

CITY OF SPRINGDALE
Committee Agendas
Monday, March 3rd, 2014
Multi-Purpose Room #236
City Administration Building
Meetings begin at 5:30 p.m.

Ordinance Committee, Chairman Mike Overton:

1. **An Ordinance** amending Section 42-93(a) of the Code of Ordinance of the City of Springdale, Arkansas; declaring an emergency and for other purposes, presented by Ernest Cate, City Attorney. **Pg. 2**

Parks & Recreation Committee, Chairman Brad Bruns:

2. **A Presentation** about floating wetlands by Sydney Hines from the E.A.S.T program at Springdale High School, introduced by Rick McWhorter, Director of Parks and Recreation. **Pg.'s 3-10**

Health, Sanitation & Property Maintenance Committee, Chairman Jeff Watson:

3. **A Discussion/Update** regarding 4003 S. Thompson Street outlining their desire to abate some code violations, presented by Missha Wagoner, Community Engagement Supervisor and Sam Goade, Director of Public Works.

Finance Committee, Chairman Brad Bruns:

4. **A Resolution** authorizing execution of a contract for engineering services for design of a material storage building, presented by Sam Goade, Director of Public Works. **Pg.'s 11-30**
5. **A Resolution** authorizing the Mayor and City Clerk to enter into a joint funding agreement with the U.S. Geological Survey (USGS) for monitoring Spring Creek, presented by Alan Pugh, Director of Engineering. **Pg.'s 31-34**
6. **A Resolution** authorizing a master lease agreement with Verizon Wireless, presented by Wyman Morgan, Director of Admin & Financial Services. **Pg.'s 35-47**
7. **An Ordinance** authorizing the Mayor to enter into a contract with MSI Consulting Group, LLC, to provide a comprehensive case management system (Virtual Justice) for the Springdale District Court; to waive competitive bidding and for other purposes, presented by Jeff Harper, District Judge. **Pg.'s 50-51**
8. **A Resolution** amending the 2014 Budget of the Springdale District Court, presented by Jeff Harper, District Judge. **Pg.'s 52-57**
9. **A Resolution** amending the 2014 Budget of the Springdale District Court and authorizing certain purchases by the District Court, presented by Jeff Harper, City Attorney. **Pg.'s 58-59**
10. **An Ordinance** authorizing the District Court to enter into a contract with Advanced Information Management for Imaging (archiving) of court records; to waive competitive bidding and for other purposes, presented by Jeff Harper, City Attorney. **Pg.'s 60-63**

Street & CIP Committee, Chairman Rick Evans:

11. **A Discussion** of speed limits on Don Tyson Parkway, presented by Sam Goade, Director of Public Works and Ernest Cate, City Attorney. **Pg. 64**
12. **A Discussion** regarding truck routes, presented by Ernest Cate, City Attorney **Pg.'s 65-66**
13. **A Discussion** of settlement of the Valley Harvest Ministries Lawsuit, presented by Ernest Cate, City Attorney. **Pg.'s 67-73**
14. **A DISCUSSION** concerning the possible purchase of property (Rabbits Foot Lodge) from Karen Morton, presented by Mayor Doug Sprouse and Ernest Cate, City Attorney. (the resolution will be presented at the meeting on Monday by Ernest). **Pg. 74**

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 42-93(a) OF THE CODE OF ORDINANCES OF THE CITY OF SPRINGDALE, ARKANSAS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, it has come to the attention of the City Council for the City of Springdale, Arkansas, that Section 42-93(a) of the Code of Ordinances of the City of Springdale, Arkansas, needs to be clarified to provide that all graffiti will be removed from any structure on which graffiti is viewable from a public or quasi-public place in the City of Springdale, Arkansas;

WHEREAS, it is in the best interests of the citizens of the City of Springdale, Arkansas, that Section 42-93(a) of the Code of Ordinances of the City of Springdale, Arkansas, be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS:

Section 1: Section 42-93(a) of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

Sec. 42-93. Right of city to remove.

- (a) Whenever the city becomes aware, or is notified and determines that graffiti is so located on the exterior of a building, structure, such as fences or walls, or utility boxes or poles, on public or privately owned property viewable from a public or quasi-public place within the city, the city shall be authorized to use public funds for the removal of graffiti from the entire building affected same, or for the painting of same, but shall not authorize or undertake to provide for the painting of any more extensive area than where the graffiti is located, unless the director of public works, or his designee, determines that a more extensive area is required to be repainted in order to avoid an aesthetic disfigurement to the neighborhood or community.

Section 2: All other provisions of Chapter 42-93 of the Code of Ordinances of the City of Springdale, Arkansas, not specifically modified herein shall remain in full force and effect.

Section 3: Emergency Clause. It is hereby declared that an emergency exists and this ordinance being necessary for the preservation of the health, safety and welfare of the citizens of Springdale, Arkansas, shall be effective immediately upon its passage and approval.

PASSED AND APPROVED this _____ day of _____, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney

Rose Lawrence

From: Rick McWhorter <rmcwhorter@springdalear.gov>
Sent: Thursday, February 13, 2014 10:45 AM
To: Rose Lawrence
Cc: Doug Sprouse; Brad Bruns; Chad Wolf
Subject: Parks & Recreation Committee March 3, 2014
Attachments: Floating Wetlands powerpoint.ppt; IRWP floating wetlands brochure.pdf

Please add the attached for the meeting for March 3, 2014. Sydney Hines from the E.A.S.T. program at SHS will be presenting this. She would like to place one floating wetland at Lake Springdale. This will not cost the City any money, just some time to help install properly. Thanks.

Dr. Rick McWhorter, CPRP
Director
Springdale Parks & Recreation
P.O. Box 42
Springdale, AR 72765

ph: 479-750-8185
fax: 479-750-8595

What is a Floating Wetland Island?

A Floating Wetland Island is a man-made ecosystem, that mimics naturally occurring wetlands. These floating wetlands are constructed using native, perennial aquatic plants suspended in floating rafts and they mimic the same basic function as natural wetlands.

Natural wetlands are known for their ability to improve water quality. This is a result of the wetland plants processing excess nutrients, intercepting other pollutants, trapping sediment and reducing suspended solids in the water. In the case of floating wetlands, the plants' roots are always exposed to the water, which enables them to constantly improve the things that degrade water quality.

Floating Island Pollutant Removal Rates

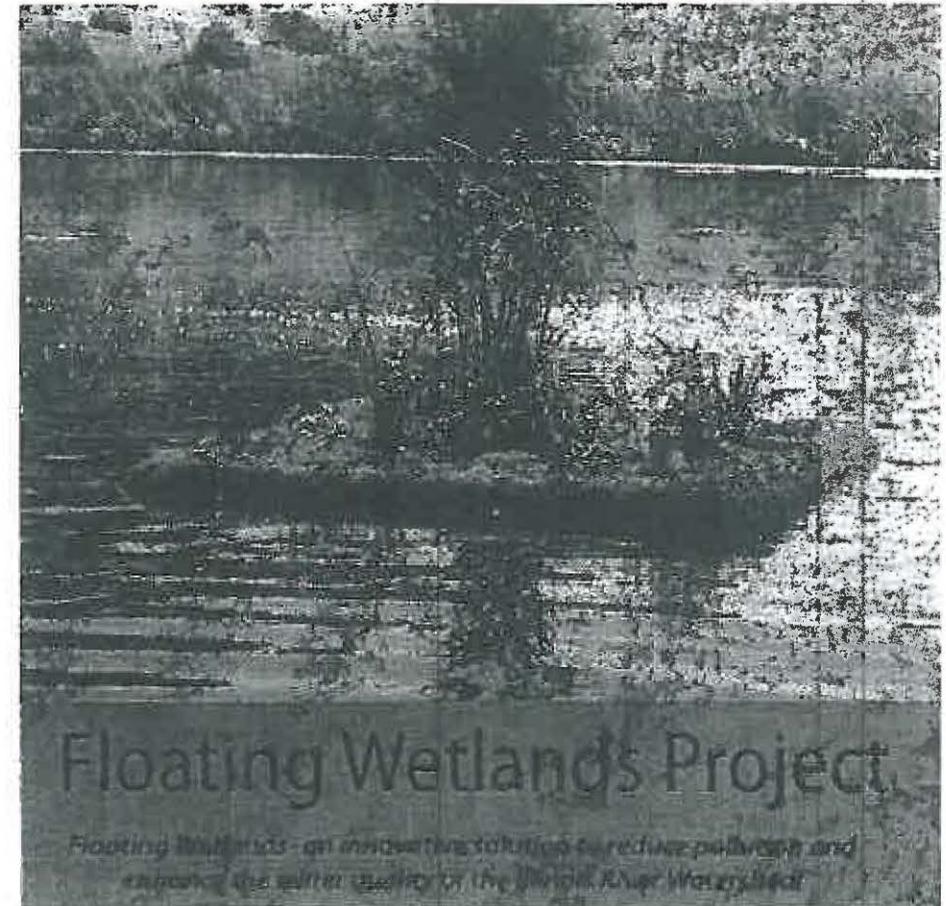
Pollutant	Daily Rates mg/ft ² /day	Annual Rates g/ft ² /year
Nitrate (NO ₃ ⁻)	21	7.67
Total Nitrogen (TN)	28.7	10.48
Ammonia (NH ₃)	25.8	9.42
Total Phosphorus (TP)	1.9	0.69
Dissolved Phosphate (PO ₄ ⁻³)	1.4	0.51
Copper (Cu)	0.25	0.09
Zinc (Zn)	2.3	0.84
Fine Particulates (FP)	3.1	1.13

Source: National Institute of Water & Atmospheric (NIWA) Research Study



The "Botanic"

Prairie Grove Middle School EAST submitted their floating wetland project, the "Botanic," to the National EAST Conference, 2013.



For more information, visit www.illinoisriver.org, eastaction.org, or call 1-79-238-4671.

Materials:

For the frame:

- 3 4" x 10' PVC pipe: Hardware store
- 4 4" PVC 90 degree elbows: Hardware store
- PVC cleaner and cement: Hardware store

For the body:

- 1 48" x 10' piece black plastic netting (Industrial Netting #XB 1133 Black PE 1-1/4" opening or similar), from Industrial Netting
- 1 39" (1 meter) x 10' piece erosion control mesh (Enkamat #7020 or similar)
- 1 mattress coir fiber bale (18 lbs.), from RoLanka
- 1 39" (1 meter) x 20' piece BioD 90 erosion control mat, from RoLanka
- UV-protected cable ties (18")
- Cord, preferably UV-stabilized (or other cord, or baling twine)

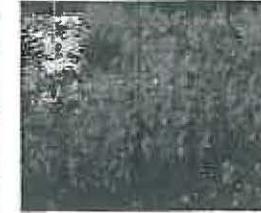
Note: Watertightness of the PVC frame is what keeps the raft afloat; work carefully in making the pipe connections to insure a good seal. Make sure edges are clean, use a cleaner or primer first, follow directions on cement packaging.

Instructions:

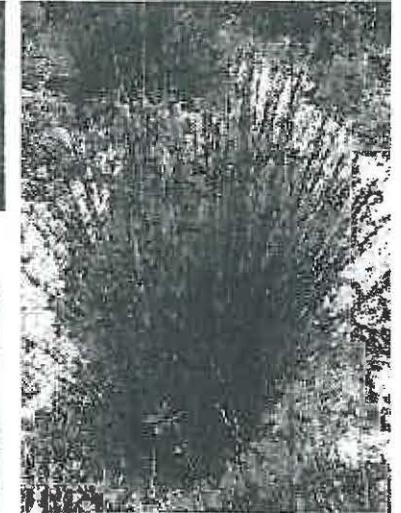
- (1) Cut one of the PVC pipes into two (2) 37" long pieces.
- (2) Cut 3" from each of the two remaining 10' pipes to create two 117" pieces.
- (3) Assemble the PVC pieces to create a water-tight frame. Follow the instructions on the PVC cement. Apply a clear PVC cleaner or primer and then PVC cement to each joint. (Suggestion: Use a clear primer and cement unless you want purple splotches on your raft.
- (4) Attach the black plastic netting to the frame with UV-protected cable ties.
- (5) Lay the Enkamat mesh on top of the netting.
- (6) Lay the first 10' of the coir erosion control mat over the Enkamat; let the additional 10' hand off one end.
- (7) Shred the coir (coconut fiber) bale and place on top of the erosion control mat.
- (8) Fold the rest of the erosion control fabric over the first (you are making a mattress with shredded coir between two layers of mat.)
- (9) Sew the edges of the coir mattress together and to the netting & mesh layers at the same time.



Rose Mallow



Water Willow



Soft Rush, *Juncus effusus*



Swamp Milkweed, *Asclepias incarnate*

Native Wetland Plants

- Bog lily, *Crinum americanum*
- Blueflag Iris, *Iris virginica*
- Button Bush, *Cephalanthus occidentalis*
- Cardinal Flower, *Lobelia cardinalis*
- Duck Potato, *Sagittaria lancifolia*
- Fox Sedge, *Carex vulpinoides*
- Lizard Tail, *Saururus cernuus*
- Pennywort
- Pickerel weed, *Pontedaria cordata*
- Powdery thalia, *Thalia dealbata*
- Riparian sedge, *Carex riparia*
- Swamp Dogwood, *Cornus amomum*
- Swamp Iris, *Iris versicolor*
- Typha latifolia, *Cattails*
- Water Parsnip, *Sium suave*



Cardinal Flower

Floating Wetlands

Springdale High School
E.A.S.T.

What is a Floating Wetland?

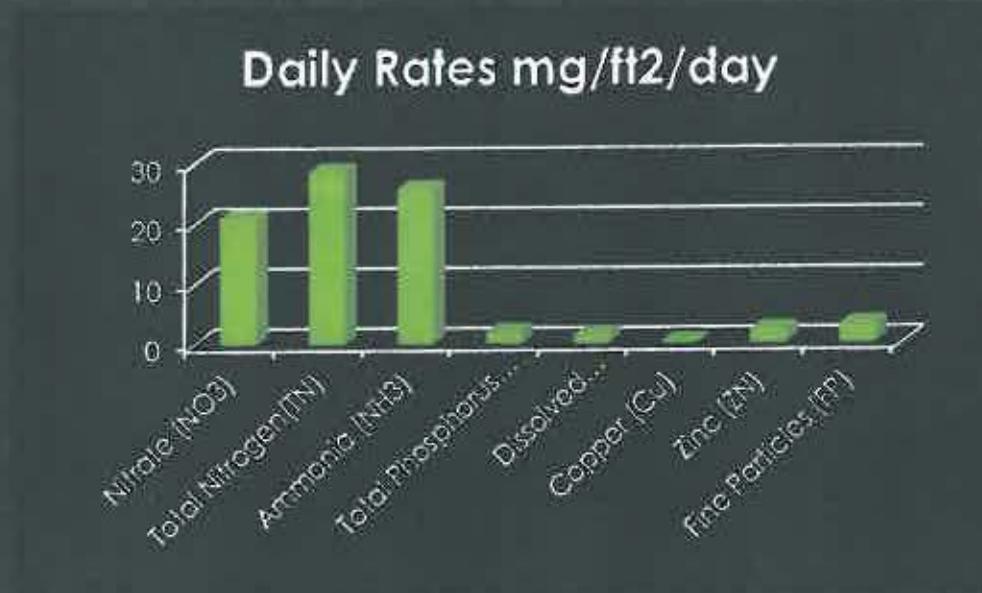
- A floating wetland is a man made ecosystem, that mimics naturally occurring wetlands. These floating wetlands are constructed using native, perennial aquatic plants suspended in floating rafts.



What are the benefits of a Floating Wetland?

- Filters pollutants
- Nurturing habitat
 - Fish
 - Water fowl
 - Other aquatic organisms
- Reduces Nitrogen and Phosphorus levels
 - 32% removal of phosphorus
 - 45% reduction of nitrogen
- Habitat Restoration
- Carbon Sequestration

Charts



Ideal Location

- Lake Springdale!



RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A
CONTRACT FOR ENGINEERING SERVICES FOR
DESIGN OF A MATERIAL STORAGE BUILDING**

WHEREAS, resolution number 14-14 amending the 2014 budget of the Public Works Department transferring funds from the Materials/Asphalt account and the Contract Labor/Paving account to the Equipment account and the Building Improvements account was passed and approved on January 28, 2014 \$150,000 of which was allocated for construction of a salt/grit storage building, and

WHEREAS, the salt/grit storage building requires engineering design consulting services, and

WHEREAS, USI Consulting Engineers, Inc., has submitted a contract for engineering consulting services in the amount of \$19,699, a copy of which is attached to this resolution, and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor and City Clerk/Treasurer are hereby authorized to execute a contract with USI Consulting Engineers, Inc., for design services for a material storage building in the amount of \$19,699.

PASSED AND APPROVED this 11th day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

PROFESSIONAL SERVICES AGREEMENT
between
THE CITY OF SPRINGDALE, ARKANSAS
and
USI CONSULTING ENGINEERS, INC.
for
MATERIAL STORAGE BUILDING
CITY OF SPRINGDALE PROJECT NO. _____
USI PROJECT NO. 1409013

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between CITY OF SPRINGDALE, 201 Spring Street, Springdale, Arkansas 72764, hereinafter referred to as the "CITY", party of the first part, USI CONSULTING ENGINEERS, INC., hereinafter referred to as the "ENGINEER", party of the second part.

The CITY intends to make the following improvement within the City of Springdale, hereinafter referred to as PROJECT:

Construct an adequately sized clear-span materials storage facility that will house salt and mineral aggregate; provide support slabs for liquid beet juice and liquid chloride storage; and provide a staging or mixing area and truck loading zone as further defined in Attachment "A".

The ENGINEER shall provide professional services related to these improvements as described in this AGREEMENT.

The CITY and ENGINEER in consideration of the mutual covenants in this contract agree in respect to the performance of professional services by the ENGINEER and the payment for those services by the CITY as set forth below. Execution of the AGREEMENT by the CITY and the ENGINEER constitutes the CITY's written authorization to the ENGINEER to proceed on the date written above with the services described herein.

ARTICLE I
GENERAL

Sec. 1.0. The CITY and the ENGINEER agree that the following provisions shall apply to all work to be performed under this AGREEMENT.

Sec. 1.1. During the tenure of the AGREEMENT, the ENGINEER agrees as follows:

1.1-1. The ENGINEER shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification

reasonably necessary to the normal operation of the ENGINEER. The ENGINEER shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 1.1-2. The ENGINEER, in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER, shall state that the ENGINEER is an equal opportunity employer.
 - 1.1-3. Notices, advertisements, and solicitations placed in accordance with federal law, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - 1.1-4. The ENGINEER shall include the provisions of Section 1.1-1, 1.1-2 and 1.1-3 above in all subcontracts or purchase orders in excess of ten thousand dollars (\$10,000.00). These provisions shall be binding upon each subcontractor or vendor.
- Sec. 1.2. This AGREEMENT shall be subject to and interpreted under the laws of the State of Arkansas. Should any dispute arise out of or pertaining to the performance of the AGREEMENT, such dispute shall be initiated and decided solely in the Circuit Court having jurisdiction in Springdale, Arkansas.
- Sec. 1.3. The ENGINEER shall not be responsible for the CONSTRUCTION CONTRACTOR(s)'s failure to perform the work in accordance with the Contract Documents through no fault of the ENGINEER.
- Sec. 1.4. Any notice, demand, or request required by or made pursuant to this AGREEMENT shall be deemed properly made if personally delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below. This shall not be construed to restrict the transmission of routine communications between representatives of the ENGINEER and the CITY.

CITY: CITY OF SPRINGDALE
201 Spring Street
Springdale, AR 72764

ENGINEER: USI CONSULTING ENGINEERS, INC
4847 Kaylee Avenue
Springdale, AR 72762

- Sec. 1.5. The invalidity, illegality, or unenforceability of any provision of this AGREEMENT, or the occurrence of any event rendering any portion or provision of this

AGREEMENT void, shall in no way affect the validity or enforceability of any other portion or provision of this AGREEMENT. Any void provision shall be deemed severed from this AGREEMENT. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this AGREEMENT.

- Sec. 1.6. The ENGINEER, in performing the services required by this AGREEMENT, shall comply with applicable federal, state and local laws, rules, regulations, orders, codes, criteria and standards.
- Sec. 1.7. This AGREEMENT represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This AGREEMENT may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- Sec. 1.8. This AGREEMENT shall be binding upon the parties hereto, their partners, heirs, successors, administrators and assigns. Neither the CITY nor the ENGINEER shall assign, or transfer any rights under, or interest, in this AGREEMENT without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing in this section shall prevent the ENGINEER from employing such independent consultants, associates, and subcontractors as it may deem appropriate to assist it in providing the SERVICES required by this AGREEMENT.
- Sec. 1.9. The ENGINEER and any subcontractors are to maintain all documents, accounting records and other evidence pertaining to cost incurred and to make such materials available at their respective offices at all reasonable times during the contract period, and for three (3) years from the date of final payment under the contract, for inspection by authorized representatives of the CITY, or any governmental agency providing any portion of PROJECT funding, and copies thereof shall be furnished, if requested.

ARTICLE II SCOPE OF SERVICES

- Sec. 2.0. The ENGINEER shall perform the SERVICES described in Attachment "A", which is attached hereto and incorporated by reference as part of this AGREEMENT. The ENGINEER shall also perform any services mutually agreed upon in writing as Additional Services pursuant to Article III.
- Sec 2.1. The ENGINEER shall consult with CITY to define and clarify CITY's requirements for the PROJECT and available data.

Sec. 2.2. The SERVICES required under this AGREEMENT shall commence on the date of the execution of this agreement by the CITY and will proceed in accordance with the schedule shown in Attachment "B".

Sec 2.3. The ENGINEER shall begin work within ten (10) calendar days of receiving a notice-to-proceed from the CITY.

ARTICLE III ADDITIONAL SERVICES

Sec. 3.0. Additional Services are those services which may be required by the CITY which are beyond the Scope of Services set forth in Attachment "A" to this AGREEMENT. The ENGINEER shall provide such Additional Services only when properly authorized by the CITY. Such Additional Services shall be negotiated and agreed upon in writing by both PARTIES, and this AGREEMENT must be amended prior to commencement.

Sec. 3.1. Additional Services which may be added to this AGREEMENT are defined in Attachment "C".

Sec 3.2. The ENGINEER shall advise the CITY as to the necessity of CITY providing data or services of the type described in Attachment "C" and assist the CITY in obtaining such data and services.

ARTICLE IV RELATIONSHIP OF THE PARTIES

Sec. 4.0. The ENGINEER covenants with the CITY to furnish SERVICES with skill, care and judgment consistent with that ordinarily used by members of the ENGINEER's profession practicing under similar conditions. The ENGINEER shall act in accordance with applicable federal, state and local laws and regulations. The ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and CITY shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies in the documents without additional compensation except to the extent such action is directly attributable to deficiencies in CITY-furnished information.

ARTICLE V RESPONSIBILITIES OF THE CITY

Sec. 5.0. The CITY shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the work.

- Sec. 5.1. If the CITY observes or otherwise becomes aware of any fault or defect in the PROJECT or the Contract Documents, the CITY shall give prompt written notice thereof to the ENGINEER.
- Sec. 5.2. The CITY shall provide criteria and information as to CITY's requirements for the PROJECT, including design objectives and constraints, right-of-way, capacity and performance requirements, and any budgetary limitations.
- Sec. 5.3. The CITY will furnish copies of design and construction standards which CITY will require to be included in the drawings and specifications.
- Sec. 5.4. The CITY will assist the ENGINEER by placing at ENGINEER's disposal all available information pertinent to the PROJECT, including previous reports and other data relative to design or construction of the PROJECT.
- Sec. 5.5. The CITY will arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.
- Sec. 5.6. The CITY shall furnish approvals and permits from all governmental authorities having jurisdiction over the PROJECT and such approvals and consents as may be necessary for completion of the PROJECT. The CITY will pay all fees associated with obtaining permits and approvals.
- Sec. 5.7. The CITY shall provide such accounting, independent cost estimating and insurance counseling services as may be required for the PROJECT, such legal services as CITY may require or ENGINEER may reasonably request with regard to legal issues pertaining to the PROJECT including any that may be raised by CONSTRUCTION CONTRACTOR(s), such auditing services as CITY may require to ascertain how or for what purpose any CONSTRUCTION CONTRACTOR(s) has used the monies paid to him under the construction contract, and such inspection services as CITY may require to ascertain that CONTRACTOR(s) is complying with any law, rule or regulation applicable to the performance of the work.
- Sec. 5.8. The CITY will obtain the necessary lands, permits, easements and rights-of-way for construction of the PROJECT.
- Sec. 5.9. The CITY will pay all plan review and advertising costs in connection with the PROJECT.

Sec. 6.4. Excess Liability Umbrella Form

Bodily injury and Property Damage Combined Including: (See Note 1)

Note 1 - The intent of this insurance specification is to provide the coverages required and the limits expected for each type of coverage. With regard to the Automobile Liability and the Comprehensive General Liability, the total amount of coverage can be accomplished through any combination of primary and excess umbrella insurance. However, the total insurance protection provided for Comprehensive General Liability protection or for Automobile Liability protection, either individually or in combination with Excess Liability Umbrella, must total \$2,000,000 per occurrence.

Sec 6.5. Professional Liability

Limits of Liability:

Aggregate	\$1,000,000
Per Claim	\$1,000,000

Sec 6.6. The parties to this AGREEMENT waive any right they may have in law or in equity to demand or receive consequential or punitive damages.

**ARTICLE VII
INDEMNIFICATION AND LIABILITY**

Sec. 7.0. The ENGINEER agrees to indemnify and hold harmless the CITY, its officers, agents and employees against all liability, loss or damage the CITY may suffer as a result of any claims, demands, costs, or judgments arising from the ENGINEER'S negligent performance of its obligations under this contract. The ENGINEER will not be held responsible for failure to perform the duties and responsibilities imposed by this AGREEMENT due to strikes, fires, riots, rebellions, acts of God and other causes beyond the control of the ENGINEER that make performance impossible or illegal, unless otherwise specified in the AGREEMENT.

Sec. 7.1. The CITY agrees to indemnify and hold harmless the ENGINEER from and against any and all claims, demands, suits, damages, including consequential damages and damages resulting from personal injury or property damage, costs and expenses and fees that are asserted against the ENGINEER and that arise out of or result from negligent acts or omissions by the CITY, its employees, agents and representatives in performing the work.

Sec. 7.2. The ENGINEER is not responsible for delay, nor shall ENGINEER be responsible for damages or be in default or deemed to be in default by reason of lockouts, accidents or acts of God, or for the failure of CITY to furnish timely information or to

approve or disapprove ENGINEER's work promptly, or delay or faulty performance by CITY, other contractors or governmental agencies, or any other delays beyond the ENGINEER's control.

- Sec. 7.3. The ENGINEER shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits and building permits.

ARTICLE VIII COMPENSATION

- Sec. 8.0. The CITY agrees to compensate the ENGINEER monthly for all SERVICES provided in accordance with Attachment "D".
- Sec. 8.1. The ENGINEER shall submit invoices to the CITY monthly for payment of SERVICES performed during the preceding calendar month. The total amounts set forth in Attachment "D" represent the maximum amounts payable to the ENGINEER for its SERVICES. The CITY shall make payment within 30 days after receipt of the ENGINEER'S invoice. Should the CITY fail to make payment, the ENGINEER shall be entitled to an additional payment of 1 percent per month on the outstanding balance until the invoice is paid.
- Sec. 8.2. The CITY shall not be obligated to compensate the ENGINEER for SERVICES described herein which exceed the total compensation set forth in this AGREEMENT. If the scope of SERVICES is increased as provided in Article III of the AGREEMENT, the ENGINEER shall not be obligated to perform the additional SERVICES or otherwise incur costs for such additional SERVICES, unless the CITY has notified the ENGINEER in writing that such compensation is increased. The notification shall specify the revised compensation which shall thereupon constitute the new total compensation for performance of SERVICES under this AGREEMENT.
- Sec. 8.3. Upon satisfactory completion of the SERVICES required under this AGREEMENT, and as a condition for final payment or termination settlement under this AGREEMENT, the ENGINEER shall execute and deliver to the CITY a release of all claims against the CITY arising under or by virtue of this AGREEMENT, except claims which are specifically identified by the ENGINEER as to date and amount.

ARTICLE IX USE OF DOCUMENTS

- Sec 9.0. All documents including drawings and specifications prepared by ENGINEER

pursuant to this AGREEMENT are instruments of service in respect to the PROJECT. They are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at CITY's sole risk and without liability or legal exposure to ENGINEER.

Sec 9.1. Copies of documents and furnished data that may be relied upon by recipient of said documents and data are limited to the printed sealed copies (also known as hard copies) that are delivered. Files in electronic media format of text, data, graphic, or of other types are only for convenience of recipient. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Sec 9.2. ENGINEER shall, however, also retain its rights to utilize such instruments of service (engineering documents, drawings and specifications prepared by the ENGINEER as part of the service to the CITY and tendered to the CITY) in its standard drawing details, specifications, databases, computer software, intra-office correspondence and memoranda and other proprietary property. The parties agree that said materials are the sole and valuable property of the ENGINEER and that said property constitutes trade secret information of the ENGINEER as defined by Arkansas Trade Secrets Act of 1981. The parties further recognize that the public dissemination of any such information would give a competitive edge or would provide a benefit to ENGINEER's competitors (within the meaning of Ark. Code Ann. 25-19-105(A), which would ordinarily require an expenditure of time, cost and effort to duplicate. As such, all rights to intellectual property and trade secret and proprietary information shall remain the confidential, valuable property of the ENGINEER.

ARTICLE X OPINIONS OF PROBABLE COST

Sec. 10.0. Since the ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the CONSTRUCTION CONTRACTOR(s) methods of determining prices, or over competitive bidding or market conditions, the ENGINEER's estimates of PROJECT costs and construction costs provided for herein are to be made on the basis of the ENGINEER's experience and qualifications and represent the ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids or actual total PROJECT or construction costs will not vary from estimates prepared by the ENGINEER.

Sec. 10.1. The CITY understands that the construction cost estimates developed by the ENGINEER do not establish a limit for the construction contract amount. If the actual amount of the low construction bid exceeds the construction budget established by the CITY, the ENGINEER will not be required to re-design the PROJECT or any part thereof without additional compensation.

**ARTICLE XI
HAZARDOUS ENVIRONMENTAL CONDITIONS**

- Sec. 11.0. If a Hazardous Environmental Condition is recognized by the ENGINEER during the course of his normal duties, the ENGINEER shall have the obligation to notify CITY, and, to the extent of applicable laws and regulations, appropriate governmental officials.
- Sec. 11.1. It is acknowledged by both parties that the ENGINEER's scope of services does not include any services related to a Hazardous Environmental Condition. The CITY acknowledges that ENGINEER is not and shall not be required to become a "arranger", "operator", "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the PROJECT in connection with ENGINEER's activities under this AGREEMENT.

**ARTICLE XII
TERMINATION**

- Sec. 12.0 This AGREEMENT may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this AGREEMENT through no fault of the terminating party, if the other party is given:
- 12.0-1. Not less than 30 calendar days written notice of intent to terminate, delivered by certified mail, return receipt requested, and
- 12.0-2. An opportunity for consultation and 30 day cure period with the terminating party prior to termination.
- Sec. 12.1. This AGREEMENT may be terminated in whole or in part by letter from the CITY for its convenience, if the ENGINEER is given notice as provided by Section 12.0-1.
- Sec. 12.2. If termination for default is effected by the CITY, an equitable adjustment in the price provided for in this AGREEMENT shall be made.
- Sec. 12.3. If termination for default is effected by the ENGINEER, or if termination for convenience is effected by the CITY, there shall be an equitable adjustment for SERVICES performed. The equitable adjustment for termination shall provide for payment to the ENGINEER for SERVICES rendered and expenses incurred prior to the termination and costs reasonably incurred by the ENGINEER for commitments made prior to the termination.
- Sec. 12.4. Upon receipt of a notice of termination pursuant to Section 12.1 or Section 12.2, the ENGINEER shall:

12.4-1. Promptly discontinue all SERVICES unless the notice directs otherwise, and

12.4-2. Deliver or otherwise make available to the CITY all plans, specifications, data, reports, estimates, summaries, and such other information and materials accumulated by the ENGINEER in performing this AGREEMENT, whether completed or in process.

Sec. 12.5. Upon termination, the CITY may take over the work and may award another party an agreement to complete the work required under this AGREEMENT.

Sec. 12.6. If, after termination for failure of the ENGINEER to fulfill contractual obligations, it is determined that the ENGINEER did in fact fulfill its contractual obligations, the termination shall be deemed to have been for the convenience of the CITY. In such event, adjustment of the price provided for in this AGREEMENT shall be made as provided in Section 12.3.

ARTICLE XIII PERFORMANCE SCHEDULE AND LIQUIDATED DAMAGES

Sec. 13.0 The ENGINEER agrees that time is of the essence in completing the work contemplated under this AGREEMENT. The ENGINEER agrees to complete the work in accordance with the schedule shown in Attachment "B" or pay liquidated damages in the amount of 0.1% of the total contract amount for each calendar day beyond the total time allotted in the AGREEMENT for Concept, Preliminary, and Final Design Phases (hereinafter referred to as "Contract Time").

Sec. 13.1 Contract Time for Concept, Preliminary, and Final Design phases shall begin on the date of written Notice to Proceed for each phase. Contract Time will be suspended on the date of receipt of deliverables required for each design phase. Determination of compliance with the Scope of Services for each phase will be made by the CITY within 5 days of receipt of deliverables required for each phase. If the deliverables submitted are in compliance with the requirements of the Scope of Services, the Contract time will remain suspended until Notice to Proceed with the subsequent phase is given. If the required deliverables are not provided, or are incomplete, notification of the deficient submittal will be made to the ENGINEER, and additional time will be charged from the date of the initial phase submittal through submittal of deliverables meeting the requirements of the Scope of Services.

Sec. 13.2. Underruns of Contract Time on one phase of work may be used to offset overruns in another phase provided that the total cumulative Contract Time for the Concept, Preliminary, and Final Design Phases is not exceeded.

IN WITNESS THEREOF, the PARTIES to this AGREEMENT have hereunto set their hands of the day and year first above written.

CITY OF SPRINGDALE, ARKANSAS

USI CONSULTING ENGINEERS, INC.

By: _____

By: _____

Honorable Doug Sprouse, Mayor
Title

Charles R. Nickle, CEO
Title

Attest

Attest

Denise Pearce, City Clerk
Title

Terry W. Carpenter, President
Title

ATTACHMENT 'A'

SCOPE OF SERVICES

PROFESSIONAL SERVICES AGREEMENT

between

THE CITY OF SPRINGDALE, ARKANSAS

and

USI CONSULTING ENGINEERS, INC.

for

MATERIAL STORAGE BUILDING

CITY OF SPRINGDALE PROJECT NO. _____

USI PROJECT NO. 1409013

1. Scope of Project

- a. The Project shall consist of a single clear-span pre-engineered fabric structure that will be sized to contain approximately a normal one-year volume of salt and mineral aggregate to treat the City's streets during winter.
- b. Provide design and construction documents for installation of the foundation, storage slab and loading areas. The pavement material will be selected in cooperation with the City Public Works Department.
- c. Work with Public Works staff in selecting an appropriate location which is to be located on existing Public Works property off Randall Wobbe Road.

2. Basic Services

The Scope of Services of the ENGINEER as described in the Agreement are further defined and described hereinafter.

3. Topographic Surveys

- a. Establish base line on the site and set a minimum of two monuments with caps stating "USI Control" to facilitate proper location of the facilities. Survey control shall be established on the State Plane Coordinate System.
- b. Locate structures, streets, driveways, storm drains, trees and other features within the general project area and extending to the connecting street for the purpose of evaluation of truck accessibility.
- c. Survey areas in the vicinity of drainage channels. Determine flow line elevations, sizes and other characteristics of all drainage facilities (pipes, inlets, ditches, etc.).

- d. Set temporary bench marks for construction.
- e. All surveys shall be performed to a minimum of third order accuracy.

4. Geotechnical Investigations

No geotechnical investigation is currently planned. However, should one become necessary, Engineer will assist City in determining the necessary information to be obtained.

5. Design Phase

- a. Consult with Public Works on adequate sizing of the storage facility to stay within the budget.
- b. Develop preliminary facility layout for staff review.
- c. Develop contract drawings and specifications suitable for construction by City staff and subcontractors.
- d. Prepare a Storm Water Pollution Prevention Plan (SWPPP).

6. Construction Phase Services

During the construction phase of work, the Engineer will accomplish the following:

- a. Furnish professional engineers to make visits to the site (as distinguished from the services of a Resident Project Representative) as appropriate to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the contract documents. In performing these services, the Engineer will endeavor to protect the City against defects and deficiencies in the work of the contractor. But the Engineer cannot guarantee the performance of the contractor, nor be responsible for the actual supervision of construction operations or for the safety measures that the contractor takes or should take.

7. Project Deliverables

- a. Two copies of the Preliminary Plans.
- b. Two copies of the Final Plans and Specifications.
- c. Electronic files as requested.

8. General

- a. Plans shall be provided on standard City of Springdale plan sheet templates to be provided. All layers, linetypes, fonts, etc. shall conform to the standard templates.
- b. Plans shall be reducible, and legible, to scalable half size plans on 11" x17" sheets. One set of reproducible plans will be provided for right-of-way. In addition, provide preliminary and final plans on computer disk in a format compatible with the current AutoCAD release used by the City of Springdale.
- c. Attend meetings with Owner and Agencies for plan review, project coordination and right-of-way.
- d. The services specified for the various phases of the Agreement shall be completed and all stipulated documents shall be submitted to the OWNER in accordance with the schedule in Attachment "B".
- e. The ENGINEER should anticipate a 21 calendar day review period by the CITY between the completion of one phase and the beginning of the following phase. Additional time may be required for review by agencies.
- f. The plans, specifications and contract documents authorized by this Agreement shall be prepared to allow construction bids to be received and construction to be performed under one construction contract. Demolition of building structures, if required, will be included in the construction contract.
- g. Subcontracting of services by the ENGINEER shall have prior approval of the OWNER.

ATTACHMENT "B"

SCHEDULE

**PROFESSIONAL SERVICES AGREEMENT
between
THE CITY OF SPRINGDALE, ARKANSAS
and
USI CONSULTING ENGINEERS, INC.
for
MATERIAL STORAGE BUILDING**

**CITY OF SPRINGDALE PROJECT NO. _____
USI PROJECT NO. 1409013**

The ENGINEER shall begin work under this AGREEMENT within ten (10) calendar days of issuance of Notice to Proceed and shall complete the work in accordance with the schedule below:

- Surveys – Design 15 calendar days from Notice to Proceed
- Preliminary Design 30 calendar days after approval of Conceptual Design
- Final Design 30 calendar days after approval of Preliminary Design

ATTACHMENT "C"

ADDITIONAL SERVICES

PROFESSIONAL SERVICES AGREEMENT

between

THE CITY OF SPRINGDALE, ARKANSAS

and

USI CONSULTING ENGINEERS, INC.

for

MATERIAL STORAGE BUILDING

CITY OF SPRINGDALE PROJECT NO. _____

USI PROJECT NO. 1409013

In accordance with Article III, Additional Services under this AGREEMENT may include, but are not limited to the following:

ATTACHMENT "D"

COMPENSATION

PROFESSIONAL SERVICES AGREEMENT

between

THE CITY OF SPRINGDALE, ARKANSAS

and

USI CONSULTING ENGINEERS, INC.

for

MATERIAL STORAGE BUILDING

CITY OF SPRINGDALE PROJECT NO. _____

USI PROJECT NO. 1409013

CITY shall pay ENGINEER for Basic Services rendered in the lump sum amount of \$19,699 plus reimbursable expenses, as follows:

- **Basic Services:** Payment by CITY shall be based on services rendered by the Engineer and shall be as set forth for the following payment categories.

Topographic/Design Surveys	\$ 2,123
Design Phase	<u>\$14,872</u>
TOTAL Basic Services	\$16,995

- **Construction Phase** \$ 2,704
- | | |
|------------------------------------|-----------------|
| TOTAL Construction Services | \$ 2,704 |
|------------------------------------|-----------------|

- **Reimbursable Expenses:** CITY shall pay ENGINEER the actual cost of Reimbursable Expenses incurred in connection with Basic Services. Reimbursable Expenses mean the actual expenses incurred directly or indirectly in connection with the PROJECT for printing and reproduction costs and ENGINEER's consultant charges. Any and all expenditures for reimbursable expenses must be approved by the CITY prior to rendering or obtaining same. Overtime salary costs are not considered Reimbursable Expenses. The estimated amount of Reimbursable Expenses to be incurred in connection with Basic Services is:

TOTAL Reimbursable Expenses	\$ 200
------------------------------------	---------------

ENGINEER shall submit invoices monthly for services rendered and expenses borne.

EXHIBIT 1

**TO PROFESSIONAL SERVICES AGREEMENT
CITY OF SPRINGDALE, ARKANSAS
MATERIAL STORAGE BUILDING**

**USI CONSULTING ENGINEERS, INC.
SCHEDULE OF CLASSIFICATIONS AND RATES FOR 2014**

<u>Classification</u>	<u>Hourly Rate</u>
Engineer X.....	\$189.00
Engineer IX.....	\$179.00
Engineer VIII.....	\$169.00
Engineer VII.....	\$159.00
Engineer VI.....	\$149.00
Engineer V.....	\$139.00
Engineer IV.....	\$124.00
Engineer III.....	\$109.00
Engineer II.....	\$ 93.00
Engineer I.....	\$ 77.00
Engineering Technician V.....	\$102.00
Engineering Technician IV.....	\$ 83.00
Engineering Technician III.....	\$ 66.00
Engineering Technician II.....	\$ 56.00
Engineering Technician I.....	\$ 49.00
Executive Assistant.....	\$ 61.00
Administrative III.....	\$ 55.00
Administrative II.....	\$ 47.00
Administrative I.....	\$ 41.00
Survey Manager.....	\$ 97.00
Survey Crew (1-man).....	\$105.00
Survey Crew (2-man).....	\$160.00

- GPS and robotic surveying equipment will be billed at \$50.00 per hour when utilized
- Hourly rate schedules will be adjusted annually each January
- Mileage will be billed at the current approved Federal rate

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO A JOINT FUNDING AGREEMENT WITH THE U.S. GEOLOGICAL SURVEY (USGS) FOR MONITORING SPRING CREEK

WHEREAS, in order to address the City's MS4 Storm Water Permit, funding is necessary for monitoring Spring Creek to provide baseline information on the creek with respect to flow, nutrient and pollutant levels; and

WHEREAS, the City of Springdale has historically partnered with the USGS in order to provide this service; and

WHEREAS, included in the 2014 budget is funding to enter into a joint funding agreement with the United States Department of the Interior, U. S. Geological Survey for sampling of Spring Creek to continue to provide baseline information on the creek on a cost sharing basis.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor and City Clerk are hereby authorized to enter into a joint funding agreement with the United States Department of the Interior, U. S. Geological Survey, a copy of which is attached as Exhibit "A", for sampling of Spring Creek to provide baseline information on the creek on a cost sharing basis.

PASSED AND APPROVED this _____ day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney



United States Department of the Interior

U.S. GEOLOGICAL SURVEY
Arkansas Water Science Center
401 Hardin Road
Little Rock, Arkansas 72211
Telephone: (501) 228-3600
Fax: (501) 228-3601
DUNS: 949284129

February 14, 2014

The Honorable Doug Sprouse
Mayor, City of Springdale
201 Spring Street
Springdale, AR 72764
(479) 750-8550
DUNS: 075661694

Dear Mayor Sprouse:

Enclosed is a Joint Funding Agreements (JFA) for sampling, operating and maintaining two streamflow gaging stations on Spring Creek. Please sign the original JFA and return them to us.

Work performed with funds from these agreements will be conducted on a fixed-price basis and billed quarterly. We acknowledge Laura Favorite (479) 750-8177, to be the administrative contact for this project. Our billing contact is Suzanne Abernathy (501) 228-3603.

The results of all work under these agreements will be available for publication by the U.S. Geological Survey and can be accessed by using the following link <http://ar.water.usgs.gov/>.

We look forward to working with you during this project. If you have any questions or comments, please contact Dan Wagner at (479) 442-4888 ext. 201.

Sincerely,

David A. Freiwald
Director

Enclosure

JEF:rkc

**U.S. DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY**

Customer #: AR051
Agreement #: 14E4AR051AR0220
Project #:
TIN #: 71-6015810
Fixed Cost
Agreement YES

JOINT FUNDING AGREEMENT

FOR
Water Resources Investigations

THIS AGREEMENT is entered into as of the, 14th day of February, 2014 by the U.S. GEOLOGICAL SURVEY, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the CITY OF SPRINGDALE, party of the second part.

1. The parties hereto agree that subject to availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation for operating, maintaining and sampling 2 streamflow gaging stations on Spring Creek in Springdale, Ark. herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50; and 43 USC 50b.
2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) includes In-Kind Services in the amount of
 - (a) by the party of the first part during the period

Amount	Date	to	Date
\$3,000.00	January 1, 2014		December 31, 2014
 - (b) by the party of the second part during the period

Amount	Date	to	Date
\$29,800.00	January 1, 2014		December 31, 2014
 - (c) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
 - (d) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.
3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.
4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.
5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the part of the first part to insure the required standards of accuracy subject to modification by mutual agreement.
6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner either party may terminate this agreement upon 60 days written notice to the other party.

- 7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.
- 8. The maps, records, or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records, or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at costs, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records, or reports published by either party shall contain a statement the cooperative relations between the parties.
- 9. USGS will issue billings utilizing Department of the Interior Bill for Collection (form DI-1040). Billing documents are to be rendered quarterly. Payments of bills are due within 60 days after the billing date. If not paid by the due date, interest will be charged at the current Treasury rate for each 30 day period, or portion thereof, that the payment is delayed beyond the due date. (31 USC 3717; Comptroller General File B-212222, August 23, 1983).

**U.S. Geological Survey
United States
Department of the Interior**

CITY OF JONESBORO

USGS Point of Contact

Customer Point of Contact

Name: David A. Freiwald
 Address: USGS Arkansas Water Science Center
 401 Hardin Road
 Little Rock, AR 72211
 Telephone: (501) 228-3618
 Email: freiwald@usgs.gov

Name: Doug Sprouse
 Address: City of Springdale
 201 Spring Street
 Springdale, AR 72764
 Telephone: (479) 750-8550
 Email:

Signatures and Date

Signature: 	Date: 2/14/14	Signature: _____	Date: _____
Name: David A. Freiwald		Name: Doug Sprouse	
Title: Director		Title: Mayor	

Signature: _____	Date: _____	Signature: _____	Date: _____
Name: _____		Name: Denise Pearce	
Title: _____		Title: City Clerk	

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING A MASTER LEASE
AGREEMENT WITH VERIZON WIRELESS**

WHEREAS, Verizon Wireless desires to improve their cell phone capability in Springdale, and

WHEREAS, Verizon Wireless wants to explore the possibility of locating equipment on property owned by the City of Springdale, and

WHEREAS, Verizon Wireless has requested permission to install equipment and work in public rights-of-way;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor is hereby authorized to execute a master lease agreement with Verizon Wireless Tennessee Partnership.

PASSED AND APPROVED this 11th day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney

MASTER LEASE AGREEMENT

This Master Lease Agreement (the "Agreement") made this _____ day of _____, 20____, between the City of Springdale, Arkansas, with its principal offices located at _____, hereinafter designated LESSOR and Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless, with its principal offices at One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 (telephone number 866-862-4404), hereinafter designated LESSEE. LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

WITNESSETH

WHEREAS, LESSOR is the owner of or holds a leasehold interest in certain buildings, utility poles and/or other improvements and/or facilities, which are located within the geographic area of a license to provide wireless services licensed by the Federal Communications Commission ("FCC") to LESSEE; and

WHEREAS, LESSEE desires to install, maintain and operate communications equipment in and/or upon certain of LESSOR's buildings, utility poles and/or other improvements and/or facilities, some of which may be located in the public rights-of-way; and

WHEREAS, LESSOR and LESSEE desire to enter into this Agreement to define the general terms and conditions which would govern their relationship with respect to particular sites at which LESSOR may wish to permit LESSEE to install, maintain and operate communications equipment as hereinafter set forth; and

WHEREAS, LESSOR and LESSEE acknowledge that they will enter into a lease supplement ("Supplement"), a copy of which is attached hereto as Exhibit A, with respect to any particular location or site which the Parties agree to lease; and

WHEREAS, the Parties acknowledge that different related entities may operate or conduct the business of LESSOR and LESSEE in different geographic areas and as a result, each Supplement may be signed by LESSEE and LESSOR's affiliated entities as further described herein, as appropriate based upon the ownership or other interest in of the subject building or facility, in the case of LESSOR, and the entity holding the FCC license in the subject geographic location, in the case of LESSEE.

NOW THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES.** Pursuant to all of the terms and conditions of this Agreement and the applicable Supplement, LESSOR agrees to lease to LESSEE certain space described in the applicable Supplement (the real property to which LESSOR has an interest to be subject to the applicable Supplement is hereinafter sometimes collectively referred to as the "Property"), for the installation, operation and maintenance of communications equipment; together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Property to and from the Premises (as hereinafter defined) for the purpose of installation, operation and maintenance of LESSEE's communications facility, along with the right to use the public rights-of-

way as described in Paragraph 26 below. The space leased by LESSOR to LESSEE described in the applicable Supplement to be executed by the Parties is hereinafter collectively referred to as the "Premises". In the event there are not sufficient electric and telephone, cable or fiber utility sources located on the Property, LESSOR agrees to grant LESSEE or the local utility provider the right to install such utilities on, over and/or under the Property necessary for LESSEE to operate its communications facility, provided the location of such utilities shall be as reasonably designated by LESSOR.

2. CONDITION OF PROPERTY. In the event LESSOR leases to LESSEE any space within or on any building of any Property (the "Building"), LESSOR shall deliver the Premises to LESSEE in a condition ready for LESSEE's construction of its improvements and clean and free of debris. In the event LESSOR leases to LESSEE any space within or on a Building, LESSOR represents and warrants to LESSEE that as of the Effective Date of each Supplement and continuing throughout the Term of each Supplement (as hereinafter defined): (a) the Building (including without limitation the roof, foundations, exterior walls, interior load bearing walls, and utility systems) is (i) in good condition, structurally sound, and free of any leakage; and (ii) the Property and Building are in compliance with all Laws (as defined in Paragraph 23 below), including any applicable building codes, regulations, or ordinances which may exist with regard to the Building, or any part thereof; and (b) the Property is free of all lead-based paint, asbestos or other hazardous substances, as such term may be defined under any applicable federal, state or local law. If a breach of the representations and warranties contained in this Paragraph 2 with respect to the Premises is discovered at any time during the Term of a particular Supplement, LESSOR shall, promptly after receipt of written notice from LESSEE setting forth a description of such non-compliance, rectify same at LESSOR's expense.

3. TERM; RENTAL.

This Agreement shall be for a term of twenty-five (25) years commencing upon the execution hereof by both Parties. Each Supplement shall be effective as of the date of execution by both Parties (the "Effective Date"), provided, however, the initial term of each Supplement shall be for five (5) years and shall commence on the first day of the month following the day that LESSEE commences installation of the equipment on the Premises (the "Commencement Date") at which time rental payments shall commence and be due at a total annual rental of \$2,000.00 to be paid in advance annually on the Commencement Date and on each anniversary of it in advance, to the payee designated by LESSOR in the Supplement or to such other person, firm or place as LESSOR may, from time to time, designate in writing at least thirty (30) days in advance of any rental payment date by notice given in accordance with Paragraph 17 below. LESSOR and LESSEE acknowledge and agree that the initial rental payment for each Supplement shall not actually be sent by LESSEE until thirty (30) days after the Commencement Date. LESSOR and LESSEE agree that they shall acknowledge in writing the Commencement Date of each Supplement.

Upon agreement of the Parties, LESSEE may pay rent by electronic funds transfer and in such event, LESSOR agrees to provide to LESSEE bank routing information for such purpose upon request of LESSEE.

LESSOR hereby agrees to provide to LESSEE certain documentation (the "Rental Documentation") including without limitation: (i) documentation evidencing LESSOR's good and sufficient title to and/or interest in the Property and right to receive rental payments and other benefits under each Supplement; (ii) a completed Internal Revenue Service Form W-9, or equivalent for any party to whom rental payments are to be made pursuant to this Agreement or a Supplement; and (iii)

other documentation requested by LESSEE and within fifteen (15) days of obtaining an interest in any Property, Supplement or this Agreement, any assignee(s), transferee(s) or other successor(s) in interest of LESSOR shall provide to LESSEE such Rental Documentation. All documentation shall be acceptable to LESSEE in LESSEE's reasonable discretion. Delivery of Rental Documentation to LESSEE shall be a prerequisite for the payment of any rent by LESSEE and notwithstanding anything to the contrary herein or in any Supplement, LESSEE shall have no obligation to make any rental payments until Rental Documentation has been supplied to LESSEE as provided herein.

4. ELECTRICAL. LESSOR shall, at all times during the Term of each Supplement, provide electrical service and telephone service access within the Premises. In consideration for electrical service, the amount of \$300.00 shall be added to the annual rent due under each Supplement as additional rent; provided, however, in the event the Supplement reflects that Tenant will supply its own electrical service to the Premises, such amount shall not be added to the annual rent due under such Supplement.

LESSEE shall be permitted at any time during the Term of each Supplement, to install, maintain and/or provide access to and use of, as necessary (during any power interruption at the Premises), a temporary power source, and all related equipment and appurtenances within the Premises, or elsewhere on the Property in such locations as reasonably approved by LESSOR. After obtaining approval from LESSOR, LESSEE shall have the right to install conduits connecting the temporary power source and related appurtenances to the Premises.

5. EXTENSIONS. Each Supplement shall automatically be extended for four (4) additional five (5) year terms unless LESSEE terminates it at the end of the then current term by giving LESSOR written notice of the intent to terminate at least three (3) months prior to the end of the then current term. The initial term and all extensions under a Supplement shall be collectively referred to herein as the "Term". Notwithstanding anything herein, after the expiration of this Agreement, its terms and conditions shall survive and govern with respect to any remaining Supplements in effect until their expiration or termination. Annual rental for each five (5) year extension term of each Supplement shall be equal to 110% of the annual rental payable with respect to the immediately preceding five (5) year term of such Supplement.

6. USE; GOVERNMENTAL APPROVALS. LESSEE shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. LESSEE shall have the right to replace, repair, add or otherwise modify its utilities, equipment, antennas and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, antennas, conduits or frequencies are specified or not on any exhibit attached to a Supplement, during the Term. It is understood and agreed that LESSEE's ability to use the Premises is contingent upon its obtaining after the execution date of each Supplement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as a satisfactory building or utility pole structural analysis which will permit LESSEE use of the Premises as set forth above. LESSOR shall cooperate with LESSEE in its effort to obtain such approvals and shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by LESSEE. In the event that (i) any of such applications for such Governmental Approvals should be finally rejected; (ii) any Governmental Approval issued to LESSEE is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority; and (iii) LESSEE determines that such Governmental Approvals may not be obtained in a timely manner, LESSEE shall have the right to terminate the applicable

Supplement. Notice of LESSEE's exercise of its right to terminate shall be given to LESSOR in accordance with the notice provisions set forth in Paragraph 17 and shall be effective upon the mailing of such notice by LESSEE, or upon such later date as designated by LESSEE. All rentals paid to said termination date shall be retained by LESSOR. Upon such termination, the applicable Supplement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each Party to the other thereunder. Otherwise, the LESSEE shall have no further obligations for the payment of rent to LESSOR for the terminated Supplement.

7. **INDEMNIFICATION.** Subject to Paragraph 8 below and to the extent allowed by applicable law, each Party shall indemnify and hold the other harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of the indemnifying Party, its employees, contractors or agents, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of the other Party, or its employees, contractors or agents. Nothing herein shall constitute a waiver of LESSOR's sovereign immunity pursuant to Ark. Code Ann. § 21-9-301.

8. **INSURANCE.** To the extent allowed by applicable law, the Parties hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to the Premises or to the Property, resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Parties, or either of them. These waivers and releases shall apply between the Parties and they shall also apply to any claims under or through either Party as a result of any asserted right of subrogation. All such policies of insurance obtained by either Party concerning the Premises or the Property shall waive the insurer's right of subrogation against the other Party.

9. **INTENTIONALLY DELETED.**

10. **ANNUAL TERMINATION.** Notwithstanding anything to the contrary contained herein, provided LESSEE is not in default hereunder beyond applicable notice and cure periods, LESSEE shall have the right to terminate each Supplement upon the annual anniversary of the Commencement Date provided that three (3) months prior notice is given to LESSOR.

11. **INTERFERENCE.** LESSEE agrees to install equipment of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to any equipment of LESSOR or other lessees of the Property which existed on the Property prior to the date this Agreement is executed by the Parties. In the event any after-installed LESSEE's equipment causes such interference, and after LESSOR has notified LESSEE in writing of such interference, LESSEE will take all commercially reasonable steps necessary to correct and eliminate the interference, including but not limited to, at LESSEE's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will LESSOR be entitled to terminate a Supplement or relocate the equipment as long as LESSEE is making a good faith effort to remedy the interference issue. LESSOR agrees that LESSOR and/or any other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause harmful interference which is measurable in accordance with then existing industry standards to the then existing equipment of LESSEE. The Parties acknowledge that there will not be an adequate remedy at law for noncompliance with the provisions of this

Paragraph and therefore, either Party shall have the right to equitable remedies, such as, without limitation, injunctive relief and specific performance.

12. **REMOVAL AT END OF TERM.** LESSEE shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of a Supplement, remove its equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. LESSOR agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of LESSEE shall remain the personal property of LESSEE and LESSEE shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable laws. If such time for removal causes LESSEE to remain on the Premises after termination of the Supplement, LESSEE shall pay rent at the then existing monthly rate or on the existing monthly pro rata basis if based upon a longer payment term, until such time as the removal of the antenna structure, fixtures and all personal property are completed.

13. **RIGHT OF FIRST REFUSAL (COMMUNICATIONS EASEMENT).** If LESSOR elects, during the Term of any Supplement to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, with or without an assignment of the Supplement to such third party, LESSEE shall have the right of first refusal to meet any bona fide offer of transfer on the same terms and conditions of such offer. If LESSEE fails to meet such bona fide offer within thirty (30) days after written notice thereof from LESSOR, LESSOR may grant the easement or interest in the Property or portion thereof to such third person in accordance with the terms and conditions of such third party offer.

14. **RIGHTS UPON SALE.** Should LESSOR, at any time during the Term of any Supplement decide (i) to sell or transfer all or any part of the Property or the Building thereon to a purchaser other than LESSEE, or (ii) to grant to a third party by easement or other legal instrument an interest in and to that portion of the Building and or Property occupied by LESSEE, or a larger portion thereof, for the purpose of operating and maintaining communications facilities or the management thereof, such sale or grant of an easement or interest therein shall be under and subject to the Supplement and any such purchaser or transferee shall recognize LESSEE's rights hereunder and under the terms of the Supplement. In the event that LESSOR completes any such sale, transfer, or grant described in this paragraph without executing an assignment of the Supplement whereby the third party agrees in writing to assume all obligations of LESSOR under the Supplement, then LESSOR shall not be released from its obligations to LESSEE under the Supplement, and LESSEE shall have the right to look to LESSOR and the third party for the full performance of the Supplement.

15. **QUIET ENJOYMENT AND REPRESENTATIONS.** LESSOR covenants that LESSEE, on paying the rent and performing the covenants herein and in a Supplement, shall peaceably and quietly have, hold and enjoy the Premises. LESSOR represents and warrants to LESSEE as of the execution date of each Supplement, and covenants during the Term that LESSOR is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute the Supplement. LESSOR further covenants during the Term that there are no liens, judgments or impediments of title on the Property, or affecting LESSOR's title to the same and that there are no covenants, easements or restrictions which prevent or adversely affect the use or occupancy of the Premises by LESSEE as set forth above.

16. **ASSIGNMENT.** This Agreement and each Supplement under it may be sold, assigned or transferred by the LESSEE without any approval or consent of the LESSOR to the LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market defined by the FCC in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement and each Supplement may not be sold, assigned or transferred without the written consent of the LESSOR, which such consent will not be unreasonably withheld, delayed or conditioned. No change of stock ownership, partnership interest or control of LESSEE or transfer upon partnership or corporate dissolution of LESSEE shall constitute an assignment hereunder.

17. **NOTICES.** All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

LESSOR: The City of Springdale, Arkansas

LESSEE: Verizon Wireless Tennessee Partnership
d/b/a Verizon Wireless
180 Washington Valley Road
Bedminster, New Jersey 07921
Attention: Network Real Estate

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

18. **RECORDING.** To the extent the Premises is not located within a public right-of-way or on an existing utility pole, LESSOR agrees to execute a Memorandum of each Supplement which LESSEE may record with the appropriate recording officer. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either the Term or rent payments.

19. **DEFAULT.** In the event there is a breach by a Party with respect to any of the provisions of this Agreement or its obligations under it, the non-breaching Party shall give the breaching Party written notice of such breach. After receipt of such written notice, the breaching Party shall have thirty (30) days in which to cure any breach, provided the breaching Party shall have such extended period as may be required beyond the thirty (30) days if the breaching Party commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. The non-breaching Party may not maintain any action or effect any remedies for default against the breaching Party unless and until the breaching Party has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this

Agreement if LESSOR fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by LESSOR if the failure to perform such an obligation interferes with LESSEE's ability to conduct its business in the Building; provided, however, that if the nature of LESSOR's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

20. **REMEDIES.** In the event of a default by either Party with respect to a material provision of this Agreement, without limiting the non-defaulting Party in the exercise of any right or remedy which the non-defaulting Party may have by reason of such default, the non-defaulting Party may terminate the applicable Supplement and/or pursue any remedy now or hereafter available to the non-defaulting Party under the Laws or judicial decisions of the state in which the Premises are located. Further, upon a default, the non-defaulting Party may at its option (but without obligation to do so), perform the defaulting Party's duty or obligation on the defaulting Party's behalf, including but not limited to the obtaining of reasonably required insurance policies. The costs and expenses of any such performance by the non-defaulting Party shall be due and payable by the defaulting Party upon invoice therefor. If LESSEE undertakes any such performance on LESSOR's behalf and LESSOR does not pay LESSEE the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due, LESSEE may offset the full undisputed amount due against all fees due and owing to LESSOR under the applicable Supplement until the full undisputed amount is fully reimbursed to LESSEE.

21. **ENVIRONMENTAL.** LESSOR will be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Building or Property, unless such conditions or concerns are caused by the specific activities of LESSEE in the Premises.

22. **CASUALTY.** In the event of damage by fire or other casualty to the Building or Premises that cannot reasonably be expected to be repaired within forty-five (45) days following same or, if the Property is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt LESSEE's operations at the Premises for more than forty-five (45) days, then LESSEE may, at any time following such fire or other casualty, provided LESSOR has not completed the restoration required to permit LESSEE to resume its operation at the Premises, terminate the Supplement upon fifteen (15) days prior written notice to LESSOR. Any such notice of termination shall cause the Supplement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of the Supplement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under the Supplement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such fire or other casualty in proportion to the degree to which LESSEE's use of the Premises is impaired.

23. **APPLICABLE LAWS.** LESSEE shall, in respect to the condition of the Premises and at LESSEE's sole cost and expense, comply with (a) all applicable laws, rules, regulations, ordinances, directives, covenants, easements, zoning and land use regulations, and restrictions of record, permits, building codes, and the requirements of any applicable fire insurance underwriter or rating bureau, now in effect or which may hereafter come into effect (including, without limitation, the Americans with Disabilities Act and laws regulating hazardous substances) (collectively "Laws") relating solely to

LESSEE's specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by LESSEE in the Premises. It shall be LESSOR's obligation to comply with all Laws relating to the Property in general, without regard to specific use (including, without limitation, modifications required to enable LESSEE to obtain all necessary building permits).

24. **AUTHORIZED ENTITIES.** This Agreement is entered into by the Parties each on its own behalf and for the benefit of: (i) any entity in which the Party directly or indirectly holds an equity or similar interest; (ii) any entity which directly or indirectly holds an equity or similar interest in the Party; or (iii) any entity directly or indirectly under common control with the Party. Each Party and each of the entities described above are referred to herein as an "Authorized Entity". No obligation is incurred or liability accepted by any Authorized Entity until that Authorized Entity enters into a site specific Supplement. Only the Party and the Authorized Entity executing a Supplement are responsible for the obligations and liabilities related thereto arising under that Supplement and this Agreement. All communications and invoices relating to a Supplement must be directed to the Authorized Entity signing the Supplement. A default by any Authorized Entity will not constitute or serve as a basis for a default by any other Authorized Entity not a party to the applicable Supplement.

25. **MISCELLANEOUS.** This Agreement and the Supplements that may be executed from time to time hereunder contain all agreements, promises and understandings between the LESSOR and the LESSEE regarding this transaction, and no oral agreement, promises or understandings shall be binding upon either the LESSOR or the LESSEE in any dispute, controversy or proceeding. This Agreement may not be amended or varied except in a writing signed by all Parties. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns hereto. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights hereunder shall not waive such rights and such party shall have the right to enforce such rights at any time. The performance of this Agreement via each Supplement shall be governed interpreted, construed and regulated by the laws of the state in which the Premises is located without reference to its choice of law rules.

26. **USE OF PUBLIC RIGHTS-OF-WAY.**

a. LESSOR hereby grants to LESSEE the right to use the municipal public right-of-way for the installation, maintenance and operation of LESSEE's communications equipment in and/or upon utility poles and/or other improvements and/or facilities owned by LESSOR or by third parties and located within said public right-of-way. LESSOR agrees that the annual rental as described in Paragraph 3 above includes any fee or rent associated with LESSEE's use of the public rights-of-way, and in no event shall LESSEE be obligated to pay LESSOR any other rent or fee in connection with such use of any of the public rights-of-way.

b. All communications equipment shall be installed in accordance with applicable Federal, State, and City regulations and, in the absence of such regulations, in accordance with accepted industry practice. LESSEE shall comply with all laws, ordinances, rules and regulations adopted by the City Council of LESSOR with respect to all communications equipment installed in any public right-of-way. Within the public rights-of-way, the location of the communications equipment shall be subject to the reasonable and proper regulation, direction and control of the LESSOR or the official to whom such duties have been delegated by LESSOR. Notwithstanding the foregoing, should any ordinances, rules or regulations adopted by LESSOR be unduly burdensome in LESSEE's sole judgment, LESSEE may terminate

this Agreement or any Supplement or Supplements under the Agreement, without penalty, upon written notice to LESSOR.

c. LESSEE and its contractors shall give LESSOR reasonable notice of the dates, location, and nature of all work to be performed on its communications equipment within the public rights-of-way. This Agreement shall allow LESSEE to perform all work on LESSEE's communications equipment within the public rights-of-way and to park vehicles in the streets and other public rights-of-way when necessary for the installation, replacement, abandonment, operation or maintenance of LESSEE's communications equipment; provided however, any installation of fiber for any LESSEE communication facility located in a public right-of-way shall be performed by a third party provider with the right to install fiber within the given public right-of-way. LESSEE shall not be required to pay any fee in order to perform work on LESSEE's communications equipment, or park within the streets and other public rights-of-way. Following completion of work in the public rights-of-way, LESSEE shall repair any affected public rights-of-way as soon as possible, but no later than the time frame established by the permit issued by the LESSOR. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work authorized by this Agreement.

[The Remainder of this Page is Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

The City of Springdale, Arkansas

By: _____

Date: _____

LESSEE:

**Verizon Wireless Tennessee Partnership d/b/a
Verizon Wireless**

By: **Cellco Partnership,
its General Partner**

By: _____

**Aparna Khurjekar
Area Vice President Network**

Date: _____

EXHIBIT "A"

LEASE SUPPLEMENT

This Lease Supplement ("Supplement"), is made this ____ day of _____, _____, between the **CITY OF SPRINGDALE, ARKANSAS**, whose principal place of business is <Address>, City, State, ("Lessor"), and **VERIZON WIRELESS TENNESSEE PARTNERSHIP** d/b/a Verizon Wireless, whose principal place of business is One Verizon Way, Mail Stop 4AW100, Basking Ridge, New Jersey 07920 ("Lessee").

1. **Master Lease Agreement.** This Supplement is a Supplement as referenced in that certain Master Lease Agreement between the City of Springdale, Arkansas and Verizon Wireless Tennessee Partnership d/b/a Verizon Wireless, dated _____, 201__, (the "Agreement"). All of the terms and conditions of the Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Agreement. In the event of a contradiction, modification or inconsistency between the terms of the Agreement and this Supplement, the terms of this Supplement shall govern. Capitalized terms used in this Supplement shall have the same meaning described for them in the Agreement unless otherwise indicated herein.
2. **Premises.** Lessor hereby leases to Lessee that certain premises on Lessor's Property located at INSERT SITE ADDRESS as shown on Exhibit "1" attached hereto and made a part hereof.
3. **Term.** The Commencement Date and the Term of this Supplement shall be as set forth in the Agreement.
4. **Consideration.** Rent under this Supplement shall be as set forth in the Agreement, payable to the City of Springdale, Arkansas at _____.
5. **Site Specific Terms.** (Include any site-specific terms)

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seal the day and year first above written.

LESSOR:

The City of Springdale, Arkansas

By: _____

Date: _____

LESSEE:

**Verizon Wireless Tennessee Partnership d/b/a
Verizon Wireless**

By: Cellco Partnership,
its General Partner

By: _____

**Aparna Khurjekar
Area Vice President Network**

Date: _____

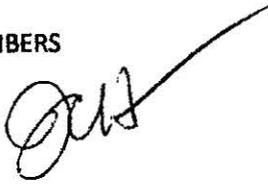
SPRINGDALE DISTRICT COURT

CITY ADMINISTRATION BUILDING
201 N. SPRING STREET
SPRINGDALE, ARKANSAS 72764
(479) 750-8143

JEFF C. HARPER
DISTRICT JUDGE

BETTY LEE
COURT CLERK

TO: SPRINGDALE CITY COUNCIL MEMBERS

FROM: JEFF C. HARPER, DISTRICT JUDGE 

DATE: FEBRUARY 27, 2014

RE: REQUEST FOR EXPENDITURES

On the agenda for the Finance Committee, are several requests by the District Court to expend money. The first request, and the largest, involves the installation of a comprehensive case management system. I am proposing that the District Court leave its current program, and go to Virtual Justice, which is a product of MSI Consulting Group, LLC. This product was designed specifically for Arkansas district courts, and is currently being used by every District Court in Washington County, except for Springdale. I have studied the computer program since I became District Judge on January 1, 2013, and I believe this program (Virtual Justice) would allow the Court to be much more efficient. Currently, we are not able to automatically issue a warrant when someone fails to pay their fine and costs. This new program issues a warrant automatically when fines and costs are not paid as agreed. The Springdale District Court has departments in Elm Springs and Johnson, besides Springdale, and Elm Springs and Johnson are much more efficient in tracking monies owed to their court. The biggest expense in going to this new program is that the conversion of our current records into the new system is \$100,000. I have attached all the cost information from MSI Consulting. All these costs involve District Court related technology and therefore can be paid from the District Court Automation Fund. I currently have \$224,000.00 in this fund (see email from Laura Favorite). There is an Ordinance waiving competitive bidding and a Resolution making the budget adjustments for all 2014 costs related to this request. I have involved the Springdale IT Department in this matter and the proposal made by MSI Consulting came after they worked with our IT Department in determining the nature of the work they would have to put all our current records in their system.

The next Resolution involves certain purchases, some of which you authorized last year, for security to the Court. In addition, there is a request for a system to allow the Court to purchase all the technology to play video evidence in the courtroom, with all parties being able to see the video. We are currently lacking in this area and it is a major ordeal for the Court to review video evidence in the courtroom. The total to finish the security related technology projects, including adding a camera in the courtroom to allow court personnel to see all spectators, and the technology to see videos in the courtroom, will not exceed \$15,000 (I believe this amount is high and it should be less). Again, all this involves technology

related purchases for the Court and therefore the funds from the District Court Automation Fund can be used.

The final matter I have is an Ordinance allowing the Court to enter into a contract with Advanced Information Management for the imaging and archiving of District Court records. I already budgeted an adequate amount of funds to pay for this project, so there will be no change to the 2014 budget. The ordinance just allows the City to enter into the contract and waive competitive bidding because this is an ongoing project. Most of the criminal records were archived last year and if you look at Advance Information Management's proposal, we plan to complete the rest of the projects this year except the imaging (archiving) of the old traffic records, which I do not think we need to do at this time.

Thank you for your consideration on these matters.

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH MSI CONSULTING GROUP, LLC, TO PROVIDE A COMPREHENSIVE CASE MANAGEMENT SYSTEM (VIRTUAL JUSTICE) FOR THE SPRINGDALE DISTRICT COURT; TO WAIVE COMPETITIVE BIDDING AND FOR OTHER PURPOSES.

WHEREAS, the Springdale District Court has proposed the installation of a comprehensive case management system (Virtual Justice);

WHEREAS, the cost for data conversion from the existing court system will cost a one-time fee of \$100,000.00 (see MSI proposal dated January 14, 2014, which is incorporated herein by reference);

WHEREAS, after data conversion, the system setup, configuration and installation, and training will cost \$19,050.00 plus tax (see proposal dated January 15, 2014, which is incorporated herein by reference);

WHEREAS, for 30 users, the cost will be \$1,800 per month plus tax (see page 2 of January 15, 2014 proposal);

WHEREAS, all the above listed expenses can be paid for from the district court automation fund, as they are expenses for district court related technology (Ark. Code Ann. Section 16-13-704);

WHEREAS, every District Court in Washington County, Arkansas, except for the Springdale Department of the Springdale District Court, are using the Virtual Justice software (including Johnson and Elm Springs, both Departments of the Springdale District Court);

WHEREAS, this technology will make the Springdale District Court more efficient in collecting monies owed to the Court, as delinquent payers are identified automatically by the software, and the software also contains a civil /small claims software program for the Court;

WHEREAS, the City Council finds that the requirement for competitive bidding is not feasible or practical in this case because of the exceptional circumstances of there being very few vendors having a product designed specifically for an Arkansas district court, all district courts in Washington County, Arkansas are using the software with good results, it would help the Springdale District Court to be more efficient if their software was consistent with all other district courts in Washington County, and especially those courts within the Springdale District Court's jurisdiction;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor, on behalf of the Springdale Department of the Springdale District Court, is authorized to enter into a contract with MSI Consulting Group, LLC, to provide a comprehensive case management system for the Court for a total price not exceeding \$125,000.00, and further is authorized to enter into a lease agreement at an initial cost of \$1,800 per month (which will provide 30 user systems); BE IT FURTHER ORDANED, that the City Council finds that the requirement for competitive bidding is not deemed feasible or practical because of the exceptional circumstances set out in this Ordinance, and therefore, the requirement of competitive bidding is waived under Ark. Code Ann. Section 14-58-303.

PASSED AND APPROVED this _____ day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney

A RESOLUTION AMENDING THE 2014 BUDGET OF
THE SPRINGDALE DISTRICT COURT

WHEREAS, the Springdale District Court has proposed the installation of a comprehensive case management system (Virtual Justice) and the City Council of the City of Springdale, Arkansas has approved the proposal;

WHEREAS, all expenditures qualify for payment from funds in the Court Automation Fund, which can be used for District Court related technology;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, ARKANSAS, that the 2014 budget of the Springdale District Court is hereby amended as follows with the increases to be paid from the District Court Automation Fund:

<u>Department</u>	<u>Account No.</u>	<u>Description</u>	<u>Present Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Proposed Budget</u>
District Court	205-0103-413.70-05	Travel/Training	\$7,600	\$ 5,762		\$ 13,362
District Court	205-0103-413.51-10	ComputerMain.	\$4,000	\$115,804		\$119,804
District Court	205-0103-413.80-50	Capital	\$ 0	\$ 15,146		\$ 15,146

PASSED AND APPROVED this _____ day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney

Jeff Harper

From: Bryan Smith <bryan.smith@msicg.com>
Sent: Wednesday, January 15, 2014 9:30 AM
To: 'Jeff Harper'
Cc: 'Jerry Selby'
Attachments: Proposal - Springdale.doc; Data Conversion Proposal - Springdale.doc

Judge Harper,

This email replaces the one I sent yesterday. This one includes the updated proposal for 30 users.

Please find attached the 2 proposals that we discussed today on the phone.

1. Virtual Justice Case Management System Proposal
2. Data Conversion Proposal

I will also be sending you hard copies of each proposal via mail.

Please let me know if you have any questions about either of these proposals.

We look forward to working with you & your staff on this project.

Thank You.

Bryan D. Smith
Vice President
MSI Consulting Group, LLC
(479) 452 - 0560
(479) 452 - 0638 (Fax)



MSI Consulting Group, LLC

2120 S. Waldron, Suite C-312 • Fort Smith, Arkansas 72903 • (479) 452-0560 • Fax: (479) 452-0638 • www.msicg.com

February 27, 2014

Judge Jeff Harper
Springdale District Court
201 Spring Street
Springdale, AR 72764

Dear Judge Harper,

Please accept this proposal for our comprehensive case management system - **Virtual Justice®**.

Virtual Justice® is a comprehensive case management system that combines the latest technology with over 80 years of combined experience in court case management system design and development. This product was first installed in February of 2002 and is currently being used in over 160 courts in the state of Arkansas. With the arrival of VJ, MSI will continue its vision and supremacy in court innovation by leading the world into a new era of court technology.

We are very excited about our innovative pricing structure, giving our customers the option of leasing the software. It is our experience that it's easier for most courts to handle a moderate initial fee, with an affordable monthly lease payment, rather than allocate a large amount to purchase the software. Also, our lease option fully complies with state laws concerning lease agreements with city and county governments.

Also, with the passage of Act 1809 of 2001, money has been earmarked specifically for local court automation, thus allowing your new court software to be paid for by these increased special fees.

This proposal details the price of our lease option. The price includes the software installation, initial system setup, initial system configuration, training, and detailed user documentation, but does not include sales tax.

In addition, a high speed internet connection, or some alternative remote access method, will be required to allow for remote software support from the MSI offices as needed.

Because you are replacing another computerized court software product, data file conversion is always an issue. The process of converting the data files from your existing software product over to VJ can be complicated & must be evaluated. We have completed evaluating your existing system and the price for your data conversion will be quoted separately.

Judge Jeff Harper
Springdale District Court
February 27, 2014
Page - 2

PROPOSAL: SPRINGDALE DISTRICT COURT
30 - USER SYSTEM (CRIMINAL & CIVIL)

LEASE OPTION - Both Criminal & Civil Modules

Virtual Justice® System Setup, Configuration & Installation:	\$13,800.00
Training (70 Hours @ \$75.00 / Hour):	<u>\$ 5,250.00</u>
Total:	\$19,050.00 (One Time Fee + Tax)

Plus

Monthly Software Lease Payment: \$ 1,800.00 (Monthly Fee + Tax)

(Lease Agreement Is Perpetual For As Long As You Use The Software, But Can Be Terminated By Giving 60 Days Prior Written Notice)

We hope you join the VJ team very soon! Add **Springdale District Court** to our large family of satisfied court customers and start receiving the outstanding benefits of the **#1 Choice** in court technology software in Arkansas - Virtual Justice® !!

Please contact us at (479) 452-0560, or e-mail at bryan.smith@msicg.com if you have any questions.

Sincerely,

Bryan D. Smith
Vice President

Enclosures



MSI Consulting Group, LLC

2120 S. Waldron, Suite C-312 • Fort Smith, Arkansas 72903 • (479) 452-0560 • Fax: (479) 452-0638 • www.msicg.com

February 27, 2014

Judge Jeff Harper
Springdale District Court
201 Spring Street
Springdale, AR 72764

Dear Judge Harper,

Please accept this proposal for data conversion from your existing court software file structure to the database format used by our comprehensive case management system - Virtual Justice®.

Our conversion prices are calculated based on the estimated amount of time and resources that will be needed to complete this process. The process of converting the data files from your existing software product over to VJ can be complicated and very time consuming. We have preliminarily evaluated your current data structure to assist us in determining this proposal amount.

This price is also based on the successful delivery of your current files - extracted from your existing court system, and the file layouts identifying the content of the extracted data.

Please be advised, MSI can only convert electronic data transactions that were entered into your existing court system. MSI cannot process manual transactions (Ex: Manual Money Disbursements & Manual Adjustments) that were not entered into your court system. Furthermore, MSI will not be responsible for any data that is corrupt due to viruses, hardware malfunctions, or other physical acts that has damaged your existing data.

PROPOSAL: SPRINGDALE DISTRICT COURT – ALL COURT DATA EXCLUDING CIVIL & SMALL CLAIMS

Data Conversion From Existing Court System: \$100,000.00 (One Time Fee)

(Note: Data Conversion Is Tax Exempt Per Arkansas Law)

Please contact us at (479) 452-0560, or e-mail at bryan.smith@msicg.com if you have any questions.

Sincerely,

Bryan D. Smith
Vice President

Jeff Harper

From: Laura Favorite <lfavorite@springdalear.gov>
Sent: Wednesday, February 19, 2014 5:00 PM
To: Jeff Harper
Subject: Court Automation Fund

Jeff,

You currently have approximately \$224,000 in court automation funds. Your average monthly collections for 2013 were \$3,000. The average collections for 2014 are \$2,800.

Please let me know if you need any other information.

Laura Favorite

Finance Director
City of Springdale
201 Spring St
Springdale, AR 72764
Direct line: 479-750-8177
Email: lfavorite@springdalear.gov

**A RESOLUTION AMENDING THE 2014 BUDGET OF THE
SPRINGDALE DISTRICT COURT AND AUTHORIZING CERTAIN
PURCHASES BY THE DISTRICT COURT**

WHEREAS, by Resolution number 173-13, passed by the City Council of the City of Springdale, Arkansas, on November 26, 2013, the Council authorized certain expenditures related to technology in the District Court, which were to be paid from the District Court Automation Fund;

WHEREAS, of the \$12,000.00 in expenditures authorized, \$5,759 was not spent in 2013 because the product was not delivered and the work was not completed in 2013, but will be completed in 2014, and will need to be paid in 2014, and involved technology related to security in the Court, so it is necessary to make a budget adjustment to allow for payment in 2014;

WHEREAS, the District Judge has requested additional technology be acquired and that the District Court Automation Fund be used to fund the purchases and these expenditures include the implementation of a computer generated video system to allow video evidence to be shown in the District Court courtroom so that all parties involved can see the video, and an additional camera to monitor the entire seating area of the courtroom, which enhances security;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the District Judge or Mayor are authorized to make the above described purchases, and all the purchases will not exceed \$15,000, and the budget of the District Court for 2014 shall be amended as follows (with all payments qualifying as District Court related technology to be paid from the District Court Automation Fund):

<u>Department</u>	<u>Account No.</u>	<u>Description</u>	<u>Present</u>		<u>Proposed</u>
			<u>Budget</u>	<u>Increase</u>	<u>Decrease</u>
District Court	205-0103-413.51-01	Bulding Maint.	0	\$7,500	\$ 7,500
District Court	205-0103-413.80-50	Capital	\$15,146	\$7,500	\$22,646

PASSED AND APPROVED THIS ____ day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE DISTRICT COURT TO ENTER INTO A CONTRACT WITH ADVANCED INFORMATION MANAGEMENT FOR IMAGING (ARCHIVING) OF COURT RECORDS; TO WAIVE COMPETITIVE BIDDING AND FOR OTHER PURPOSES.

WHEREAS, Advanced Information Management has been contracted by the City of Springdale, Arkansas, to image (archive) records of the Springdale District Court, as well as the Springdale Police Department;

WHEREAS, Advanced Information Management has made a proposal to the Springdale District Court which would allow for additional court records to be imaged (archived) in 2014, which consists 2005-2012 traffic records, 2011 and 2012 criminal records, civil case records, and small claims records, for a total cost of \$51,108.00;

WHEREAS, a proposal from Advanced Information Management to archive these records is incorporated herein by reference, which consists of two pages, including the pricing for each set of records (the 2004 and older traffic records are not going to be scanned and archived at this time so the cost of that project is not included in the total of \$51,108.00 set out above);

WHEREAS, Advanced Information Management has just completed imaging (archiving) the criminal records of the Springdale District Court from 1982-1998, which was started in 2013 and completed in 2014 (approved by Ordinance 4729 and Resolution 127-13);

WHEREAS, competitive bidding is not feasible or practical as Advanced Information Management has performed all the imaging of other similar court records for the District Court up to the present time, and it would be impractical to change companies in the middle of the entire job (archiving all the District Court records);

WHEREAS, the money to fund this contract has already been budgeted in the 2014 budget of the Springdale District Court under professional services and should be paid from the District Court Automation Fund, which can be used for court related technology;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor, on behalf of the District Court, is authorized to enter into a contract with Advanced Information Management for the total amount not to exceed \$51,108.00 to perform the work set out above; BE IT FURTHER ORDAINED that competitive bidding is not deemed feasible or practical for the exceptional

circumstances set out in this Ordinance and therefore competitive bidding is waived under Ark. Code Ann. Section 14-58-303.

PASSED AND APPROVED this _____ day of March, 2014.

Doug Sprouse, Mayor

ATTEST:

Denise Pearce, City Clerk

APPROVED AS TO FORM:

Ernest B. Cate, City Attorney



**PROPOSED SCANNING PROJECTS
FOR THE CITY OF SPRINGDALE
February 14, 2014**

Traffic	Estimated Images	Cost per Image	Total Cost	Completion time
2004 and older	565,000	\$ 0.17	\$ 96,050.00	14 Weeks
2005 - 2011	135,000	\$ 0.17	\$ 22,950.00	4 Weeks ✓
2012	15000	\$ 0.17	\$ 2,550.00	3 Days ✓
Total Traffic			\$ 121,550.00	

Criminal	Estimated Images	Cost per Image	Total Cost	Completion time
2011	8200	\$ 0.22	\$ 1,804.00	4 Days
2012	8200	\$ 0.22	\$ 1,804.00	4 Days
Total Criminal			\$ 3,608.00	

Civil	Estimated Images	Cost per Image	Total Cost	Completion time
Old Warehouse	80,000	\$ 0.11	\$ 8,800.00	7 Weeks

Small Claims	Estimated Images	Cost per Image	Total Cost	Completion time
Old Warehouse	120,000	\$ 0.11	\$ 13,200.00	9 Weeks
TOTALS:			\$ 147,158.00	36 Weeks, 1 Day

* RECORD STORAGE * COMPUTER TAPE STORAGE AND ROTATION * MICROFILM SERVICES * SCANNING SERVICES * CONFIDENTIAL SHREDDING *



**PROPOSED SCANNING PROJECTS
FOR THE CITY OF SPRINGDALE
February 14, 2014**

CONTINUED

The charges indicated on the scanning proposal contain the following services:

SCANNING:

Pickup and delivery of records
Supplying transport boxes
Scanning documents in Tiff format, convert to PDF
Verifying all images to documents scanned

PREPPING:

Removing staples, paper clips, etc.
Removing sticky tabs and any other obstructions
Bar-code Sheet placement

INDEXING:

Verifying all indexes to the images
Specifically for each department:

TRAFFIC:

Naming files by Defendant, Case Number and Date of Birth

CRIMINAL:

Naming files by Defendant, Case Number and Date of Birth

CIVIL:

Naming files by Plaintiff, Defendant and Case Number

SMALL CLAIMS:

Naming of files by Plaintiff, Defendant and Case Number

All scanning will be done in our record center which is security monitored 24 hours per day. All personnel are bonded and all work is guaranteed to meet your satisfaction. After scanning, records may be delivered back or be stored in our state-of-the-art records center.

Don Keller, CRM
Managing Partner

Ernest Cate

From: Ernest Cate <ecate@springdalear.gov>
Sent: Saturday, February 01, 2014 1:40 PM
To: Goade, Sam; Sprouse, Doug; O'Kelley, Kathy; Mike Irwin; Overton, Mike; Bruns, Brad; Jaycox, Kathy; Reed, Jim; Ford, Eric; Evans, Rick; Watson, Jeff; Mike Lawson; Morgan, Wyman; Patsy Christie; Pugh, Alan
Cc: Hritz, Ron
Subject: Don Tyson Parkway
Attachments: IMG_0884.jpeg

All:

Last night there was another accident on Don Tyson Parkway between Old Missouri Road and Thompson. The driver of the vehicle crashed through a privacy fence at the northwest corner of Don Tyson and Powell, almost hitting a house. The property owner called 911 and stated that the driver was trying to leave the scene. Police arrived and discovered that the driver had no drivers' license and was intoxicated (.13 BAC). I have attached a copy of the crash scene. It is a miracle that the utility boxes were not destroyed, and that the house was not damaged. I bring this to your attention because this is at least the 6th or 7th time this has happened on this stretch of street in the last year or so. If you drive on Don Tyson from Old Missouri Road to Thompson, you will see the fences are many different colors, indicating all the places where vehicles have run through them. The amount of property damage that has taken place on this stretch of road is unbelievable. To date, there has been one person killed by an accident on this street, and I am afraid that more lives will be taken and more property will be damaged if the City does not take action. If a child had been playing in the backyard of this residence, it could have been disastrous. My parents live in the Renaissance Subdivision and walk daily along this stretch of street. I am genuinely concerned for their safety, as well as the safety of all who own property and travel in that area.

I know this is not the first time this issue has arisen. At least one local television station has run a story on this, and perhaps the Mayor and/or City Council have received some calls about it as well. I would like to initiate a discussion about how we can work on this problem. In thinking about this:

- 1) Is there a possibility of reducing the speed limit on Don Tyson from Old Missouri Road to Thompson from 45 to 35 mph?
- 2) Is there a possibility of having an increased police presence and traffic enforcement there?
- 3) Is there some way to better protect these intersections from crashes, such as concrete barriers or other barriers to shield houses, fences, and utility equipment from being damaged?

I throw these ideas out there for discussion, and I am sure that others would probably have other ideas as well. It seems like when we put our collective heads together, we always find a way to accomplish our goals, and do what is best for our citizens.

After seeing this latest accident, I thought I would see if anyone else was interested in looking at this.

I look forward to everyone's comments!

Thanks, Ernest

Springdale, Arkansas, Code of Ordinances >> - CODE OF ORDINANCES >> Chapter 114 - TRAFFIC AND VEHICLES >> ARTICLE III. TRUCKS AND TRUCK ROUTES >>

ARTICLE III. TRUCKS AND TRUCK ROUTES

Sec. 114-86. Definitions.

Sec. 114-87. Truck routes authorized.

Sec. 114-88. Violations.

Sec. 114-89. Penalty.

Secs. 114-90—114-110. Reserved.

Sec. 114-86. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Street means any paved or otherwise improved street, road, highway, avenue, boulevard or other land transportation route commonly used by automobiles, trucks, buses or motorcycles.

 *Truck* means any vehicle weighing 5,000 pounds or more.

(Code 1973, § 32-23)

Cross reference— Definitions generally, § 1-2.

Sec. 114-87. Truck routes authorized.

The city council hereby authorizes, empowers and appoints the city council street committee and the police committee to work jointly in such manner as they see fit to designate and make certain city streets as truck routes; to purchase or have constructed signs or signals to mark such truck routes, and to change or modify such routes or markings as the joint committee deems necessary or desirable to effect the purposes of this article.

(Code 1973, § 32-24)

State law reference— Authority generally, A.C.A. § 27-49-106.

Sec. 114-88. Violations.

It is unlawful for any person to drive or park, or permit the driving or parking, of any truck on any city street not expressly marked as a truck route; provided, however, that this prohibition shall not apply to any truck making a bona fide pickup or delivery of property or merchandise when it is necessary to leave the marked truck route to do so.

(Code 1973, § 32-26)

Sec. 114-89. Penalty.

Any person in violation of this article shall be subject to the penalties in section 1-9.

(Code 1973, § 32-27)

Secs. 114-90—114-110. Reserved.

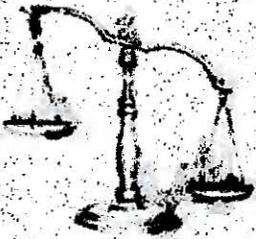
Some alternative definitions of "Truck"

Trucks: All buses, single-unit trucks, combination trucks and recreational vehicles. For traffic-classification purposes, trucks are normally defined as those vehicles having manufacturer's gross vehicle weight (GVW) ratings of 9,000 lb. or more and having dual tires on at least one rear axle. (AASHTO Design Guide).

Truck - Every motor vehicle designed, used, or maintained primarily for the transportation of property including, but not limited to, motor vehicles or any combination of vehicles that exceed twenty feet (20') in length, or exceed seven feet (7') in height, or exceed eight feet (8'), or are registered for a gross vehicle weight of more than twelve thousand (12,000) pounds.

"Truck" means any vehicle with more than 6 wheels, except vehicles or operators of local origin, recreational vehicles, busses used in transportation of chartered parties and government owned vehicles.

For the purpose of this section, the word "truck" shall mean any vehicle designed or operated for the transportation of property, the body weight or combined body and load weight of which exceeds 6,000 pounds (City of Fayetteville).



Office Of The City Attorney

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Springdale, Arkansas 72764
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Writer's Email:

MEMORANDUM

- Ernest B. Cate
City Attorney
Taylor Samples
Deputy City Attorney
Sarah Sparkman
Deputy City Attorney
David D. Phillips
Deputy City Attorney
Lynda Belvedresi
Case Coordinator/
Victim Advocate
Steve Helms
Investigator
Cindy Horlick
Administrative Legal
Assistant/Paralegal

TO: City Council - Mayor Sprouse
FROM: Ernest Cate, City Attorney
RE: City of Springdale v. Victory Church (West of I-540)
DATE: March 3, 2014

If you will recall, the City Council approved the condemnation of land in connection with the Don Tyson - I-540 Interchange Project. One of these tracts of land is owned by Valley Harvest Ministries. The file was turned over to the City Attorney's office for the purpose of acquiring the needed property by eminent domain. The City Attorney's office filed the eminent domain action and obtained an Order of Possession. At the time the City filed this case, the amount of \$468,000 was deposited with the court as the City's estimate of just compensation to be paid to Valley Harvest. This amount represented the value of the property to be taken and was determined from an appraisal conducted by Reed & Associates, Inc.

The attorney for Valley Harvest has indicated that they would now be willing to settle this case for the amount of \$4.95/sq. ft., which is just slightly above what the City paid for property owned by 4&P, LLC, and Victory Church (west of I-540). However, the City's appraiser did value the Valley Harvest property as being worth more than those other properties.

At the time of the taking, the City acquired 5.94 of the 6.33 acres owned by Valley Harvest, with the remaining 0.39 acres being an "uneconomic remnant". The settlement proposal now submitted by Valley Harvest requests that the City take the entire 6.33 acre tract, including the 0.39 acres not previously taken by the City. At \$4.95/sq. ft., this would be total compensation of \$1,367,041.50 for

ErnestCa/2014misc/memoValleyHarvest

the entire 6.33 acres tract. In other words, Valley Harvest is asking for an additional amount of \$899,041.50 to settle this case.

In the alternative, Valley Harvest may be willing to settle with the City taking only the 5.94 acres already taken by the City. At \$4.95/sq. ft., the total compensation would be \$1,281,446.10. In this alternative, Valley Harvest would be asking for an additional amount of \$813,446.10 to settle this case.

It is my opinion that the City of Springdale should pay either of these additional amounts to settle this case. If you will recall, this case was presented to Committee in September of 2013 for purposes of a proposed settlement. At that time, the property owner was willing to settle for a total of more than what he now offered. This new offer represents an offer that is substantially less than originally proposed. Additionally, this new offer is consistent with what the City paid to settle the 4&P, LLC, and Victory Church (west of I-540) cases. I appreciate your consideration of this request.

For your information, I have enclosed a copy of the settlement statement offered by Valley Harvest.

City of Springdale v. Valley Harvest Ministries
Case No. CV 2012-311-4

Date of Taking: 12/27/2012

Deposit: **\$468,000** (\$ 1.75 per s/f + \$15,000 in severance damages)

Size before taking: 6.33 acres (275,090 s/f Reed); 6.34 acres (276,170 s/f - Carlson)

Area of taking: 5.94 acres (258,878 s/f)

Size After taking: .39 acre (17,031 s/f with no access)

Severance Damages: Yes

Landowners' Appraisals: Thurman (adjacent property): **\$2,423,543** (\$8.81 s/f); Carlson: **\$1,518,500** (\$5.50 s/f)

Facts: Valley Harvest Ministries purchased this property in 2003. The property was purchased for a future church location that would accommodate a large campus. The property was later appraised by The Real Estate Consultants for \$900,000 in 2007. That report notes that the real estate market had experienced a downturn. Even at that time, the land appraised for \$3.26 per s/f. According to the Reed appraisal, the recession ended in June of 2009, so we can clearly expect higher values as of late 2012 and early 2013, when this land was taken. As evidence of the land's value, Valley Harvest conveyed a sign easement of about 3,200 s/f for approximately \$130,000 in 2006, which equals \$40.00 per s/f. Valley Harvest also had a written offer from a buyer who wanted to purchase the property for \$1,880,769 in 2007.

This property is close to the interchange at Goad Springs Road and has the best visibility from I-540 of any property in the area. The property is zoned C-2 and all of the appraisers agree that its highest and best use is for commercial development. However, Tom Reed used comparable sales of R-O and R-A property, and he avoided comparable sales of commercial property along I-540. This is significant in that his report recognizes that I-540 is the primary north-south transportation route for the entire region. Sales along other roads are predictably much lower. On one of his sales (#1), he indicates that the usable size adjustment supports a per s/f value of \$5.53, yet he left the value at \$3.73 and ultimately set the value of the subject property at \$1.75 - a fraction of the prior appraisal. The other appraisals, using C-2 sales along I-540, support a current valuation of \$7.00 to \$8.00 per s/f. It is worth noting that Reed appraised this property at a significantly higher value than he did the nearby properties taken in for this project.

The entire area of the taking must be included in the compensation awarded. The remaining .39 acres (17,031 s/f) will have no access. Reed's report recognizes that this land has "the possibility of being a non-economic remnant." The fact is that it is not usable. Therefore, we have included the full value of this additional land in our calculations.

Exposure at trial:

Because the Reed appraisal is so much lower than the first report done six years ago after the market downturn, we do not believe the jury will give it any credence. We believe that a jury will award something between the Thurman valuation of \$2,423,543 (\$8.81 s/f) and Carlson: valuation of \$1,518,500 (\$5.50 s/f). The landowner will testify to a value of \$1,880,769. There is strong support for that value based on the offer that was received. They are willing to settle for the \$4.95 per s/f, for the entire property, which equals \$1,367,041.50. We believe the jury is

most likely to award something between \$1,518,500 and \$1,880,769, so this offer would potentially save the City more than \$513,728.

Potential Exposure: \$1,880,769

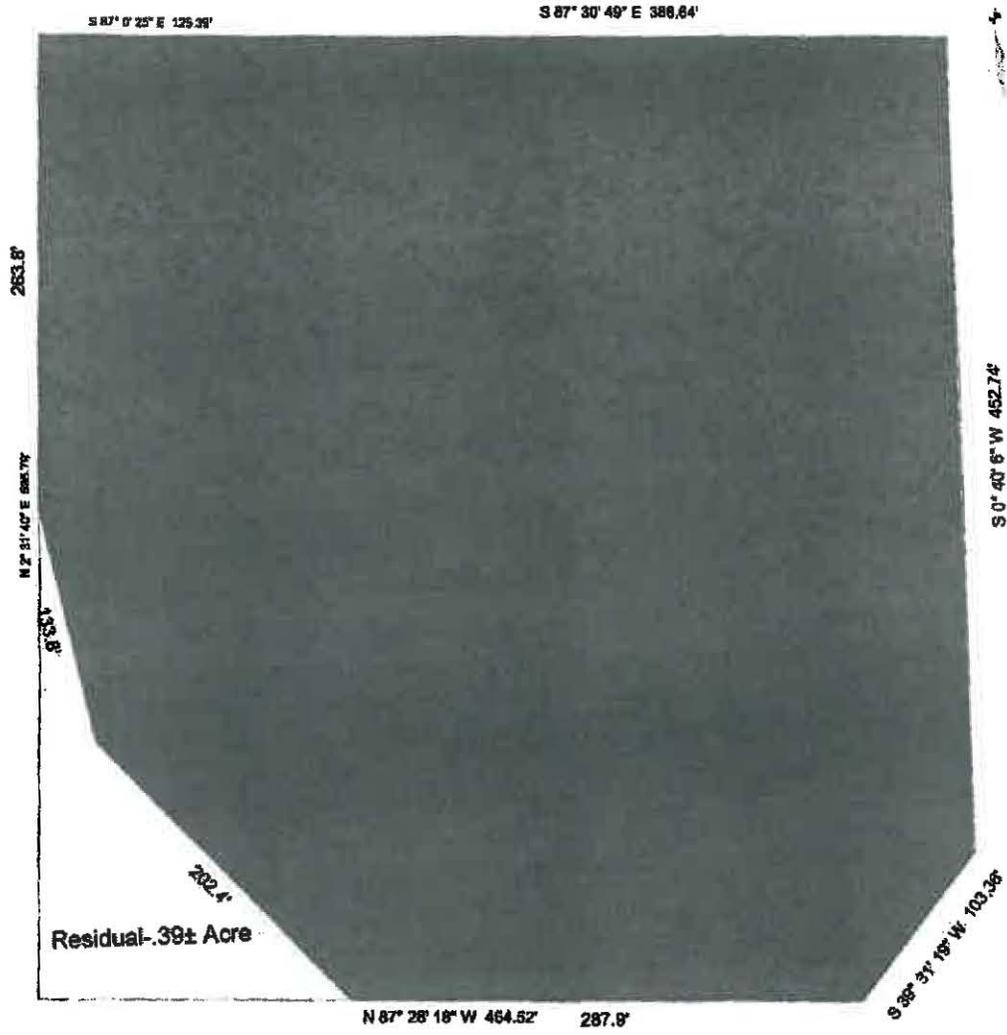
Settlement offer: \$1,367,041.50



SITE SKETCH

6.33± Acres

Acquisition Area 4-5.94± Acres



REAL ESTATE CONTRACT
Offer and Acceptance

1. BUYER: S+S Investor's Group LLC, herein called the BUYER (whether one or more), offers to buy from Valley Harvest Ministries INC., herein called the SELLER (whether one or more), subject to the terms set forth herein, the following property.
2. PROPERTY DESCRIPTION AND ADDRESS: 6.34 Acres @ IS40 + Deering Rd Section 16 Township 17 N Range 30 West
3. PURCHASE PRICE: The BUYER shall pay \$1,880,769 for the property at closing. The down payment shall be \$0 with the balance of the purchase price subject to the following conditions:
 - (a) X NEW LOAN: CONV. FHA VA
The BUYER'S ability to obtain a loan to be secured by the property in an amount not less than \$1,225,000., payable over a period of not less than 15 years, with interest not to exceed 7.5 % per annum. Unless otherwise specified, all loan costs and prepaid items shall be paid by the BUYER. If this loan is not available or is not closed, the BUYER shall pay for all loan costs incurred, including appraisal and credit report, unless failure to close is caused by the SELLER. Seller to carry
2nd Mortgage for
658,769
 - (b) LOAN ASSUMPTION: The BUYER'S ability to assume existing loan payable to amount of \$_____ in the approximate amount of \$_____ currently payable at approximately \$_____ per month, including _____ principal, _____ interest, _____ existing taxes, and _____ existing insurance. Payments on existing loan are to be current at closing.
 - (c) OTHER: This offer contingent upon the BUYER'S ability to obtain a variable rate conventional loan at _____ with the initial interest rate not to exceed _____ % per annum and with the points to be paid by the BUYER not to exceed _____.
4. APPLICATION FOR FINANCING: If applicable, the BUYER shall make application for a new loan or loan assumption within 10 days from date of this contract.
5. EARNEST MONEY: The BUYER herewith tenders a check for \$N/A as earnest money, which shall apply on the purchase price or the closing costs if this offer is accepted. This sum shall be deposited by N/A, and if this offer is not accepted or if title requirements are not fulfilled, then the sum shall be promptly refunded to BUYER. If after acceptance, the BUYER fails to fulfill the BUYER'S obligations, the earnest money shall become liquidated damages, WHICH FACT SHALL NOT PRECLUDE SELLER OR BUYER FROM ASSERTING OTHER LEGAL RIGHTS WHICH SELLER OR BUYER MAY HAVE BECAUSE OF SUCH BREACH.

13. **INSPECTIONS AND REPAIRS:** The BUYER certifies that the BUYER has inspected the property and is not relying upon any warranties, representations or statements of the SELLER or any agent of the SELLER as to the age or condition of improvements, other than those specified herein. Subparagraphs 13(a) and 13(b) do not apply to previously occupied dwellings.

(a) BUYER accepts the property in its present condition, subject only to the following: Seller to provide current survey

(b) _____ The following items, if any, shall be in normal working order at closing, dishwashers, disposals, trash compactors, ranges, exhaust fans, heating and air conditioning systems, plumbing system, electrical system, and _____ . The BUYER shall have the right, at the BUYER'S expense, to inspect the above items prior to closing. If any of the above items are found not to be in normal working order, the BUYER may notify the SELLER in writing prior to closing. After notice as provided herein, the SELLER shall pay the cost of repair of any such items up to but not exceeding \$_____. If the cost of repair will exceed the aforementioned amount and the SELLER refuses to pay the additional cost, the BUYER may accept the property in its condition at closing with credit on the purchase price in the above amount; or the BUYER may declare this contract null and void. If the BUYER does not give notice of defects in writing prior to closing, all subsequent repairs shall be solely at the BUYER'S expense.

14. **RISK OF LOSS:** The risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the SELLER.

15. **EXPIRATION OF OFFER:** This offer expires if not accepted within 14 days from this date.

16. **OTHER CONDITIONS:** All costs of loan and closing shall be paid by the BUYER except (1) warranty deed, (2) one half (1/2) of revenue stamps, (3) termite inspection and (4) abstracting.

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED BY BOTH THE BUYER AND THE SELLER. IF YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.

The above offer is made this 8 day of February, 2007.

Anna K. K. K.
BUYER

The above offer is accepted this _____ day of _____, 2007.

[Signature]
SELLER

