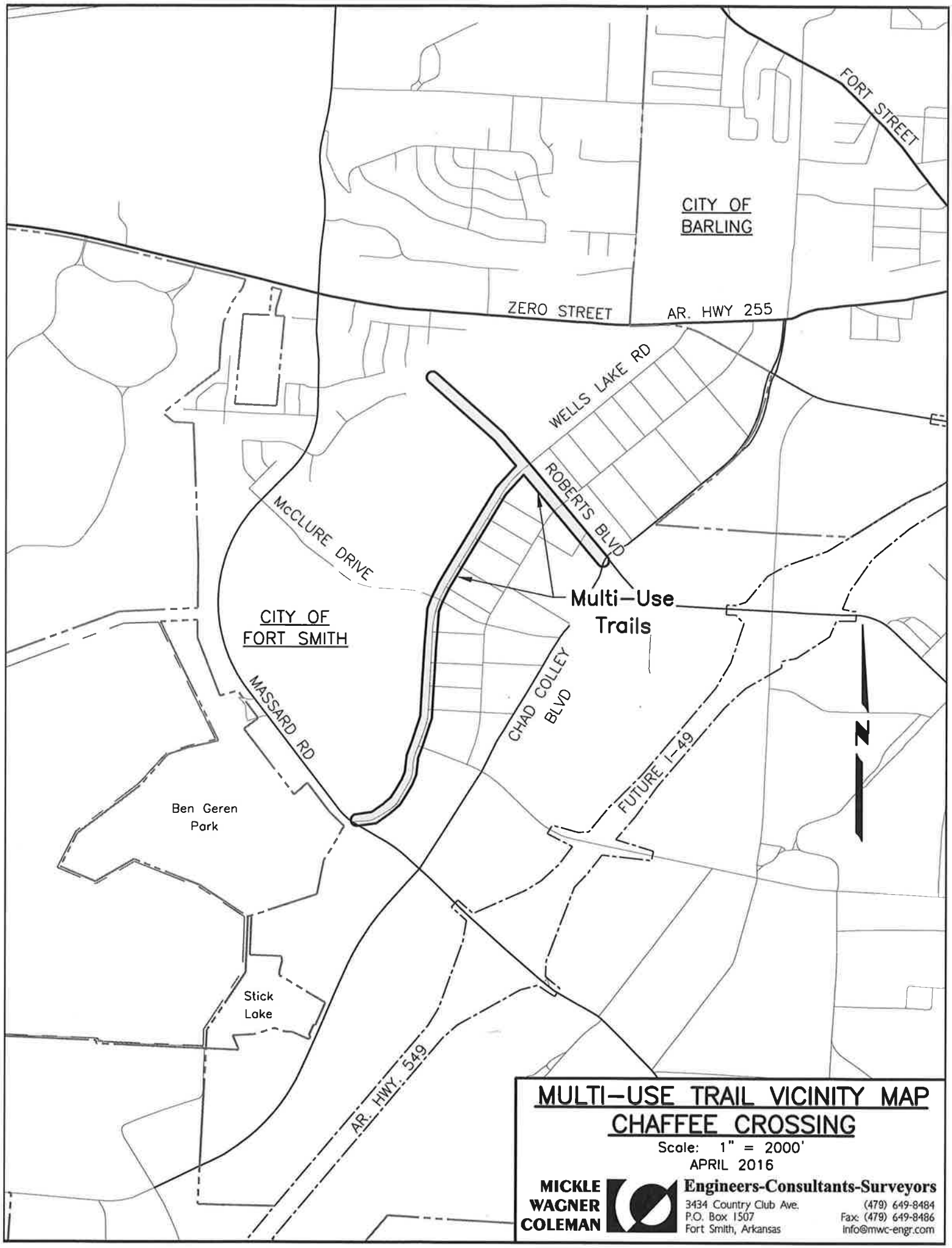
An application is being filed for funding through the Arkansas Recreational Trails Program for non-motorized trails (RTP) and the Arkansas Transportation Alternatives Program (TAP). As part of the application process, the Board of Directors must show support for the project with a resolution.

The trails that we are requesting funding for are at Chaffee Crossing. We are currently negotiating a contract with a local engineering firm for the design of these trails. There is the potential of up to $500,000 worth of grant funding that could be received. We will not be awarded both grants; however we do qualify to seek funding for both, bettering the opportunity to be awarded funding from one of the sources.

The trail will be a 10 foot wide asphalt trail and will connect several housing additions and possibly future schools. The funding requires that we provide 20% of the total project cost which will be funded through the Sale's and Use Tax Budget. Our match will be for $125,000 because we will be seeking the maximum funding. Fort Chaffee Redevelopment Authority has agreed to partner with us and to share the cost in trail design and construction.

The application deadline for both grants is June 1. This is in alignment with the goals of the comprehensive plan action TI-1.5.1, TI-1.6.1, TI-3.1, TI-3.2 and TI-3.3. I recommend approval of these resolutions. Please call if you have any questions.

Attachment


FORT STREET
CITY OF BARLING
ZERO STREET
AR. HWY 255
WELLS LAKE RD
ROBERTS BLVD
McCLURE DRIVE
Multi-Use Trails
CITY OF FORT SMITH
MASSARD RD
CHAD COLLEY BLVD
FUTURE I-49
N
Ben Geren Park
Stick Lake
AR. HWY. 549
MULTI-USE TRAIL VICINITY MAP
CHAFFEE CROSSING
Scale: 1" = 2000'
APRIL 2016
MICKLE WAGNER COLEMAN
Engineers-Consultants-Surveyors
3434 Country Club Ave.
P.O. Box 1507
Fort Smith, Arkansas
(479) 649-8484
Fax: (479) 649-8486
info@mwc-engr.com

5E

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE WESTERN ARKANSAS TENNIS ASSOCIATION FOR OPERATION OF THE TENNIS CENTER AT CREEKMORE PARK

_____

WHEREAS, Western Arkansas Tennis Association (WATA), Fort Smith, Arkansas has requested to operate the tennis center at Creekmore Park, and;

WHEREAS, the City of Fort Smith Parks and Recreation Commission recommends the approval of the agreement with WATA for the operation of the tennis center at Creekmore Park;

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

Section 1: The Mayor is hereby authorized to execute an agreement with WATA for a period of three (3) years beginning April 19, 2016 and expiring April 18, 2019.

This Resolution passed this _____ day of April, 2016.

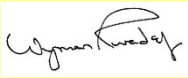
APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM



_____npr

Memo:

April 15, 2016

To: Jeff Dingman, Acting City Administrator
From: Doug Reinert, Director of Parks and Recreation DSR
Re: Renewal of the Western Arkansas Tennis Association (WATA) agreement to operate the Creekmore Tennis Center

The Parks and Recreation Commission recommends approval of an agreement with WATA to continue to manage and operate the tennis center at Creekmore Park. The tennis center building was opened in May of 2003; WATA has operated and managed the courts under this agreement since then.

The agreement covers operational topics like scheduling, hours of operation, services offered, maintenance, and safety, and managerial topics like record keeping, insurance, and reporting.

The Association promotes tennis in our region with tournaments, leagues, lessons, and scheduling school use of the courts. They are a good partner with the City providing recreation for all ages in the lifelong sport of tennis. This year WATA will be hosting the state tournament that is expected to be a boost in tourism for Fort Smith.

The City pays for the utilities and repairs to the building and courts, and WATA pays the daily operation and staffing costs. They have been an excellent partner for the City of Fort Smith. Please call me if there are any questions.

AGREEMENT

THIS AGREEMENT MADE AND ENTERED INTO this ____day of _____, 2016, by and between the City of Fort Smith, Arkansas, hereinafter "CITY" and Western Arkansas Tennis Association pursuant to resolution of its Board of Directors, hereinafter "Contractor" or "WATA," for the provision of tennis services at the Creekmore Tennis Center at Creekmore Park, hereinafter "Tennis Center."

WITNESSETH

WHEREAS, the CITY is the owner of the real property described as the Creekmore Tennis Center (located on the City owned real property identified on the plat attached as Exhibit A attached hereto) used for the benefit of its citizens as a "public park"; and,

WHEREAS, the parties desire that the subject property continue to be used, in part, for organized public athletic activities supervised by Contractor; and,

WHEREAS, the parties desire to place in writing the terms of their mutual agreement regarding the responsibilities of the parties with regard to the use of the described real and personal properties owned by Contractor;

NOW, THEREFORE, in exchange of the mutual terms and conditions set forth herein, which are acknowledged by the parties to be sufficient to support the obligations set forth herein, the parties agree as follows:

1. PURPOSES: Contractor shall provide tennis services at the Creekmore Tennis Center at Creekmore Park. Contractor shall supervise activities at the Tennis Center as an independent contractor as identified in paragraph 16. Contractor shall use the facility for conducting scheduled tennis activity programs for the public park benefit of the citizens of the City of Fort Smith.

2. SCHEDULING & HOURS: Except as noted in this paragraph, Contractor shall have the right to schedule the use of the courts on the subject property. All of the property shall be available for public park uses by the citizens of the CITY of Fort Smith at all times not scheduled for Contractor activities. The CITY reserves the right to schedule and use the property, including structures and other facilities, at all times not scheduled by Contractor. At least one tennis court will be open for public use at all times not scheduled for WATA activities. WATA activities, tournaments and special events, lasting longer than four consecutive days or more must be approved in writing by the City prior to scheduling by WATA.

2.01 Hours of Operation: Contractor shall establish daily operational hours, subject to CITY review and approval. Daily operational hours shall be publicly posted on-site at the Tennis Center.

3. ACTIVITIES & SERVICES: Contractor is authorized and required to provide organization, administration, and supervision of tennis competition, including scheduling of courts, leagues, and tournament play during hours of operation, and shall provide concession services to the public.

3.01 **Lessons and Clinics:** Paid tennis lessons and clinics shall be taught only by qualified instructors as certified by USPTR or USPTA. Contractor shall have the exclusive right to provide paid tennis instruction.

3.02 **Tournaments**: Contractor shall make reasonable efforts to develop and facilitate/host special events and tournaments such as City, County, State, Regional, and National tournaments.

3.03 **Leagues:** Contractor shall make available facilities for youth and adult play in organized leagues, ensuring equal access to all CITY residents without regard to race, religion, color, national origin, sex, age, or handicap.

3.04 **Special Events:** Contractor may offer special activities such as corporate outings, charity benefits, and exhibitions. Contractor shall also cooperate with the CITY in providing tennis services at other, selected CITY sponsored special events and activities at the Tennis Center on mutually agreed upon terms.

3.05 **Concession and Stringing:** Concession and racquet stringing rights are awarded to Contractor and may be self-operated or contracted to a third party.

3.06 **Food and Beverages:** Contractor is hereby authorized to sell food and beverages at the Tennis Center. Contractor shall ensure that all local and state regulations are adhered to. All food and beverage products kept on hand by Contractor shall be stored and handled with due regard to sanitation. In the event that Contractor's food and beverage products are deemed by the CITY to be less than first class in quality, the CITY shall have the right to order the improvements of the quality of any such product kept or offered for sale.

3.07 **Pro Shop:** Contractor shall provide and maintain such inventory of tennis merchandise as is deemed necessary by the joint agreement of Contractor and CITY to adequately meet the public demand. The CITY shall have the right to prohibit the sale or rental of any item of merchandise on finding that the item is of such inferior quality as to not be in the public interest to be offered for sale, or that such item is not necessary for proper service to the public.

3.08 **Quality of Goods and Service:** Service to the public, with goods and merchandise of the best quality and at reasonable charges, is of prime concern to the CITY and is considered a part of the consideration for this Agreement. Therefore, Contractor agrees to operate and manage the Tennis Center facilities and services offered in a first-class manner, and comparable to other similar facilities and services during the entire term of this Agreement. Contractor, following receipt of written notification issued under sub-paragraph 19.01, shall immediately withdraw or remove from sale any goods or services which may be found objectionable to the CITY based on findings that the provision of such goods or services are harmful to the public welfare.

3.09 **Signs:** Contractor shall not post additional, permanent signs at the Tennis Center or improvements thereon, unless prior approval is obtained from the CITY. Contractor may post temporary signs, banners, and the like to promote special activities and to allow publicity for sponsors of the various activities at the Tennis Center.

3.10 **Nondiscrimination:** Contractor shall conduct activities on a non-discriminatory basis with regard to race, national origin, religion, disability or gender. The provisions of this sub-paragraph shall not prevent Contractor from establishing recreational activities according to the ages and skill level of the participants in the activities.

4. MAINTENANCE: The property shall be maintained according to the following sub-paragraphs.

4.01 **Grounds:** The CITY, at its own expense, shall maintain to a standard within its discretion, the structural parts of the Tennis Center and courts, which shall include court surfaces, fences, gates, lights and light poles on the tennis courts, side walks, paved areas, trees and landscape, foundations, exterior walls, sub-flooring, and roof. The CITY will replace burned-out light bulbs over the tennis courts, empty large trash receptacles on courts and replace HVAC filters.

4.02 **Premises**: WATA shall, as its own expense, be responsible for routine janitorial services of the office areas, storage rooms, and tennis courts at the Tennis Center, in particular cleaning and replacement of consumables (toilet paper, soap, etc.). Routine janitorial services shall include: court sweeping, litter control, pro shop cleaning (including toilet areas), replacing interior light bulbs, etc. These examples are not an all-inclusive list but are merely provided to guide both parties in defining areas of responsibility. Specifically, it shall be the obligation of WATA to insure conformance with all relevant codes and ordinances of the CITY and applicable Health Codes in connection with the Tennis Center.

5. UTILITIES: The CITY shall provide public utilities (sewer, water, and electricity) for uses of the park by Contractor and by the public generally. All telephone numbers that identify Creekmore Tennis Center to the public shall be placed in the name of Contractor and shall not be transferable to any other location. The City shall provide the main phone line and internet connection for the Center. WATA shall reimburse the City for any long distance charges on the main phone line.

6. IMPROVEMENTS: Contractor shall have no right to construct additional improvements or to remodel or to modify or alter the facilities in any way without prior written permission from the CITY.

6.01 **Appliances & Personal Property**: WATA, at its own expense, shall provide furniture and office and tennis equipment required for the Tennis Center building operation. WATA shall have the right to control personal property and equipment owned by WATA and stored in the structures at the Tennis Center. In the event of an involuntary cancellation or termination of this Agreement, WATA shall accomplish the removal of personal property within seven (7) days of such cancellation or termination. Should WATA fail to remove said appliances, furniture, and equipment within the applicable time period, WATA shall forfeit all right, title and interest therein and the CITY may elect to keep same upon the premises or to sell, remove or demolish same without recourse.

7. INSPECTIONS: Regularly scheduled joint inspections of the Tennis Center and review of Contractor's operations shall be made by the CITY with a representative of Contractor. The written report of such inspections shall be recorded, ranked, retained for reference, and forwarded to Contractor and the CITY as confirmation of the inspection.

8. SAFETY: Contractor shall immediately correct any unsafe practices or conditions which come to its attention or if notified of such by the CITY.

8.01 **Identification:** Contractor shall establish an identification system for personnel assigned to the Tennis Center which clearly indicates to Tennis Center patrons and other members of he general public the name of the person(s) on duty.

8.02 **Injuries:** Contractor shall notify emergency medical services (911) in the event of illness or injury occurring at the Tennis Center. Contractor shall notify the City of an incident through email or a written report.

8.03 **Security Devices:** Contractor may provide any lawful devices, installation, or equipment designed for the purpose of protecting the Tennis Center from theft, burglary or vandalism, provided written approval for installation is first obtained from the CITY.

9. COMPLIANCE WITH LAW: Contractor shall conform to and abide by all CITY and county ordinances, and all state and federal laws and regulations, insofar as the same or any of them are applicable; and where permits and/or licenses are required for the Tennis Center operation(s) and/or any construction required or authorized, the same must be first obtained from the regulatory agency having present jurisdiction. Contractor shall also conform to and abide by all rules, regulations, procedures and policies of the CITY Board of Directors and the CITY Administrator insofar as the same or any of them are applicable.

10. EMERGENCY CONTACT: Contractor shall provide the CITY with the names and telephone numbers of the Executive Director and President should an emergency situation occur during hours when Contractor's normal work force is not present.

11. CLOSURE: If the governing body of the CITY does not appropriate sufficient funds to operate the Tennis Center as a park facility, this contract is subject to the absolute right of the CITY to discontinue use of the Tennis Center upon three months notice. In such event, Contractor shall have no legal rights pursuant to this. Contractor acknowledges that the CITY has the authority to temporarily or permanently close the Tennis Center if the CITY determines that the conditions require closure or the remediation of such conditions is too costly.

12. TERM & RENEWAL: The term of this Agreement shall be for a period of (3) years, subject to the other provisions of the Agreement.

13. REVENUES: all revenues derived from the operation of the Tennis Center shall be the property of Contractor.

13.01 **Registers:** All sales shall be recorded by means of cash registers that publicly display the amount of each sale. Said cash registers shall in all cases have locked-in sales totals and transaction counters which are constantly accumulating and which cannot, in either case, be reset, and in addition thereto, a tape located within the register on which transaction numbers and sales details are imprinted. In the event of a technical or electrical failure of the cash register, Contractor shall record by hand all collections, and issue a sequentially, pre-numbered customer's receipt in a like manner.

14. ACCOUNTING: Contractor shall be required to maintain a method of accounting to the satisfaction of the CITY, which correctly and accurately reflects the gross receipts and disbursements of

Contractor in connection with the Tennis Center operation. The method of accounting, including bank accounts established for the Tennis Center operation, shall be separate from the accounting system used for any other business operated by contractor and shall be separate from the accounting system used for recording Contractor's personal financial affairs.

14.01 Records: Contractor's method of accounting shall include the keeping of the following documents:

a. Regular books of accounting such as general ledgers.
b. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
c. State and federal income tax returns and sales tax returns and checks and other documents providing payment of sums shown.
d. Cash register tape
e. Any other reporting records that the CITY's Department of Finance deems necessary for proper reporting of receipts.

14.02 Open Inspection: All documents and accounting records required to be kept pursuant to the Agreement shall be maintained and open for inspection and re-inspection during normal business hours upon forty-eight (48) hours advance notice during the term of this Agreement and for three (3) years thereafter. In addition, during the term of this Agreement, the CITY may observe the operation of the business and may from time to time conduct an audit and re-audit of the books and business conducted by Contractor and for three (3) years after end of this Agreement so that accuracy of the above records can be confirmed. All information obtained in connection with the CITY's inspection of records or audit shall be treated as public information pursuant to the Arkansas Freedom of Information Act. If Contractor deems any such information to be of a confidential nature, (i.e., not intended for disclosure to third persons) Contractor should so indicate. The CITY will then exercise its best efforts to protect this information, but only to the extent that the law permits. The CITY shall not be liable, nor assume any responsibility, for any loss or damage that may result directly or indirectly from any breach of confidentiality.

14.03 Reporting: WATA shall furnish an annual report to include court usage and an income statement. The court usage report shall include usage by individuals, leagues, tournaments, schools and others. The income statement shall include a listing of types of revenues received such as court fees, tournament fees and sponsorships, concessions, and fees or percentages charged to instructors and the amount collected. The statement shall also include expenditures by category in the operation of the Center and amounts. The annual report shall be submitted within thirty (30) days of the end of June.

14.04 Annual Report: Contractor shall provide a written annual report for the preceding calendar year and shall include all revenues received and how they were expended for the year.

15. INDEMNITY: Contractor shall indemnify and hold the CITY harmless from all claims, liens, actions, and judgments, including reasonable legal fees and costs incurred with reference thereto, caused by the fault, negligence, breach of contract or violation of law by the Contractor under this Agreement.

15.01 Liability Insurance: Contractor shall provide and maintain at its own expense during the term of this Agreement liability insurance in the minimum amount of $100,000.00 per person, $300,000.00 per occurrence, and $50,000.00 property damage for the purposes of providing liability protection to Contractor with reference to the premises and activities on the property.

15.02 Casualty Insurance: The CITY shall maintain fire, storm and other casualty insurance on the improvements located on the Tennis Center in amounts determined by the CITY. Any such insurance policy shall designate the CITY as the insured under the policy. All insurance proceeds shall be utilized to repair or replace damaged structures and/or improvements, unless a different use for the proceeds is designated, in the CITY's sole discretion. To the extent they desire insurance, Contractor will insure its own personal property.

16. INDEPENDENT CONTRACTOR: It is acknowledged and agreed that Contractor is acting as an independent contractor and that no employee, agent or volunteer of Contractor shall be considered an employee or agent of the CITY nor may this Agreement be so construed. Contractor shall comply with the requirements of Arkansas Workers' Compensation law.

17. PARK RULES: The property and its use shall be subject to the park rules of the CITY of Fort Smith codified in Article II of Chapter 18 of the Fort Smith Code. The CITY reserves the right to adopt and implement additional park rules and regulations at any time during the term of this Agreement. WATA will be provided notice of any additional park rules and regulations prior to implementation of said rules and/or regulations.

17.01 WATA RULES: WATA shall have the right to impose reasonable rules on participation in connection with tennis activities and programs and use of facilities, provided that such rules do not conflict with any requirement under this Agreement or rules adopted by the CITY.

18. ADDRESSES: Any notice required or permitted to be given pursuant to this Agreement shall be provided to the other party at the addresses indicated:

City of Fort Smith	WATA
Parks & Recreation Director	Executive Director
3301 South M Street	3303 South M Street
Fort Smith, Arkansas 72903	Fort Smith, Arkansas 72903

19. DISAGREEMENT OR BREACH: Either party to this Agreement may provide notice to the other party at the address indicated in the preceding paragraph 18 of any disagreement or breach.

19.01 Notice & Response: The notice shall specify the nature of the alleged violation and its corresponding provision in this Agreement. Within seven (7) days, the other party shall respond in writing regarding the alleged violation of the Agreement. If the alleged violation has been cured, the response shall so note. If, after the exchange of notice of violation and response, either party considers the issue to be unresolved, that party shall notify the other of the date, time and place of a meeting (to be held within the City of Fort Smith no sooner than seven (7) days nor later than fourteen (14) days from the date of said notice of meeting) at which representatives of the parties shall discuss the alleged violation and the response thereto.

19.02 **Termination**: In the event the meeting of the parties pursuant to the procedures in sub-paragraph 19.01 above does not resolve the alleged violation, the CITY reserves the right to terminate this Agreement after seven (7) days written notice to the Contractor. Either party may pursue any available judicial remedy.

19.03 **Hazards**: Irrespective of the Notice & Response provision, in the event the CITY determines that any condition on the Tennis Center constitutes an imminent health hazard to any member of the public, the CITY shall have the right to take immediate action to correct such condition. In such event, the CITY shall notify a representative of Contractor by telephone, facsimile or other method deemed to provide expedient notice to the Contractor. Expenses associated with curative action shall be borne by the party responsible for maintenance that would have prevented such condition under this Agreement. If Contractor does not subsequently agree to pay the expense of any curative action so charged, the CITY has the right under this Agreement to petition a court of competent jurisdiction to declare the rights of the parties and, if it is declared that the expense was the obligation of Contractor under this Agreement, Contractor shall immediately pay the expense to the CITY after exhausting judicial remedies regarding that issue. Any failure of Contractor to comply with the provisions of this sub-paragraph shall be a basis for the CITY, in its sole discretion, to terminate this Agreement on seven (7) days written notice.

19.04 **Right of Entry**: Should Contractor fail, after thirty (30) days notice from the CITY of the need to perform its required routine maintenance obligations, the CITY in addition to all other available remedies may, but shall not be obligated to, exercise its Right of Entry and perform Contractors' failed obligations, using any equipment or materials on the premises suitable for such purposes. Contractor shall reimburse the CITY on demand for its costs in performing Contractor's obligations. In addition, the CITY shall have the right to step in and perform Contractor's obligations under this contract while any litigation is pending.

20. **DEFINITIONS**: References to actions or notices to or from the CITY in this agreement shall be construed to refer to the City Administrator or his authorized representative. Any authorization or permission required or authorized under this Agreement shall be valid only if issued by the City Administrator or his authorized representative.

21. **ADVERTISING:** WATA is authorized to sell advertisement on the wind screens at Creekmore Park Tennis Center for the purpose of funding the repairs and resurfacing of the tennis courts. These funds may also be used for other large maintenance projects or capital improvements to the center.

21.01 All advertisement must be approved by the Parks and Recreation Director prior to ordering the wind screens.
21.02 Denial of advertisement may be appealed to the Parks and Recreation Commission.
21.03 Projects funded under this section will be executed and managed by the Parks Department according to the City's purchasing policies. WATA will provide funding for the projects to the City.
21.04 Funds from advertising under this provision may not be used for day to day operation of the tennis center.
21.05 Advertising is limited to business logos, business names, family names, or other approved logos or names.

21.06 Advertising must not promote alcoholic beverages, tobacco products, gambling, sexually explicit materials or graphically violent material.

21.07 The following advertising materials are prohibited:

1. Political
2. Public issue or viewpoint
3. Tobacco and tobacco related products, or advertisements of a business, the principal purpose of which is selling the same
4. Alcoholic beverages or advertisements of a business, the principal purpose of which is selling of same
5. Obscene materials, sexually explicit materials, including graphic representations of sexual conduct, or advertisements of a business, the principal purpose of which is selling of same
6. Gambling or advertisements of a business, the principal purpose of which is selling of same
7. Graphically violent or threatening materials
8. Non-consented use of a person's name
9. Race, religion, gender, or age demeaning or discriminatory materials

THIS AGREEMENT EXECUTED as of the date first set forth above by the Mayor and the City Clerk of the City of Fort Smith pursuant to Resolution No. _____ of the Fort Smith Board of Directors and by the authorized representative of Western Arkansas Tennis Association, a non-profit corporation organized under the laws of the State of Arkansas, pursuant to resolution of the WATA Board of Directors adopted on April _____, 2016.

CITY OF FORT SMITH, ARKANSAS

By:_____
Mayor

ATTESTED:

_____
City Clerk

WESTERN ARKANSAS TENNIS ASSOCIATION:

By:_____
WATA Representative

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF SEBASTIAN)

On this _____ day of _____, 2016, before me personally appeared Sandy Sanders, personally known to me to be the individual who executed the within and foregoing instrument, and he acknowledged that he signed the same as the duly authorized agent of the City of Fort Smith, and that the same is the free and voluntary act and deed of the City of Fort Smith, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 2016.

_____
Notary Public

My Commission Expires:

_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
COUNTY OF SEBASTIAN)

On this _____ day of _____, 2016, before me personally appeared _____, personally known to me, and acknowledged said instrument to be his free and voluntary act and deed, for the uses purposes therein mentioned.

Given under my hand and official seal this _____ day of _____, 2016.

_____
Notary Public

My Commission Expires:

_____

The City of Fort Smith ARKANSAS

MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Mathis, Administrative Assistant

DATE: April 14th, 2016

SUBJECT: Advertising & Promotion Commission

Mr. Marion Driscoll will fill the expired term for the position previous occupied by Ms. Sandi Snead.

Appointments are **by the A & P Commissioners and confirmed by the Board of Directors,** one appointments is needed. The term will expire December 31st, 2017.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
www.fortsmithar.gov

Printed on 100% Recycled Paper

ADVERTISING AND PROMOTION COMMISSION

The Advertising and Promotion Commission is authorized to administer and oversee funds received from the three percent Fort Smith lodging tax and is comprised of seven members as follows according to Arkansas Code Ann 26-75-605:

Four members of the commission shall be owners or managers of businesses in the tourism industry and shall reside in either Fort Smith or within Sebastian County. At least three of these four members shall be owners or managers of hotels, motels or restaurants and all of them shall staggered terms of four years. Two members of the commission shall be members of the governing body of the city of Fort Smith and selected by the governing body and shall serve at the will of the governing body. One member of the commission shall be from the public at large who shall reside within Fort Smith or Sebastian County and shall serve for a term of four years. Any vacancy in the four tourism industry positions or the one at large position shall be filled by appointment made by the remaining members of the commission with the approval of the Fort Smith Board of Directors. Meetings are monthly as called and are held at the Fort Smith Center, 2 North B Street, unless otherwise stated in meeting announcements.

	DATE APPOINTED	TERM EXPIRES
VACANT		
Debra Presson **Golden Corral** **2422 South N Street (01)** **484-1040** **Debo-goldencorral@sbcglobal.net**	**09/15/09**	**12/31/16**
Tom J. Caldarera, Jr. **Taliano's Italian Restaurant** **522 No. 32 Street (01)** **785-2292 (w)** **www.linguinet@aol.com**	**11/18/14**	**12/31/17**
Calvy Remy **Owner/Manager** **Holiday Inn Express** **P.O. Box 11343 (17)** **452-7500 (w)** **tdremy@sbcglobal.net**	**03/27/13**	**12/31/18**

Storm Nolan **CSK Properties** **Fort Smith Hampton Inn** **4320 Industrial Drive (16)** **649-6909** snolan@cskhotels.com	**11/18/14**	**12/31/19**
Don Hutchings, City Director **1300 Clover Lane (08)** **782-9121**	**01/06/15**	**Indefinite**
Mayor Sandy Sanders **2301 Wyndermere Way (03)** **784-2437 (w)**	**01/04/11**	**Indefinite**

Fort Smith
ARKANSAS

TO: Wendy Mathis
Administration

FROM: Claude Legris, Executive Director
Advertising and Promotion (A & P) Commission

COPY: Mayor Sandy Sanders, Chairman
A & P Commission

DATE: April 5, 2016

REGARDING: Advertising & Promotion Commission Appointment

Per the attached minutes of the March 22, 2016 monthly meeting of the A & P Commission, I am submitting the name of Mr. Marion Driscoll for City Board consideration as an A & P Commission member:

Mr. Marion Driscoll
Driscoll Properties
11570 Southcrest Drive
Fort Smith, AR 72916

Driscoll Properties
7400 Phoenix Avenue
Fort Smith, AR 72903
mariondriscoll@msn.com

Mr. Driscoll will fill the unexpired term for the position previous occupied by Ms. Sandi Snead. The appointment runs through December, 2017.

Let me know if you have any questions.

Attachments

A & P Minutes 3/22/16
Application

Fort Smith Convention & Visitors Bureau
2 North B Street • Fort Smith, Arkansas 72901
479-783-8888 • 1-800-637-1477 • Fax 479-784-2421
E-Mail: tourism@fortsmith.org • URL: http://www.fortsmith.org

Minutes
Fort Smith A & P Commission Meeting
March 22, 2016

The March 22, 2016, A & P Commission meeting was called to order by Mayor Sandy Sanders. Commissioners present: Calvin Remy, Storm Nolan, Debra Presson, Tom Caldarera and Don Hutchings. Absent: None – Proposed commissioner: Marion Driscoll.

A & P Staff Present: Claude Legris, Carolyn Joyce, Russ Jester, Amy Knight and Debra Cossey. Absent: None

Fort Smith Convention Center Staff Present: Tim Seeberg and Donna Ross.

Tom Caldarera made a motion to accept the February 23, 2016, minutes with a second from Calvin Remy. The Commission passed the motion unanimously.

Financial Report

- The A & P monthly revenue for January, 2016, was $58,349.00 an increase of $2,130.00 a 3% increase compared to same month in 2015. Monthly budget is over by $126.00 at 102%. The Year End revenue total for 2016 are the same as January 2016.

- The A & P monthly expense for January, 2016, was $55,706.00 over budget by $2,549.00 at 104%. Year to date expenses are the same as January, 2016...

- The A & P Fund Balance as of January 31, 2016, was $147,225.00, which is 5.5% ahead of 2015.

- Variance items for January, 2016, were timing of Flame Gymnastics invoicing paid in January and was budgeted in February.

- Convention Center monthly invoiced revenue for February, 2016, was $43,870.00, an increase of $4,055.75 compared to same month in 2015 at +10.2%. YTD invoiced revenue through February, 2016, was $81,051.00 a decrease of 19,313.75 at -19.2%.

- Convention Center monthly expenses for February, 2016, were $69,378.88 a decrease of $1,195.37 at -1.69%. YTD expenses are $176,819.23 which is +$5,607.32 over the same period in 2015, +10.2%.

- Convention Center Fund Balance through February, 2016, is $264,136.00.

Don Hutchings made a motion to accept the A & P January, 2016 and Convention Center February, 2016 Financial Reports with a second from Debra Presson. The Commission passed the motion unanimously.

Director's Report

Claude Legris reported on the following:

Destination Development

- Took part in editorial planning team meeting with publishers of upcoming Fort Smith Bicentennial Book.
- Attended the AR Governor's Conference on Tourism. Purchased a national media item at the annual auction at an 86.6% discount and 1.7 million circulation, ("Endless Vacations").
- Hosted a table of Henry Award finalists at the luncheon held in conjunction with Governor's Conference: Fort Smith Radio Group, planners of the Marathon and Steel Horse Rally, Peacemaker Music & Art Festival and the Unexpected Mural Festival, as members of what was dubbed "The 2015 Fort Smith Dream Team". No winners this year, but we have won the last 2 yrs.

Administration

- Developed and sent a Convention Center informational survey regarding operation efficiency to other Arkansas Convention Centers.
- Compiled a report on Sebastian County Travel trends 2014/2015.

Tim Seeberg reported on the following:

Public/Client Relations/Promotion:

- Assisted staff with giving a Convention Center tour to Laura Caulk, Front Office Manager and Sales Manager with Cherokee Casino Roland. Was interested in touring so that they would be able to refer their clients to the Fort Smith Convention Center when events were too big to hold at the casino. Will be visiting their facility in the near future.

Operations/Administration

- Worked with the city's legal counsel and the city's Parks and Recreation Department to negotiate a plan in 2016 to re-enter into agreements with the three major music copyrighting organizations in our industry (BMI, ASCAP and SESAC). Agreements are to insure that the City of Fort Smith and its properties are protected from copyright violation if a performer or DJ decide to play music without proper permission or authorization of the artist or organization that has legal rights to and ownership of the music.

Carolyn Joyce reported on the following:

Activity Report

- The inquiries for February, 2016, were up at 175 with YTD being slightly down.
- Miss Laura's visitors for February, 2016, were up 20% over last year at 536.
- The National Historic Site for February, 2016 were slightly up at 6,000 compared to 2015 at 5,902.
- Packets provided in January, 2016 were 312.

Visitor Center/ Leisure Travel /Group Travel Activity Report

Visitor Center & Leisure Travel

- Attended 42nd Annual Governor's Conference on Tourism in Springdale. Networking opportunity with tourism partners from around the state and Media reps from across the country. Purchased 2 media items at silent auction. (1) AAA southern Traveler – 1/6 page, 4 color ad valued at $1,619.00 for $1,050.00 (Leisure Market) a 35% savings. (2) Aristotle Google business View Photo package valued at $1,000 for $675.00 (Leisure/Group/Convention Markets) a 33% savings with 360 degree photos of Visitor Center for viewers to see online.
- Assisted with Financial System close out for 2015 and opening of new budget year.

Group Travel

- Attended Travel South showcase Marketplace and met with 42 Tour Operators and media representatives in pre-scheduled appointments. Will be following up on leads from showcase and sharing with hotels and attractions. This show will be held 2017 in Branson, MO and we are in discussions to bring a FAM Tour to Fort Smith.
- Attended Kaleo Tours Expo in Oklahoma City with booth exhibit and met with approximately 50 Group Leaders from Central Oklahoma.
- Half page article in Group Tour Magazine, Spring, 2016, issue after being interviewed by the editor.
- Assisted with 6 Itinerary arrangements coming to Fort Smith during March, April and June.

Amy Knight reported on the following

January Highlights

- Continued to work on the 2016 GRIT Awards for the honorary event on April 21, 2016. Nominations and feedback from the community have been phenomenal. All finalists will be listed in April's Entertainment Fort Smith.
- Attended AR Governor's Conference on Tourism. Fort Smith made a great showing of involvement with the amount of Gift Baskets for the auction that was donated.
- Met with Claude and Leta Caplinger who is with the AR Master Gardener Association to discuss the possibility of having their annual conference with us in June of 2018. Have obtained proposals from lodging partners and delivered to Leta for review.
- Will attend the CMCA (Christian Meetings & Conventions Association) Conference the week of March 27th.

Donna Ross reported for Jeremy Richey on the following for the Convention Center.

Convention/Association Business

- Completed 39 proposals and 36 contracts.

Additional Activity

- Staff met with Dennis Snow to review the Steel Horse Rally Exhibit Hall layout of room and stage

Tim Seeberg reported for Pat Geels on the following:

Convention Center Operations

February, 2015

- 15 events with 17 event days

February, 2016

- 18 events with 28 event days

Scheduled Maintenance

January, 2016

- Touch up paint in various locations of the Performing Arts Center lobby areas.
- Painted meeting rooms 3 and 7.
- Painted and stenciled the circle drive to further emphasize fire lane and loading zone restrictions.

Russ Jester reported on the following for the Communications Report:

Publicity, Promotion & Marketing

- Statewide map for Master Gardeners with detailed driving directions to Fort Smith and getting to Convention Center from Rogers, HWY 71 and Grand. Names & Numbers Phone Book photo/artwork/information release sent.
- Sent out nomination form and press release for the GRIT Awards.
- Registered Fort Smith CVB and Miss Laura's as a user on GoDowntownFS.com's soon-to-launch wordpress site and have added content to those pages.
- Working on Website & Grit Awards – Aristotle will be at GRIT Awards to roll out the new website.

New Business

None

Old Business

Calvin Remy made the motion with a second from Don Hutchings to accept Marion Driscoll as the newest Commissioner on the Advertising and Promotion Commission. The Commission passed the motion unanimously and will send to City Board for approval.

Community Comment

None. Commissioner Debra Presson thanked Donna Ross and the Convention Center crew on help with Executive Inn for an event.

Tom Caldarera made a motion to adjourn with a second from Debra Presson. The Commission passed the motion unanimously.

The meeting was adjourned at 4:50pm. The next Commission Meeting will be April 26, 2016, at 4:00pm.

Respectfully Submitted

Debra Cossey

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 3/15/16

Name: Marion Driscoll

Home Telephone: 479.650.6300

Home Address: 11570 SouthCrest Dr

Work Telephone: _____

Zip: 72916

Email: marlondriscoll@msn.com

Occupation: Hotelier / General Contractor
(If retired, please indicate former occupation or profession)

Education: _____

Professional and/or Community Activities: _____

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes X No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from con[illegible] LR. _____ Date of [illegible]
Drivers Licen[illegible]
information w[illegible] ck ground check of all appli[illegible]

I am interested in serving on the (please check):

( ) Audit Committee
(X) Advertising & Promoting Commission
( ) Airport Commission
( ) Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
( ) Comprehensive Plan Imp. Committee
( ) Convention Center Commission
( ) Civil Service Commission
( ) CIP Committee (Streets, Bridges, & Drainage)
( ) Community Development Advisory Com
( ) County Equalization Board
( ) Electric Code Board of Appeals
( ) Fire Code Board of Appeals & Adjustments
( ) Historic District Commission
( ) Housing Assistance Bd
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
( ) Parks & Recreation Commission
( ) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

Please return this form to Wendy Mathis, P.O. Box 1908, FSM, AR 72902
wmathis@fortsmithar.gov

The City of Fort Smith ARKANSAS

MEMORANDUM

TO: Mayor and Board of Directors

FROM: Wendy Mathis, Administrative Assistant

DATE: April 14th, 2016

SUBJECT: Planning Commission

Mr. Michael Redd of the Planning Commission has resigned his position effective March 21st, 2016, this vacancy will need to be appointed.

The applicants available are:

Nathaniel Deason	9505 Chad Colley Blvd.
Dianne Morrison	901 South 26 Street
Christopher Conley	10504 Tweed Lane
Joshua Kilgore	8108 Mile Tree Drive
Ryan Millican	3014 Presley Street #48
Allan Newell	10027 Carmen Vincent Court

Appointments are **by the Board of Directors,** one appointment is needed. The term will expire April 30th, 2017.

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
www.fortsmithar.gov

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PLANNING COMMISSION

The purpose of the Planning Commission is to prepare a development plan for the city, to receive and make recommendations on public and private proposals for the development and to prepare and administer planning regulations. The Planning Commission is authorized to prepare and adopt a land use plan. A community facilities plan, a master street plan, and such other plans affecting the general welfare of the city.

The Planning Commission, acting as board of zoning adjustment, hears appeals from the decision of the administrative officers regarding enforcement and application of the zoning ordinances and hears requests for variances from the provisions of the zoning ordinance.

The Planning Commission consists of nine members, appointed by the **Board of Directors** for a three year term. Members of the Planning Commission must be owners of or tenants in real property in the city of Fort Smith and be qualified electors of the city. The Planning Commission meets the second Tuesday of each month at 5:30 p.m. in the Rose Room of the Creekmore Community Center

	DATE APPOINTED	TERM EXPIRES
Thomas E. Howard Jr. 3121 Jackson (03) 648-9226 (h) 452-2636 (w) rhoward@risley-associates.com	03/15/11	04/30/17
Vicki Newton 2725 Reeder Street (01) 709-9946 (h) 782-4001 (213) vicki@dixiecupfcu.com	03/15/11	04/30/17
Michael K. Redd Attorney 2110 Euper Court (03) 452-8967 (h) 783-8200 (w) Hoglawyer58@gmail.com	06/18/14	04/30/17

Talicia Richardson 509 North 7 Street (01) 214-912-0353 (h) taliciarichardson@gmail.com	03/17/15	04/30/18
Josh Carson 5700 Thomas Road (16) 782-7203 (w) jcarson@jjmlaw.com	03/17/15	04/30/18
Sarah Howe 5701 Free Ferry #11 (03) 452-2770 (h) 459-7247 © Skhowe22@sbcglobal.net	03/17/15	04/30/18
Marshall Sharpe 7014 Riviera Drive (01) 649-7459 (h) 461-0761 © mlsharpe@cox.net	08/17/10	04/30/19
Robert Cooper, Jr. Real Estate Broker 4800 Chestnut Way (03) 478-6161 (w) 629-2115 (h) bob@rhghan.com	05/07/13	04/30/19
Don Keesee Banker 6607 Highland Drive (16) 629-8135 (h) 478-4300 (w) dkeesee@bankozarks.com	03/27/13	04/30/19

Planning

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

Note: As an applicant for a City Board, Commission or Committee, your name, address and phone number will be available to the press and the public. You will be contacted before any action is taken on your appointment.

Date: 7.2.2015

Name: NATHANIEL DEASON

Home Telephone: 479.200.2962

Home Address: 9505 CHAD COLLEY BLVD. APT. 1211

Work Telephone: 479.782.1051

Zip: 72916

Email: ndeason@mahgarch.com

Occupation: ARCHITECT
(If retired, please indicate former occupation or profession)

Education: BACHELORS OF ARCHITECTURE FROM DRURY UNIVERSITY

Professional and/or Community Activities: AIAA, CHURCH VOLUNTEER

Additional Pertinent Information/References:

Are you a registered voter in the City of Fort Smith? Yes X No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.
Drivers License_____ Date of Birth
information will b[illegible] back ground check of all applicants)

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
( ) Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
(X) Central Business Improvement District
(X) Comprehensive Plan Imp. Committee
( ) Convention Center Commission
( ) Civil Service Commission
( ) CIP Committee (Streets, Bridges, & Drainage)
(X) Community Development Advisory Com.
( ) County Equalization Board
( ) Electric Code Board of Appeals
( ) Fire Code Board of Appeals & Adjustments
(X) Historic District Commission
( ) Housing Assistance Bd.
( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
(X) Parks & Recreation Commission
(X) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
(X) Residential Housing Facilities Board

Please return this form to Wendy Mathis, P.O. Box 1908, FSM, AR 72902
wmathis@fortsmithar.gov

JACOB DEASON

email njdeason@gmail.com
phone (479)-200-2962
location fort smith, arkansas 72916

EDUCATION :

2007 - 2012
DRURY UNIVERSITY / SPRINGFIELD.MISSOURI
Major(s): Bachelors of Architecture
Minor(s): Art History, Design Arts, Global Studies

EXPERIENCE :

4.2013 - PRESENT
MAHG ARCHITECTURE / FORT SMITH.ARKANSAS
Architectural Designer
A focus on construction documents, schematic design, and presentation documents utilizing AutoDesk Revit.

5.2012 - 4.2013
HARRISON FRENCH AND ASSOCIATES / BENTONVILLE.ARKANSAS
Project Coordinator (6 months) -
Managed the production and coordination of construction documents for 7-Eleven convenience stores in the Northeast Division (Maryland, Washington DC, Virginia, etc.)

Proto Development (5 months)-
Managed the architectural discipline drawings in the prototypical construction document set for 7-Eleven convenience stores. Included DI/CI exercises as well as drafting and the instruction of production in application methods.

5.2012 - PRESENT
GRAPHICS-SCHMAFIKS DESIGN SOLUTIONS / ANYWHERE
Freelance Graphic Designer
Moonlighted with various image and graphic projects.

5.2008 - 8.2010 (summers)
MANTEL TETER ARCHITECTS / KANSAS CITY.MISSOURI
Intern Architect
Assisted partner architects in developing, documenting and archiving production drawings and 3d models.
Attended OEA meetings, and catalogued recently completed projects.

1.2011 - 5.2012
DRURY UNIVERSITY / SPRINGFIELD.MISSOURI
CAD Lab Operator
Helped run the I/O lab in the Drury Architecture facility. This entailed technical output jobs for the students and faculty.

SKILLS :

ANALOG SKILLS /
Hand drafting, illustration, sketching, physical models, etc.

SOFTWARE PROFICIENCIES /
Adobe Creative/Design Suites (2+) / Open Source Equivalents:
Illustrator/Inkscape, PhotoShop/GIMPshop, InDesign/Scribus

3d/2d Drafting:
AutoDesk Revit Architecture (with Vasari), AutoDesk Revit Structure, AutoDesk Revit MEP, AutoDesk AutoCAD, AutoDesk 3dsMax Design, Google SketchUp (with Kerkythea and/or Podium), Blender, etc.

LANGUAGE & SPECIAL SKILLS /
Some French; digital and analog fabrication, the operation of plotters, networks, 3d prototyping apparatus, laser cutting, CNC router and woodshop equipment; graphic design, web design, corporate identity development, product design, photography

HONORS & AWARDS :

2007 - 2012
DEAN'S LIST
Drury University

2009 - 2012
LIBRARIUM AWARD NOMINATIONS (5)
Drury University - Award for design excellence in the given year

MEMBER OF TAU SIGMA DELTA HONOR SOCIETY
Drury University Chapter

FOUNDERS AWARD FOR DESIGN EXCELLENCE, 2012
Graduate Award, Drury University

EXPERIENCE ABROAD :

2007 - 2012
Thailand, Cambodia, Greece, Germany, France, Turkey, Egypt

Planning

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

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Date: 5/18/15

Name: Dianne Morrison

Home Telephone: (501) 318-4446

Home Address: 901 S. 26th FS

Work Telephone: (479) 785-2651

Zip: 72901

Email: dmorrison@waprdd.org

Occupation: Director of Frontier, MPO - transportation planner
(If retired, please indicate former occupation or profession)

Education: BA Geography, working on Masters in Com. + Econ dev.

Professional and/or Community Activities: VP of AR American Planning Assoc., FS Heritage Foundation Board member, AICP, Citizens Fire Academy, Historic District Commission

Additional Pertinent Information/References: _____

Are you a registered voter in the City of Fort Smith? Yes X No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X

If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consid[illegible] _____

Drivers License [illegible] _____ Date of Birth [illegible] his information will [illegible] back ground check of all applicants

I am interested in serving on the (please check):

( ) Audit Committee
( ) Advertising & Promoting Commission
( ) Airport Commission
() Animal Services Advisory Board
( ) Arkansas Fair & Exhibition Facilities Bd
( ) Benevolent Fund Board
( ) Bldg. Bd. Of Adjustment and Appeals
( ) Central Business Improvement District
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( ) Convention Center Commission
( ) Civil Service Commission
(X) Community Development Advisory Com.
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( ) Electric Code Board of Appeals
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(X) Historic District Commission
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( ) Library Bd of Trustees
( ) Mechanical Bd of Adjustments and Appeals
( ) Oak Cemetery Commission
( ) Outside Agency Review Panel
( ) Parking Authority
(X) Parks & Recreation Commission
(X) Planning Commission
( ) Plumbing Advisory Board
( ) Port Authority
( ) Property Owners Appeals Board
( ) Sebastian County Reg. Solid Waste Mgmt. Bd.
( ) Sister Cities Committee
( ) Transit Advisory Commission
( ) Residential Housing Facilities Board

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wmathis@fortsmithar.gov

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Date: 3/9/2016

Name: Christopher B. Conley

Home Telephone: 479-285-1243

Home Address: 10504 Tweed Ln. Ft. Smith, AR

Work Telephone: 479-242-8814

Zip: 72908

Email: Chris@hajcattorneys.com

Occupation: Attorney - Hayes, Alford, Johnson & Conley, PLLC
(If retired, please indicate former occupation or profession)

Education: John Brown University, B.S.
Tulane University, JD.

Professional and/or Community Activities: _____

Additional Pertinent Information/References: legal work primarily related to real estate and business development and transactions in FSM community

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____

Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓

If yes, please identify the offense and the approximate date. A "yes" answe will not automatically preclude you from conside

Drivers License_ Date of Bir his information will be use ack ground check of all applican

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wmathis@fortsmithar.gov

Christopher B. Conley

HAYES, ALFORD, JOHNSON & CONLEY, PLLC • Ft. Smith, AR 72901 • (479) 242-8814 • chris@hajcattorneys.com

PROFESSIONAL PROFILE

- Legal practice primarily rooted in the various aspects of real estate and business matters.
- Highly effective communicator with extensive experience giving oral and written presentations.
- Excellent researcher and writer with a demonstrated ability to synthesize large amounts of information into a clear, concise, and usable format.
- Effective team builder with history of forging strong personal and professional relationships.

EDUCATION

- *J.D.*, Tulane University Law School, New Orleans, LA, 2008
  - Served as Executive Editor, Tulane Journal of International and Comparative Law
- *Summer Abroad*, Queen Mary School of Law, London, England, 2006
  - International business program
- *B.S.* in Organizational Management, *Summa cum Laude,* John Brown University, 2005

LEGAL EXPERIENCE

- **Attorney / Partner**, Hayes, Alford, Johnson & Conley, PLLC, Fort Smith, AR, Feb. 2013 – Present
  - Practice based primarily in real estate and business matters. Representation of real estate owners, buyers, developers, brokers, agents, and closing companies in all aspects of real estate transactions and property development. Representation of title insurance underwriter providing title and title insurance opinions. Representation of business owners in company formation, dissolution, liquidation, and employment matters.
  - Arkansas Certified Mediator for civil, probate, and domestic matters.
- **Attorney**, *Simon, Peragine, Smith & Redfearn, L.L.P.*, New Orleans, LA, Aug. 2008 – Jan. 2013
  - Practice based primarily in real estate development and construction law. Representation of government bodies, owners, and contractors during contract negotiations and formation, defect claims, payment schedules, bid, bond, and lien disputes. Handle all phases of litigation from pre-suit negotiations through appeals process.
- **Judicial Extern**, *The Honorable Jay C. Zainey,* U.S. District Court, Eastern District of Louisiana, Summer 2006

GENERAL AREAS OF LEGAL PRACTICE

- Real Estate
- Business consultation and litigation
- Insurance coverage (title, property & casualty) and subrogation
- Contract formation, negotiations, and litigation

Christopher B. Conley

HAYES, ALFORD, JOHNSON & CONLEY, PLLC • Ft. Smith, AR 72901 • (479) 242-8814 • chris@hajcattorneys.com

REPRESENTATIVE LEGAL WORK

- Consultation and representation of real estate owners, developers, title companies, and title insurance underwriters in all phases of real estate transactions and development.

- Co-Owner of real estate title companies. Provides legal work necessary to process and close real estate transactions. Representation of real estate title companies regarding title work, title insurance underwriting questions and opinions, as well as claims made against title insurance agents and underwriters.

- Consultation and representation of business start-ups in assisting with company formation, financing issues, preparation of employment handbooks as well as creation of company by-laws and operating documents.

- Representation of companies performing mergers & acquisitions, related necessary due diligence work, contract drafting, etc.

- Consultation and representation of business partners in dissolutions and withdrawing members with ongoing company operations.

- Representation of general contractors in construction defect and warranty claims including, but not limited to, structural failure of framing and foundation systems, architectural design flaws, and various failures to comply with the project plans & specifications and local building code requirements.

- Representation of general contractors in public contract bid disputes.

PUBLICATIONS

- Comment, *Parallel Imports: The Tired Debate of the Exhaustion of Intellectual Property Rights and Why the WTO Should Harmonize the Haphazard Laws of the International Community*, 16 TUL. J. INT'L. & COMP. L. 189.
  - Honorable Mention, Foley & Lardner 8th Annual Intellectual Property Writing Competition

BAR ADMISSION and PROFESSIONAL AFFILIATIONS

- Admitted to Arkansas State Bar Association and all Arkansas State and Federal Courts
- Admitted to Louisiana State Bar Association and all Louisiana State and Federal Courts
- Admission to Nevada State Bar Association and all Nevada State Courts
- Member, American Bar Association
- Member, Sebastian County Bar Association
- Member, Forum on the Construction Industry for American Bar Association
  - Attended Forum's trial academy in June 2012
- Adjunct Professor, University of Arkansas – Fort Smith
  - Teaching business law at College of Business

MILITARY EXPERIENCE

- **Intelligence Analyst**, 1N071, USAF, Arkansas Air National Guard, 1998 – 2007, SSgt / GS-07/11

  - Researched, analyzed, and advised commanding officers on political, military, and terrorism trends; Department of Defense anti-terrorism instructor; coordinated combat missions for aircraft during operations in Afghanistan and Iraq; supervised and trained intelligence personnel; taught intelligence gathering, combat operations, and targeting procedures to F-16 aircrew.

CITY OF FORT SMITH
Application for City Boards/Commissions/Committees

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Date: 3/23/2016

Name: Joshua Kilgore

Home Telephone: Cell 479.420.8957

Home Address: 8108 Mile Tree Drive

Work Telephone: 479.434.5500

Zip: 72903

Email: joshua@kilgore.consulting

Occupation: Business Owner - multi
(If retired, please indicate former occupation or profession)

Education: U of A. Fayetteville - B.S. - Business Administration

Professional and/or Community Activities: AHCA Board Member, Gov. LTC Advisory Board. Mercy Board of Advisors, UAFS - Family Enterprise Center Board, Childrens Emer. Shelter

Additional Pertinent Information/References: Joshua Kilgore Carson - LOL
Bob Cooper Jr.

Are you a registered voter in the City of Fort Smith? Yes ✓ No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO ✓
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from consideration.
Drivers License [redacted] Date of Birth [redacted] his information will be use to conduct a [redacted] d check of all applicants) [redacted]

I am interested in serving on the (please check):

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Planning com

CITY OF FORT SMITH
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Date: 2-25-2016

Name: Ryan Millican

Home Telephone: 479739 0246

Home Address: 3014 Presley St. APT 48

Work Telephone:

Zip: 72901

Email: ryanmillican.bum@gmail.com

Occupation: Self- Employed / Publisher
(If retired, please indicate former occupation or profession)

Education: Bachelor of Science Organizational Leadership

Professional and/or Community Activities: Fraternal Order of Free Masons

Additional Pertinent Information/References:

Are you a registered voter in the City of Fort Smith? Yes ✓ No ___
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes___ NO ✓
If yes, pleas[illegible] the approximate date. A "yes" answer will not automatically preclude you from co[illegible]
Drivers Lice[illegible] Date of Birth [illegible] (This information w[illegible] criminal back ground check of all applicants)

I am interested in serving on the (please check):

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Date: 4/10/16

Name: ALLAN NEWELL

~~Home~~ CELL Telephone: 479 462 1039

Home Address: 10027 CARMEN VINCENT COURT

Work Telephone: 479 452 5723

Zip: 72908

Email: ANEWELL@ACTION-MECHANICAL.COM

Occupation: SHOP MANAGER
(If retired, please indicate former occupation or profession)

Education: SHS 82 SOME COLLEGE UAFS

Professional and/or Community Activities:

Additional Pertinent Information/References: RETT HOWARD 651-8853
WILL HARMON 646-2806 STEVE TABOR

Are you a registered voter in the City of Fort Smith? Yes X No ____
Have you ever been convicted of a felony, misdemeanor, DWI/DUI or other serious traffic offense?
Yes____ NO X
If yes, please identify the offense and the approximate date. A "yes" answer will not automatically preclude you from considerat[illegible]
Drivers License [illegible] Date of Birt[illegible] (This information will be u[illegible]ound check of all applicants.

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wmathis@fortsmithar.gov

The City of Fort Smith ARKANSAS

April 12, 2016

TO: Members of the Board of Directors
Members of the Community Development Advisory Committee

RE: Appointments:

Ms. Fran Hall of the Community Development Advisory Committee has resigned effective April 12th, 2016. In accordance with Ordinance No. 2926 applications for this prospective vacancy 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 May 17th, 2016. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

Jeff Dingman
Acting City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
www.fortsmithar.gov

Printed on 100% Recycled Paper

Mayor – Sandy Sanders

Acting City Administrator – Jeff Dingman

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
April 19, 2016 ~ 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
Pastor Bill Fink, Central Christian Church

ROLL CALL
- All present, except for Director Lorenz
- 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-ofdirectors-meetings

APPROVE MINUTES OF THE APRIL 5, 2016 REGULAR MEETING
APPROVED as written

ITEMS OF BUSINESS:

1. Ordinance amending Section 14-52(C) of the Fort Smith Municipal Code for the purpose of amending the requirements for parking and screening of vehicles on residentially zoned property ♦
   APPROVED 6 in favor, 0 opposed / Ordinance No. 25-16

2. Ordinance ordering the owners of a certain dilapidated and substandard structure to demolish same, authorizing the City Administrator to cause the demolition of such structure to occur, and for other purposes *(2910 Russell Street)* ♦
APPROVED 6 in favor, 0 opposed / Ordinance No. 26-16

3. Ordinance adopting the 2016 amendments to the sanitary sewer system pre-treatment regulations and permits ordinance codified in Division 2 of Article VI of Chapter 25 of the Fort Smith Code of Ordinances ♦
APPROVED 6 in favor, 0 opposed / Ordinance No. 27-16

4. Ordinance amending Ordinance No. 10-96 as previously amended granting a non-exclusive franchise to Elva Stoufer, d/b/a Non-Ambulatory Transportation Service, Inc.
APPROVED 6 in favor, 0 opposed / Ordinance No. 28-16

5. Consent Agenda

   A. Resolution authorizing the Mayor to execute an amendment to the agreement with the River Valley Sports Complex adjusting the date of completion *~ Settle/Good placed resolution on agenda at the April 12, 2016 study session ~* ♦
   APPROVED 4 in favor, 1 opposed (Catsavis), 1 abstention (Pennartz) / Resolution No. R-53-16

   B. Resolution accepting the bid and authorizing the Mayor to execute a contract with Advanced Workzone Service, LLC for the construction of the Blue Lion Bikeway - Sharrows *($37,775.00 / Parks Department / Budgeted – 1/8 Cent Sales Tax)* ♦
   APPROVED 5 in favor, 1 abstention (Catsavis) / Resolution No. R-54-16

   C. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Transportation Alternatives Program Funds ♦
   APPROVED 6 in favor, 0 opposed / Resolution No. R-55-16

   D. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Recreational Trails Funds ♦
   APPROVED 6 in favor, 0 opposed / Resolution No. R-56-16

   E. Resolution authorizing the Mayor to enter into an agreement with the Western Arkansas Tennis Association for operation of the Tennis Center at Creekmore Park
   APPROVED 6 in favor, 0 opposed / Resolution No. R-57-16

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-ofdirectors-meetings

EXECUTIVE SESSION (approximately 6:50 p.m.)

Appointments:

ADVERTISING AND PROMOTION COMMISSION
Marion Driscoll *(to fill the unexpired term of Sandi Snead)*
Term expires December 31, 2017

PLANNING COMMISSION
Joshua Kilgore *(to fill the unexpired term of Michael Redd who resigned)*
Term expires April 30, 2017

CITY ADMINISTRATOR
~ Added to the agenda by unanimous consent of the Board of Directors ~
Carl Geffken
Effective May 9, 2016

6. Resolution confirming the appointment and employment of Carl Geffken as City Administrator and authorizing the Mayor to execute an at-will employment agreement *~ Added to the agenda by unanimous consent of the Board of Directors ~*
APPROVED 6 in favor, 0 opposed / Resolution No. R-58-16

ADJOURN
7:07 p.m.

MINUTES OF THE BOARD OF DIRECTORS REGULAR MEETING

TUESDAY ~ APRIL 19, 2016 ~ 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 Pastor Bill Fink of Central Christian Church, followed by the Pledge of Allegiance.

On roll call the following members of the Board were present: Directors Keith Lau, Andre' Good, George Catsavis, Tracy Pennartz, Kevin Settle and Don Hutchings; absent - Director Mike Lorenz. The Mayor declared a quorum present.

Mayor Sanders recognized Sawyer Neil of Boy Scout Troop 2316, who was in attendance to earn his Citizenship in the Community badge.

The Mayor noted he advised the Board earlier today that Mr. Carl Geffken, who the Board offered the position of City Administrator on March 8, 2016, has provided a start date of May 9, 2016. The Board must take formal action to confirm the appointment and authorize the at-will employment agreement. Since a start date has now been provided, the Board may discuss the appointment including review of the at-will employment agreement in executive session and then consider a resolution authorizing same. If the Board so desires to add the aforementioned to the current meeting agenda, per the Fort Smith Municipal Code, such may be accomplished by unanimous consent of the Board members.

Mayor Sanders then inquired if any Board member had any item of business to present that was not already on the agenda.

Hutchings, seconded by Pennartz, moved to add the aforementioned items on the

current agenda, i.e. appointment of City Administrator on the executive session and a resolution authorizing same along with authorization of an at-will employment agreement. The members present all voted affirmatively and as authorized per Section 2-31(5), Director Lorenz provided the below written consent to the City Clerk prior to the meeting:

> *"As noted in Section 2-31 below, in my absence tonight, I am providing written concurrence with any request to add discussion of the incoming city administrator's employment agreement to tonight's board meeting agenda including an executive session for such discussion."*

Due to such, the Mayor declared the motion carried and appointment of the City Administrator was added to the executive session and a resolution authorizing same along with authorization of an at-will employment agreement (Item No. 6) were added to the agenda.

The minutes of the April 5, 2016 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.

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 was an ordinance amending Section 14-52(C) of the Fort Smith Municipal Code for the purpose of amending the requirements for parking and screening of vehicles on residentially zoned property ♦ *Future Fort Smith Item*

Director of Development Services Wally Bailey briefed the Board on the item advising the Fort Smith Municipal Code states, *"the improved area for parking vehicles in*

a front yard shall be limited to forty percent (40%) of the gross front or exterior side yard land area." Recently, the Property Owner Appeals Board (POAB) reviewed a variance request to allow a larger driveway for a single-family structure with a three (3) car garage located on a cul-de-sac lot. The variance was granted to increase the allowable improved area to fifty percent (50%). The aforementioned variance revealed an obvious unintended consequence with the current ordinance whereby driveways for single-family homes and duplexes constructed on the pie shaped lot of a cul-de-sac are difficult to make comply with the current requirement. Homebuilders have attempted to comply with the regulations by adjusting the shape of the driveway, which is promoting wheel ruts beside the driveway. The issue of providing special consideration for lots located on the radius of a cul-de-sac already exists in the Fort Smith Municipal Code. Section 27-404(c)(5) allows these lots to have a reduced front yard setback of twenty (20) feet regardless of the front yard setback for the specific zoning classification of the property. The POAB reviewed the proposed amendment at their April 11, 2016 meeting and unanimously recommended such to the Board of Directors for consideration. The Greater Fort Smith Association of Homebuilders have also reviewed the proposed amendment and submitted a letter of support for such.

Lau, seconded by Good, 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.

Prior to the vote, Director Pennartz advised a citizen contacted her and questioned the necessity of the emergency clause included within the proposed ordinance. She

further inquired if the Planning Department presents any ordinances without an emergency clause.

Mr. Bailey advised the emergency clause states such is necessary for *"...the protection of the health, safety and welfare of the inhabitants of the city..."* Such allows the ordinance to become effective immediately upon passage. If no emergency clause is included, the ordinance would not become effective for thirty (30) days, which delays contractors from proceeding with construction projects. He conceded most zoning amendments include an emergency clause for the same purpose.

The motion remaining the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Catsavis, seconded by Hutchings, moved adoption of Section 2 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No. 25-16.

Item No. 2 was an ordinance ordering the owners of a certain dilapidated and substandard structure to demolish same, authorizing the City Administrator to cause the demolition of such structure to occur, and for other purposes (2910 Russell Street) ♦ *Future Fort Smith Item*

Building Official Jimmie Deer briefed the Board on the item advising the structure has been determined to be unsafe and detrimental to the public welfare; therefore, he recommended approval of the proposed ordinance. Upon approval, the property owner will have thirty (30) days to demolish the structure. If such is not accomplished by the property owner, the City will proceed with the demolition.

Catsavis, seconded by Settle, 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 member present all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Good, moved adoption of Section 5 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and the ordinance was given Ordinance No. 26-16.

Item No. 3 was an ordinance adopting the 2016 amendments to the sanitary sewer system pre-treatment regulations and permits ordinance codified in Division 2 of Article VI of Chapter 25 of the Fort Smith Code of Ordinances ♦ *Future Fort Smith Item*

Deputy Director of Utilities Lance McAvoy briefed the Board on the item advising the City is required to revise its pretreatment ordinance. As part of the National Pollutant Discharge Elimination System (NPDES) permits issued for the "P" Street and Massard wastewater treatment plants, the City is required to have an approved pretreatment program, which the program has been in existence since the mid 1980's. The program's main components include:

- Industrial User Pretreatment Ordinance (Ordinance)
- Standard Operating Procedures (SOP)
- Enforcement Response Plans (ERP)
- Industrial User Permits (Permits)
- Funding and resources to operate the required pretreatment program.

In 2005, the Environmental Protection Agency (EPA) published the Pretreatment Streamlining Rule, which requires cities to update the above noted main components of

its programs and look again at the adequacy of funding and resources to operate the required pretreatment program. An ordinance was developed in coordination with the Arkansas Department of Environmental Quality (ADEQ) to meet the requirements of the Streamlining Rule and such was approved via Ordinance No. 80-11. In September 2015, ADEQ's Pretreatment Program audit then determined the City's current ordinance did not comply with the requirements of the EPA's Pretreatment Streamlining Rule. Staff drafted a new ordinance for ADEQ's review and approval. After addressing several comments from ADEQ's State Pretreatment Coordinator, ADEQ agreed that the draft ordinance met the Streamlining Rule requirements. On February 3, 2016, a copy of the proposed revisions were provided to the Board. Through additional reviews by the city attorney and ADEQ, the proposed amendments have been determined to meet both state and federal law, as well as all requirements of the Pretreatment Streamlining Rule. Some of the major changes addressed within the proposed ordinance are as follows:

- Removal of specific values for Technically Based Local Limits (TBLLs) for certain pollutants to give the City more flexibility and reduce the need to amend the Ordinance due to treatment plant upgrades.
- Allowing Best Management Practices to be utilized in place of certain costly pollutant testing, thus saving industries money.
- Incorporation of new federally required language for compliance.
- Allowing the use of general permits in certain circumstances.
- Clarification of permittee's rights and defense against permit violations.

As required, a public notice regarding the Board's consideration of the proposed

ordinance was published in the Times Record on the March 19, 2016 and three (3) copies of such along with 2016 Amendments have been on file in the City Clerk's Office for public review. Staff also sent copies of the 2016 Amendments to all permitted industries for their review. As of this date, two (2) industries contacted staff for additional information and to obtain a better understanding of the ordinance. A meeting was conducted on Thursday, April 7, 2016 with one (1) of the aforementioned industries and, to staffs knowledge, all of the questions pertaining to the ordinance were adequately addressed. There have been no additional questions or comments received.

Catsavis, seconded by Hutchings, moved adoption of the ordinance. The motion including 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.

Prior to the vote, Director Settle conveyed multiple questions, i.e. the purpose of the proposed amendments, when the subject regulations were last updated and if staff met with interested parties regarding said amendments. He further noted that in the future, he would prefer to have a redlined copy so all changes can be easily identified. Upon approval, he requested staff gather at least ten (10) or fifteen (15) of the top discharging companies to review any potential impact to their companies and a report of such be provided to the Board. Director Pennartz noted concurrence of the aforementioned request.

Mr. McAvoy advised the proposed amendments are a direct result of an ADEQ audit of the City's Pretreatment Program, which was conducted in September 2015. The

Pretreatment Program regulations were lasted updated in 2011, which were determined to be in compliance with all federal and state regulations at the time; however, the ADEQ audit in September 2015 determined otherwise. With regard to meeting with interested parties, City staff did not set a formal meeting with all pertinent industries; however, the proposed amendments were provided to all interested parties for their review and input.

Director Lau questioned if the verbiage within the proposed regulations is merely boilerplate language from the ADEQ and if the City included any additional, more restrictive requirements.

Mr. McAvoy confirmed the proposed amendments include some boilerplate verbiage from ADEQ, but also the EPA as well as state and federal law. With regard to more restrictive regulations, staff tried not to include any more restrictive language to ensure the City's regulations closely compare to other municipalities, which also ensures no municipality maintains any financial or competitive advantage.

Director Pennartz acknowledged the proposed reduces the frequency of testing for companies; however, she inquired if the proposed amendments are anticipated to result in any positive or negative financial impact to the City.

Mr. McAvoy advised there is no impact with regard to testing requirements. The only anticipated financial impact would be a potential loss in revenue due to less penalties being assessed.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Catsavis, seconded by Hutchings, moved adoption of Section 3 the emergency clause. The members present all voting affirmatively, the

Mayor declared the motion carried and the ordinance and emergency clause were adopted and given Ordinance No. 27-16.

Item No. 4 was an ordinance amending Ordinance No. 10-96 as previously amended granting a non-exclusive franchise to Elva Stoufer, d/b/a Non-Ambulatory Transportation Service, Inc.

Acting City Administrator Jeff Dingman briefed the Board on the item advising the subject franchise was first granted in 1986 to David and Elva Stoufer to operate Non-Ambulatory Transportation Service, Inc., which serves handicapped and elderly persons living within Fort Smith. The non-exclusive franchise has been continued in five (5) year increments since 1986 and the existing franchise will expire April 30, 2016. Mr. Stoufer passed away several years; however, Ms. Stoufer submitted a letter requesting the franchise again be continued. As required by law, a public notice was published in the Times Record advising three (3) copies of the proposed ordinance has been on file in the City Clerk's Office for public inspection and review prior to Board consideration. Upon approval, the non-exclusive franchise will be continued for an additional five (5) years effective May 1, 2016.

Good, 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.

Prior to the vote, Director Pennartz inquired if there are any other franchise agreements granted for non-ambulatory services within the city of Fort Smith and if so,

requested a list of such including the franchise duration. Director Settle noted concurrence to the aforementioned request.

City Clerk Sherri Gard advised there are very few, if any; however, she will obtain the information and provide as soon as possible.

The motion remaining on the floor and the members present all voting affirmatively, the Mayor declared the motion carried. Settle, seconded by Pennartz, moved adoption of Section 3 the emergency clause. The members present all voting affirmatively, the Mayor declared the motion carried and the ordinance and emergency clause were adopted and the ordinance was given Ordinance No. 28-16.

The Consent Agenda (Item No. 5) was introduced for consideration, the items being as follows:

A. Resolution authorizing the Mayor to execute an amendment to the agreement with the River Valley Sports Complex adjusting the date of completion *~ Settle/Good placed resolution on agenda at the April 12, 2016 study session ~ ♦ Future Fort Smith Item*

B. Resolution accepting the bid and authorizing the Mayor to execute a contract with Advanced Workzone Service, LLC for the construction of the Blue Lion Bikeway - Sharrows ($37,775.00 / Parks Department / Budgeted - 1/8 Cent Sales Tax) *♦ Future Fort Smith Item*

C. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Transportation Alternatives Program Funds *♦ Future Fort Smith Item*

D. Resolution expressing the willingness of City of Fort Smith to utilize Federal-Aid Recreational Trails Funds *♦ Future Fort Smith Item*

E. Resolution authorizing the Mayor to enter into an agreement with the Western Arkansas Tennis Association for operation of the Tennis Center at Creekmore Park

Regarding Item No. 5A, the following individual was present to address the Board:

- Ed Ralston
  Fort Smith, Arkansas

  Re: Spoke in opposition to the item and expressed multiple concerns with the project specifically identified in written information presented to the Mayor and Board prior to the meeting. He further questioned a potential conflict of interest with the city attorney regarding a lawsuit filed on behalf of Mr. Jake Files. He requested the Board table consideration of the proposed extension; the city attorney determine if all contractual obligations are being met; and, the Board establish a committee to review the status of the project and prepare and submit a report regarding same.

Hutchings, seconded by Settle, moved adoption of all consent agenda items.

Prior to the vote and regarding Item No. 5A, Director Catsavis conveyed multiple inquires to Mr. Lee Webb regarding insurance for the facility, the River Valley Sports Complex (RVSC) organization's non-profit status, lien releases for contractors, and funding to complete the parking lot. He further requested a brief assessment of the project and expressed concern that the City will be required to expend additional taxpayer dollars to complete the project 'if' such is not completed with the allotted funds previously authorized.

Mr. Lee Webb, representing the RVSC organization, advised Mr. Alie Bahsoon, City of Fort Smith Purchasing Manager, is assisting the RVSC to work through issues relating to insurance. The RVSC intends to file with the Internal Revenue Service to obtain non-profit status as a 501(c)(3) organization. With regard to lien releases, the RVSC will obtain and provide to the City. Regarding completion of the parking lot, RVSC is talking with Sebastian County for possible assistance with asphalting the parking lot. If the County cannot assist, such will at least be a gravel parking lot; however, he conveyed much

assurance that RVSC *"will come through with the asphalt. "*

Director of Parks and Recreation Doug Reinert noted RVSC is making *"good progress"* citing he periodically goes out to the site and takes pictures to document that all performance indicators are being completed prior to disbursement of funds. He would like to see more progress, but anticipates substantial completion in ninety (90) days as noted.

Due to Mr. Ralston's alleged conflict of interest, Director Pennartz questioned if the city attorney concurs that a potential conflict of interest exists. She questioned if it would be feasible to have the City's auditor review the contract and performance indicators rather than the city attorney.

City Attorney Jerry Canfield advised no conflict of interest with reference to legal services provided to the City to date. If the Board requests services with reference to the requested review/investigation of the contract, the matter would require further evaluation.

Administrator Dingman conceded it would be plausible for staff to review the contract to ensure all contractual obligations are being met rather than the city attorney. With regard to performance indicators, he and Mr. Reinert, and sometimes engineering staff, review the progress to ensure the project is proceeding on schedule, as well as to ensure all performance indicators are completed prior to disbursing additional funds.

Director Lau spoke in opposition to Mr. Ralston's requests to table consideration of the proposed item, city attorney review of the contract, and establishment of a committee citing the aforementioned would only further delay completion of the project. Regarding review of the contract to ensure all contractual obligations are being met, he stated such *"would be prudent"* for the City to do.

Director Hutchings noted there have been some delays in the project due to weather; however, he inquired of any other reasons for delay.

Mr. Webb noted that although such is minor, the biggest delay has been having to wait for the disbursement of funds in order to proceed to the next phase of construction.

With regard to Item No. 5B, Director Catsavis noted the total cost of the project was estimated to be a little over $70,000; however, he inquired the cost to the City of Fort Smith.

Mr. Reinert advised Arvest Bank donated $50,000 for the project; therefore, once completed, the City of Fort Smith will be financially responsible for approximately $21,000.

The motion remaining on the floor, the members present all voted affirmatively on all consent agenda items with the exception of Item No. 5A whereby Director Catsavis voted *"no"* and Director Pennartz abstained, and Item No. 5B whereby Director Catsavis abstained. The Mayor declared the motion carried and the resolutions were adopted and given Resolution No. R-53-16 through R-57-16 respectively.

Mayor Sanders opened the Officials Forum with the following wishing to comment:

- Mayor Sanders

  Re:
  1. Announced the Steel Horse Rally is scheduled for Friday and Saturday, April 29th & 30th, downtown Fort Smith, and invited all to attend.

  2. Noted the monument dedication for the General Darby Legacy Project will take place at 10:00 a.m., Saturday, April 30th at Cisterna Park (North 10th Street and Garrison Avenue).

  3. Reminded all the Fort Smith Citywide Cleanup is Saturday, April 23rd. Volunteers will gather at 9:00 a.m. at the Arvest Tower across from Central Mall. Arvest Bank will be cooking food for all volunteers involved in the cleanup.

4. Announced Master Gardner Felder Rushing will speak at 7:00 p.m., Thursday, April 28th at the Fort Smith Convention Center. Such is hosted by the River Valley Master Gardeners, who invite all to attend.

- Director Settle

  Re: Regarding the upcoming Steel Horse Rally, he noted said event will bring many visitors to the city; therefore, he encouraged all to extend a Fort Smith welcome to all visitors and participants.

- Administrator Dingman

  Re: Introduced newly appointed Sanitation Director Mark Schlievert, who was in attendance.

The Board entered into executive session at approximately 6:50 p.m. and after reconvening, the Mayor announced the following appointment nominations:

ADVERTISING AND PROMOTION COMMISSION
Marion Driscoll
(to fill the unexpired term of Sandi Snead)
Term expires December 31, 2017

PLANNING COMMISSION
Joshua Kilgore
(to fill the unexpired term of Michael Redd who resigned)
Term expires April 30, 2017

Lau, seconded by Pennartz, moved acceptance of the above named nominations. The members present all voting aye, the Mayor declared the motion carried.

With regard to the City Administrator appointment ~ *added to the agenda by unanimous consent of the Board of Directors* ~, Mayor Sanders announced the appointment of Mr. Carl Geffken as City Administrator effective May 9, 2016 and acceptance of the proposed at-will employment agreement. A resolution authorizing same ~ *added to the agenda by unanimous*

consent of the Board of Directors ~ (Item No. 6) was presented for approval. The Mayor further announced the Board concurred to authorize an amount not to exceed $15,000 for moving and relocation expenses.

Hutchings, seconded by Good, moved adoption of the resolution. The members present all voting affirmatively, the Mayor declared the motion carried and the resolution was adopted and given Resolution No. R-58-16.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Hutchings and the members present all voting aye, the Mayor declared the motion carried and the meeting stood adjourned at 7:07 p.m.

APPROVED:

VICE-MAYOR

ATTEST:

CITY CLERK