

SCHEDULED MEETINGS to be held in the Multi-Purpose Room #236, second floor of the City Administration Building, 201 Spring Street:

- Tuesday, February 11<sup>th</sup>, 5:15 p.m. is the next CIP Committee meeting. (see item # 9A) and (discussion of moving expense reimbursement).
- Monday, March 3<sup>rd</sup>, 5:30 p.m. is the next Committee meetings.
  - Committee Agendas for March 3<sup>rd</sup> will be available Friday, February 28<sup>th</sup>.

SPRINGDALE CITY COUNCIL  
REGULAR MEETING  
TUESDAY, FEBRUARY 11<sup>th</sup>, 2014

5:55 p.m. Pre Meeting Activities

Pledge of Allegiance  
Invocation – Brad Bruns

6:00 p.m. OFFICIAL AGENDA

1. *Large Print* agendas are available at the back of the room, next to the main entrance
2. Call to Order - Mayor Doug Sprouse
3. Roll Call – City Clerk Denise Pearce  

Recognition of a Quorum
4. Comments from Citizens  

The Council will hear brief comments from citizens during this period on issues not on the agenda. No action will be taken tonight. All comments will be taken under advisement.
5. Approval of Minutes
  - a) January 28<sup>th</sup>, 2014 Pg's 3-18
6. Procedural Motions
  - A. Entertain Motion to read all Ordinances and Resolutions by title only.
  - B. Entertain Motion to dispense with the rule requiring that ordinances be fully and distinctly read on three (3) different days for ordinances listed on this agenda as *item numbers....Z*. (Motion must be approved by two-thirds (2/3) of the council members).
7. Ordinance Committee Report and Recommendations by Chairman Mike Overton:  

**An Ordinance** amending Chapter 14 of the Code of Ordinance of the City of Springdale. (vicious and dangerous dogs) *Committee recommended approval. Pg's 19-26*
8. Finance Committee Report and Recommendations by Chairman Brad Bruns:
  - A. **A Resolution** authorizing changes in the 401(a) Retirement Plan and the 457(b) Deferred Compensation Plan held by the International City Manager's Association (ICMA). *Committee recommended approval. Pg's 27-29*
  - B. **A Resolution** authorizing a change in the City of Springdale Organizational Structure and the related changes to authorized staff and budgets. *Committee recommended approval. Pg's 30-31*
  - C. **A Resolution** authorizing the establishment of the Public Works Department Community Engagement Division Committee. *Committee recommended approval. Pg 32*

- D. **A Resolution** authorizing the execution of a lease agreement for a copier for the Springdale Public Works Department Community Engagement Division. *Committee recommended approval. Pg's 33-41*
9. Street & CIP Committee Recommendations by Chairman Rick Evans:
  - A. **A Resolution** expressing the willingness of the City of Springdale, Arkansas, to utilize Federal-Aid Transportation Alternatives Program (TAP) funds for the construction of the Lake Springdale Trailhead on the Razorback Regional Greenway Project. *Committee recommended approval. Pg 42*
  - B. **A Resolution** authorizing the Mayor and City Clerk to enter into an agreement with CEI Engineering Associates, Inc. for Title II Construction Phase Services for construction of the Lake Springdale Trailhead on the Razorback Regional Greenway. *Committee recommended approval. Pg's 43-52*
  - C. **A Resolution** authorizing the Mayor and City Clerk to enter into an agreement with USI Engineers, Inc. for Title II Construction Phase Services for construction of the Sanders Avenue Trailhead on the Razorback Regional Greenway. *Committee recommended approval. Pg's 53-61*
  - D. **A Resolution** authorizing execution of an engineering design contract for 56<sup>th</sup> Street Improvements. *Pg's 62-95*
10. Comments from Department Heads.
11. Comments from Council Members.
12. Comments from City Attorney.
13. Comments from Mayor Sprouse.
14. Adjournment.

SPRINGDALE CITY COUNCIL  
JANUARY 28, 2014

The City Council of the City of Springdale met in regular session on January 28, 2014, in the City Council Chambers, City Administration Building. Mayor Doug Sprouse called the meeting to order at 6:00 p.m.

Roll call was answered by:

Doug Sprouse	Mayor
Brad Bruns	Ward 3
Jeff Watson	Ward 3
Mike Overton	Ward 2
Eric Ford	Ward 1
Mike Lawson	Ward 4
Rick Evans	Ward 2
Jim Reed	Ward 1
Kathy Jaycox	Ward 4 (Absent)
Ernest Cate	City Attorney
Denise Pearce	City Clerk/Treasurer

Department heads present:

Wyman Morgan	Director of Finance & Admin.
Patsy Christie	Planning Director
Sam Goade	Public Works Director
Kathy O'Kelley	Police Chief
Mike Irwin	Fire Chief
Mike Chamlee	Chief Building Official
Rick McWhorter	Parks & Recreation Director
Gina Kincy	Human Resource Director
Courtney Kremer	Animal Services Director
Alan Pugh	Engineering Director
Marcia Ransom	Library Director

AGENDA ITEM ADDED

Alderman Reed made the motion to add the Chamber of Commerce report by Lance Eads to the agenda. Alderman Evans made the second.

There was a voice vote of all ayes and no nays.

RECOGNITION OF LIBRARY EMPLOYEE

Mayor Sprouse recognized City of Springdale employee Arnola (Bunny) Goodman who is retiring after 17 years of service with the Springdale Library.

APPROVAL OF MINUTES

Alderman Reed moved the minutes of the January 14, 2014 City Council meeting be approved as presented. Alderman Evans made the second.

There was a voice vote of all ayes and no nays.

ORDINANCES AND RESOLUTIONS READ BY TITLE ONLY

Alderman Reed made the motion to read all Ordinances and Resolutions by title only and to dispense with the rule requiring that ordinances be fully and distinctly read on three (3) different days for all items listed on this agenda. Alderman Ford made the second.

The vote:

Yes: Overton, Ford, Lawson, Evans, Reed, Bruns, Watson

No: None

REPORT ON ECONOMIC DEVELOPMENT

Lance Eads, Vice-President of Springdale Chamber of Commerce, gave a report on economic development in the City of Springdale. (Report on file in City Clerk's Office)

APPEAL HEARING – RESOLUTION NO. 8-14 – APPROVING A CONDITIONAL USE REQUEST BY TINA HADEN FOR OPERATION OF A DAYCARE AT 505 EASTGATE STREET AS SET FORTH IN ORDINANCE NO. 4030

Tina Haden presented an appeal to City Council on a decision made by Planning Commission at their January 7, 2014 meeting to deny a request for a home occupation daycare at 505 Eastgate Street.

Some of the council members spoke highly of Ms. Haden and felt like this is a great place to have a daycare.

Alderman Bruns made the motion to overturn Planning Commission and approve the conditional use request at 505 Eastgate for the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. Alderman Overton made the second.

Ms. Haden's neighbors spoke in favor of the conditional use being approved.

Planning Director Patsy Christie explained the request was denied by a vote of 5 – 3 and some of the concerns were that when adjoining neighbors buy into a residential neighborhood they expect it to stay residential. Mrs. Haden intends to keep 10 children which could cause an impact on traffic in the neighborhood. There was no opposition voiced at the meeting.

The following Resolution was presented:

**RESOLUTION NO. 8-14**

**A RESOLUTION APPROVING A CONDITIONAL USE AT 505 EASTGATE STREET AS SET FORTH IN ORDINANCE NO. 4030**

**WHEREAS**, Ordinance #4030 amending Chapter 130 (Zoning Ordinance) of the Springdale Code of Ordinance provides that an application for a conditional use on appeal must be heard first by the Planning Commission and a recommendation made to the City Council; and

**WHEREAS**, the Planning Commission held a public hearing on January 7, 2014, on a request by Tina Haden for a conditional use for a Use Unit 28 (Home Occupation--Daycare) in a Low/Medium Density Single Family Residential District (SF-2) at 505 Eastgate Street; and

**WHEREAS**, following the public hearing the Planning Commission by a vote of three (3) yes and five (5) no's denied the request; and

**WHEREAS**, an appeal was filed on January 20, 2014 with the City Clerk in accordance and a hearing was held before the City Council on January 28, 2014.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE**, that the City Council hereby overturns the Planning Commission's denial and hereby grants a conditional use to Tina Haden for a Use Unit 28 (Home Occupation) in a Low/Medium Density Single Family Residential District (SF-2) at 505 Eastgate Street with the condition that operation of the day care be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.

**PASSED AND APPROVED THIS \_\_\_\_ DAY OF JANUARY, 2014.**

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest Cate, City Attorney

The vote:

Yes: Ford, Lawson, Evans, Reed, Bruns, Watson, Overton

No: None

The Resolution was numbered 8-14.

ORDINANCE NO. 4761 – AMENDING SECTION 46-51 OF THE CODE OF ORDINANCES WHICH CONTAINS THE FIRE PREVENTION CODE FOR THE CITY OF SPRINGDALE, ARKANSAS

Alderman Overton presented an Ordinance amending Section 46-51 of the Code of Ordinances which contains the Fire Prevention Code for the City of Springdale. The amendment is to adopt the Arkansas Fire Prevention Code 2012 edition which includes: Volume I that amends the 2012 edition of the International Fire Code; Volume II that amends the 2012 edition of the International Building Code; and Volume III that amends the 2012 edition of the International Residential Code.

After reading the title of the Ordinance, Alderman Reed moved the Ordinance “Do Pass”. Alderman Evans made the second.

The vote:

Yes: Lawson, Evans, Reed, Bruns, Watson, Overton, Ford

No: None

Alderman Reed moved the Emergency Clause be adopted. Alderman Evans made the second.

The vote:

Yes: Evans, Reed, Bruns, Watson, Overton, Ford, Lawson

No: None

The Ordinance was numbered 4761.

ORDINANCE NO. 4762 – AMENDING CHAPTER 22 OF THE CODE OF ORDINANCES OF THE CITY OF SPRINGDALE, ARKANSAS; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES (BUILDING AND BUILDING REGULATIONS)

Alderman Overton presented an Ordinance amending Chapter 22 of the Code of Ordinances which contains the Buildings and Building Regulations of the City of Springdale, Arkansas; declaring an emergency and for other purposes. The amendment updates versions of various codes which comprise the Building Code.

After reading the title of the Ordinance, Alderman Evans moved the Ordinance “Do Pass”. Alderman Reed made the second.

The vote:

Yes: Reed, Bruns, Watson, Overton, Ford, Lawson, Evans

No: None

Alderman Evans moved the Emergency Clause be adopted. Alderman Reed made the second.

The vote:

Yes: Bruns, Watson, Overton, Ford, Lawson, Evans, Reed

No: None

The Ordinance was numbered 4762.

ORDINANCE NO. 4763 – AMENDING SECTION 50-27 OF THE CODE OF ORDINANCES OF THE CITY OF SPRINGDALE, ARKANSAS; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

Alderman Overton presented an Ordinance amending Section 50-27 of the Code of Ordinances of the City of Springdale, Arkansas; declaring an emergency and for other purposes.

Section 50-27 of the Code of Ordinances contains the findings of fact with regard to flood damage prevention in the City of Springdale, Arkansas. It is in the best interest for the City Council to update these findings of fact to include activities associated with the Razorback Greenway and the Downtown Springdale Revitalization Plan for the City of Springdale, Arkansas;

Section 50-27 (Findings of fact) of the Code of Ordinances of the City of Springdale is hereby amended to include paragraph (d) as follows:

- (d) In addition to the FIS and FIRM for Washington County noted in paragraph (a) above, FEMA has approved the Conditional Letter of Map Revision cited in Case Number 13-06-3506R which affects the Special Flood Hazard Area (SFHA) for Spring Creek in the area between Johnson Road and Shiloh Street. This Conditional Letter of Map Revision is hereby adopted and will be enforced as the regulatory SFHA for this area until such time a new map is issued by FEMA including this revision and adopted by the City in whole.

After reading the title of the Ordinance, Alderman Reed moved the Ordinance "Do Pass". Alderman Evans made the second.

The vote:

Yes: Watson, Overton, Ford, Lawson, Evans, Reed, Bruns

No: None

Alderman Reed moved the Emergency Clause be adopted. Alderman Evans made the second.

The vote:

Yes: Overton, Ford, Lawson, Evans, Reed, Bruns, Watson

No: None

The Ordinance was numbered 4763.

RESOLUTION NO. 9-14 – AUTHORIZING THE ACQUISITION OF PROPERTY LOCATED AT 5620 HAR-BER AVENUE FOR THE 56<sup>TH</sup> STREET PROJECT, 12BPS8 (HAR-BER AVENUE TO ELM SPRINGS ROAD)

Alderman Evans presented a Resolution authorizing the acquisition of property located at 5620 Har-Ber Avenue from Sheila (Needham) Cook and Randy Cook for the 56<sup>th</sup> Street Project, 12BPS8 (Har-Ber Avenue to Elm Springs Road).

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

**A RESOLUTION AUTHORIZING THE ACQUISITION OF PROPERTY LOCATED AT 5620 HAR-BER AVENUE FOR THE 56<sup>TH</sup> STREET PROJECT, 12BPS8 (HAR-BER AVENUE TO ELM SPRINGS ROAD).**

**WHEREAS**, the City of Springdale is undertaking the construction of 56<sup>th</sup> Street from Har-Bar Avenue to Elm Springs Road, Project 12BPS8;

**WHEREAS**, property located at 5620 Har-Ber Avenue, owned by Sheila (Needham) Cook and Randy Cook is needed for the construction of this Project;

**WHEREAS**, after negotiations between the City of Springdale and the Cooks, the City offered to acquire the property located at 5620 Har-Ber Avenue for the total sum of \$180,324.39, as a full and final settlement for the property;

**WHEREAS**, the Cooks have agreed to accept the sum of \$180,324.39 offered by the City for the purchase of the property located at 5620 Har-Ber Avenue;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the City of Springdale is hereby authorized to purchase property located at 5620 Har-Ber Avenue for the total sum of \$180,324.39, plus closing costs, thereby allowing construction of the 56<sup>th</sup> Street Project, 12BPS8 (Har-Ber Avenue to Elm Springs Road) to proceed.

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Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Alderman Overton moved the Resolution be adopted. Alderman Reed made the second.

The vote:

Yes: Ford, Lawson, Evans, Reed, Bruns, Watson, Overton

No: None

The Resolution was numbered 9-14.

RESOLUTION NO. 10-14 – AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A CONTRACT FOR PROFESSIONAL SERVICES WITH USI CONSULTING ENGINEERS INC. FOR ROADWAY IMPROVEMENTS TO DON TYSON PARKWAY, FROM 40<sup>TH</sup> STREET TO CARLEY ROAD

Alderman Evans presented a Resolution authorizing the execution of amendment number 2 to a contract for professional services with USI Consulting Engineers Inc. for roadway improvements to Don Tyson Parkway, from 40<sup>th</sup> Street to Carley Road.

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

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AMENDMENT TO A CONTRACT FOR PROFESSIONAL SERVICES**

**WHEREAS**, the City of Springdale entered into a contract with USI Consulting Engineers, Inc. relating to roadway improvements to Don Tyson Parkway from 40<sup>th</sup> Street to Carley Road, and

**WHEREAS**, the City desires to remove the proposed 40<sup>th</sup> Street Signal from the overall project and bid it separately, and

**WHEREAS**, the compensation included in the contract will be increased by \$7,090 plus \$150 in reimbursable expenses for the additional work of producing and bidding two separate contracts;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor is hereby authorized to execute amendment no. 2 to USI Consulting Engineers, Inc. contract for roadway improvements to Don Tyson Parkway from 40<sup>th</sup> Street to Carley Road.

**PASSED AND APPROVED** this \_\_\_\_ day of January, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Alderman Reed moved the Resolution be adopted. Alderman Evans made the second.

The vote:

Yes: Lawson, Evans, Reed, Bruns, Watson, Overton, Ford

No: None

The Resolution was numbered 10-14.

RESOLUTION NO. 11-14 – AUTHORIZING THE PURCHASE OF PROPERTY  
LOCATED IN THE GLASS COMMERCIAL SUBDIVISION, SPRINGDALE,  
ARKANSAS, FOR THE CONSTRUCTION OF A NEW FIRE STATION

Alderman Ford presented a Resolution authorizing the purchase of property located in the Glass Commercial Subdivision, Springdale, Arkansas, for the construction of a new fire station.

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

**A RESOLUTION AUTHORIZING THE PURCHASE  
OF PROPERTY LOCATED IN THE GLASS  
COMMERCIAL SUBDIVISION, SPRINGDALE,  
ARKANSAS.**

**WHEREAS**, the acquisition of Lots 2, 3, 4, and 5 of the Glass Commercial Subdivision, Springdale, Washington County, Arkansas, (Parcel Numbers 815-38500-000, 815-38501-000, 815-38502-000, and 815-38503-000, as listed in the Washington County Assessor's Office) are needed for the construction of a new Fire Station, and

**WHEREAS**, the owner has agreed to sell these lots to the City of Springdale for the total sum of \$274,000.00;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS** that the Mayor is hereby authorized to execute all documents necessary for the acquisition of and tender payment from the 2012 Sales and Use Tax Bond Program for property known as Lots 2, 3, 4, and 5 of the Glass Commercial Subdivision, Springdale, Washington County, Arkansas, for a total purchase price of \$274,000.00, plus associated closing costs.

**PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Alderman Reed moved the Resolution be adopted. Alderman Evans made the second.

The vote:

Yes: Evans, Reed, Bruns, Watson, Overton, Ford, Lawson

No: None

The Resolution was numbered 11-14.

RESOLUTION NO. 12-14 – AMENDING SECTION 4.10 OF THE PERSONNEL AND PROCEDURES MANUAL FOR THE CITY OF SPRINGDALE, ARKANSAS TO CREATE "ON-CALL" PAY FOR CERTAIN CITY EMPLOYEES

Alderman Reed presented a Resolution amending Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, to create "On-Call" pay for certain Police Department employees.

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

**A RESOLUTION AMENDING SECTION 4.10 OF  
THE PERSONNEL AND PROCEDURES MANUAL  
FOR THE CITY OF SPRINGDALE, ARKANSAS**

**WHEREAS**, on January 14, 2014, the City Council for the City of Springdale, Arkansas, adopted a Resolution amending Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas, to create "On-Call" pay for certain City employees;

**WHEREAS**, certain employees of the Springdale Police Department should be included in the list of employees entitled to "On-Call" pay, pursuant to Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that:

**Section 1:** Section 4.10 of the Personnel and Procedures Manual for the City of Springdale, Arkansas is hereby amended to read as follows:

**4.10 Additional Compensation for Certain Employees:**

In addition to regular pay, including any holiday compensation, certified full-time paramedics of the Springdale Fire Department shall receive an additional salary compensation, to be determined by the City Council. Those full-time firefighters who are members of HAZMAT shall receive additional compensation in an amount to be determined by the City Council.

Police officers who have attained any certificate, except the Basic Certificate, under the Arkansas Commission on Law Enforcement Standards, shall receive an additional compensation each month for each certificate earned above the "Basic Certificate," and said compensation amount shall be set by the City Council.

Animal Control Officers, employees of the Information Technology Department, ~~and~~ employees of the Public Works Signalization Division, and designated employees of the Police Department shall receive additional compensation of \$15.00 per day when required to be "On-Call"

after normal work hours. The designated employees of the Police Department entitled to "On-Call" compensation shall be: 1) Criminal Investigation Division Sergeant; 2) Criminal Investigation Division Detective; 3) In-House Narcotics Detective; 4) Drug Enforcement Agency Detective; and 5) 4<sup>th</sup> Judicial Drug Task Force Detective.

All additional pay set out in this policy is paid bi-weekly, and such compensation is set out on the employee's paycheck.

**Section 2:** All other provisions of Section 4 not specifically modified herein shall remain in full force and effect.

**PASSED AND APPROVED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Alderman Evans moved the Resolution be adopted. Alderman Bruns made the second.

The vote:

Yes: Reed, Bruns, Watson, Overton, Ford, Lawson, Evans

No: None

The Resolution was numbered 12-14.

RESOLUTION NO. 13-14 – AMENDING THE 2014 BUDGET OF THE CITY OF SPRINGDALE POLICE DEPARTMENT FOR OPERATIONAL SUPPLIES

Alderman Bruns presented a Resolution amending the 2014 Budget of the City of Springdale Police Department for operational supplies.

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

**A RESOLUTION AMENDING THE 2014 BUDGET OF THE CITY OF SPRINGDALE POLICE DEPARTMENT**

**WHEREAS**, the City of Springdale Police Department received \$7,360.38 from the City of Fayetteville for reimbursement of training costs for one of our officers that resigned and went to work for the Fayetteville Police Department after attending the Arkansas Law Enforcement Academy; and

**WHEREAS**, this money was deposited in the 2013 Miscellaneous Revenue account and the Police Chief has requested this revenue be allocated to the Police Department's 2014 budget and placed in the Operational Supplies account, and

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the 2014 budget of the City of Springdale Police Department is hereby amended as follows:**

SPRINGDALE CITY COUNCIL  
JANUARY 28, 2014

<u>Department</u>	<u>Account No.</u>	<u>Description</u>	<u>Present Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Proposed Budget</u>
Police	10105014216002	Operational Supplies	115,000	7,360		122,360

**PASSED AND APPROVED** this \_\_\_\_ day of January, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Alderman Overton moved the Resolution be adopted. Alderman Reed made the second.

The vote:

Yes: Bruns, Watson, Overton, Ford, Lawson, Evans, Reed

No: None

The Resolution was numbered 13-14.

RESOLUTION NO. 14-14 – AMENDING THE 2014 BUDGET OF THE PUBLIC  
WORKS STREET DEPARTMENT

Alderman Bruns presented a Resolution amending the 2014 Budget of the Public Works Street Department.

Public Works Director Sam Goade is in need of additional equipment to assist in making streets safe during winter storms and also to build a storage facility for materials needed.

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

**A RESOLUTION AMENDING THE 2014 BUDGET OF  
THE PUBLIC WORKS STREET DEPARTMENT**

**WHEREAS**, the Public Works Street Department has a need for additional equipment to assist in making the streets safe during winter storms, and;

**WHEREAS**, we also have a need for a storage facility for materials needed for streets during winter storms, and;

**WHEREAS**, the Public Works Director has recommended amending the 2014 budget to fund these needs, and;

**WHEREAS**, the Finance Committee has recommended approval of this acquisition and budget amendment;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the 2014 budget of the Public Works Street Department is hereby amended as follows:**

<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>	<u>Budget</u>
Street	20102014318025	Building Improvements	3,500	142,000		143,500
Street	20102014318030	Equipment	165,900	158,000		323,100
Street	20102074316051	Materials/Asphalt	400,000		200,000	200,000
Street	20102074317037	Contract Labor/Paving	220,000		100,000	120,000

**PASSED AND APPROVED** this \_\_\_\_ day of January, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest B. Cate, City Attorney

Alderman Overton moved the Resolution be adopted. Alderman Reed made the second.

The vote:

Yes: Watson, Overton, Ford, Lawson, Evans, Reed, Bruns

No: None

The Resolution was numbered 14-14.

ORDINANCE NO. 4764 – AUTHORIZING THE CITY OF SPRINGDALE PUBLIC WORKS DEPARTMENT TO PURCHASE SNOW AND ICE REMOVAL EQUIPMENT FROM GRAND TRUCK EQUIPMENT COMPANY; TO WAIVE COMPETITIVE BIDDING AND DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

Alderman Bruns presented an Ordinance authorizing the City of Springdale Public Works Department to purchase snow and ice removal equipment from Grand Truck Equipment Company for purchases not to exceed \$157,112; to waive competitive bidding; declaring an emergency and for other purposes.

After reading the title of the Ordinance, Alderman Evans moved the Ordinance “Do Pass”. Alderman Overton made the second.

The vote:

Yes: Overton, Ford, Lawson, Evans, Reed, Bruns, Watson

No: None

Alderman Reed moved the Emergency Clause be adopted. Alderman Evans made the second.

The vote:

SPRINGDALE CITY COUNCIL  
JANUARY 28, 2014

Yes: Ford, Lawson, Evans, Reed, Bruns, Watson, Overton

No: None

The Ordinance was numbered 4764.

ORDINANCE NO. 4765 – REZONING 11.5 ACRES OWNED BY SMITH PROPERTIES LLC, LOCATED AT 6372 W. SUNSET AVENUE, FROM C-2 TO C-6 AND DECLARING AN EMERGENCY

Planning Director Patsy Christie presented an Ordinance rezoning 11.5 acres owned by Smith Properties LLC, located at 6372 W. Sunset Avenue, from C-2 to C-6 and declaring an emergency.

Planning Commission recommended approval at their January 7, 2014 meeting.

After reading the title of the Ordinance, Alderman Evans moved the Ordinance “Do Pass”. Alderman Overton made the second.

The vote:

Yes: Overton, Ford, Evans, Reed, Bruns, Watson

No: None

Recuse: Lawson

Alderman Reed moved the Emergency Clause be adopted. Alderman Evans made the second.

The vote:

Yes: Ford, Evans, Reed, Bruns, Watson, Overton

No: None

Recuse: Lawson

The Ordinance was numbered 4765.

ORDINANCE NO. 4766 – REZONING 2.26 ACRES OWNED BY JERRY PORTER, LOCATED AT 1125 NORTH JEFFERSON, FROM I-2 TO I-1 AND DECLARING AN EMERGENCY

Planning Director Patsy Christie presented an Ordinance rezoning 2.26 acres owned by Jerry Porter, located at 1125 North Jefferson, from I-2 to I-1 and declaring an emergency.

Planning Commission recommended approval at their January 7, 2014 meeting.

After reading the title of the Ordinance, Alderman Evans moved the Ordinance “Do Pass”. Alderman Reed made the second.

The vote:

Yes: Reed, Bruns, Watson, Overton, Ford, Lawson, Evans

No: None

Alderman Evans moved the Emergency Clause be adopted. Alderman Reed made the second.

The vote:

Yes: Bruns, Watson, Overton, Ford, Lawson, Evans, Reed

No: None

The Ordinance was numbered 4766.

ORDINANCE NO. 4767 – REZONING 2.5 ACRES OWNED BY STEVE STRICKLAND DBA RICHLAND COMMERCIAL MASONRY, LOCATED AT 3265 NORTH THOMPSON, FROM C-5 TO C-6 AND DECLARING AN EMERGENCY

Planning Director Patsy Christie presented an Ordinance rezoning 2.5 acres owned by Steve Strickland dba Richland Commercial Masonry, located at 3265 North Thompson, from C-5 to C-6 and declaring an emergency.

Planning Commission recommended approval at their January 7, 2014 meeting.

After reading the title of the Ordinance, Alderman Evans moved the Ordinance “Do Pass”. Alderman Reed made the second.

The vote:

Yes: Watson, Overton, Ford, Lawson, Evans, Reed, Bruns

No: None

Alderman Evans moved the Emergency Clause be adopted. Alderman Reed made the second.

The vote:

Yes: Overton, Ford, Lawson, Evans, Reed, Bruns, Watson

No: None

The Ordinance was numbered 4767.

ORDINANCE NO. 4768 – REZONING .57 ACRES OWNED BY VIRGIL AND MARLENE MOORE, LOCATED AT 10733 MARCHANT ROAD, FROM A-1 TO SF-2 AND DECLARING AN EMERGENCY

Planning Director Patsy Christie presented an Ordinance rezoning .57 acres owned by Virgil and Marlene Moore, located at 10733 Marchant Road, from A-1 to SF-2 and declaring an emergency.

Planning Commission recommended approval at their January 7, 2014 meeting.

After reading the title of the Ordinance, Alderman Reed moved the Ordinance “Do Pass”. Alderman Evans made the second.

The vote:

Yes: Ford, Lawson, Evans, Reed, Bruns, Watson, Overton

No: None

Alderman Evans moved the Emergency Clause be adopted. Alderman Reed made the second.

The vote:

Yes: Lawson, Evans, Reed, Bruns, Watson, Overton, Ford

No: None

The Ordinance was numbered 4768.

RESOLUTION NO. 15-14 – APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS AND SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO PROPERTY LOCATED AT 5890 NEW HOPE ROAD (OWNER: THOMAS ZIGLER)

Patsy Christie presented a Resolution approving a waiver of street improvements, drainage, curbs, gutters and sidewalks as set forth in Ordinance No. 3725 to property located at 5890 New Hope Road in connection with a single family dwelling owned by Thomas Zigler.

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

**A RESOLUTION APPROVING A WAIVER OF STREET IMPROVEMENTS, DRAINAGE, CURBS, GUTTERS AND SIDEWALKS AS SET FORTH IN ORDINANCE NO. 3725 TO 5890 NEW HOPE ROAD IN CONNECTION WITH A SINGLE FAMILY DWELLING**

**WHEREAS**, Ordinance #3047 provides for the waiver of street improvements, drainage relating thereto, curbs, gutters and sidewalks to be first heard by the Planning Commission and a recommendation made to the City Council, with any waivers to be granted by the City Council only; and

**WHEREAS**, the Planning Commission reviewed a request for waiver of street improvements to 5890 New Hope Road in connection with a single family dwelling and the Planning Commission recommends approval of the waiver request.

**NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE**, that the City Council hereby:

**Grants** a waiver of street improvements to 5890 New Hope Road including improvements related thereto, in connection with a single family dwelling.

**PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.**

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ernest Cate, City Attorney

SPRINGDALE CITY COUNCIL  
JANUARY 28, 2014

Alderman Reed moved the Resolution be adopted with Option 1. Alderman Evans made the second.

The vote:

Yes: Evans, Reed, Bruns, Watson, Overton, Ford, Lawson

No: None

The Resolution was numbered 15-14.

ORDINANCE NO. 4769 – AUTHORIZING THE CITY CLERK TO FILE A CLEAN-UP LIEN FOR THE REMOVAL OF OVERGROWN BRUSH AND DEBRIS ON PROPERTY LOCATED WITHIN THE CITY OF SPRINGDALE, ARKANSAS

City Attorney Ernest Cate presented an Ordinance authorizing the City Clerk to file a clean-up lien for the removal of overgrown brush and debris on the following properties within the City of Springdale, Arkansas:

1605 Cambridge St. (Parcel No. 815-25921-000)  
2403 Toni Ave. (Parcel #815-23741-000)  
303 Wright Ave. (Parcel #815-20459-000)

After reading the title of the Ordinance, Alderman Evans moved the Ordinance “Do Pass”. Alderman Lawson made the second.

The vote:

Yes: Reed, Bruns, Watson, Overton, Ford, Lawson, Evans

No: None

Alderman Evans moved the Emergency Clause be adopted. Alderman Reed made the second.

The vote:

Yes: Bruns, Watson, Overton, Ford, Lawson, Evans, Reed

No: None

The Ordinance was numbered 4769.

ADJOURNMENT

Alderman Reed made the motion to adjourn. Alderman Evans made the second.

After a voice vote of all ayes and no nays, the meeting adjourned at 6:45 p.m.

---

Doug Sprouse, Mayor

---

Denise Pearce, City Clerk/Treasurer

That which is underlined is added and that which is stricken through is deleted.

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

**AN ORDINANCE AMENDING CHAPTER 14 OF THE  
CODE OF ORDINANCES OF THE CITY OF SPRINGDALE,  
ARKANSAS.**

**WHEREAS**, Chapter 14 of the Code of Ordinances of the City of Springdale, Arkansas contains the regulations pertaining to animals;

**WHEREAS**, the City of Springdale is in need of revising its animal ordinance to more effectively deal with potentially dangerous and vicious animals, in order to protect the public from these animals;

**WHEREAS**, it is in the best interest of the City of Springdale, Arkansas, for the City Council of the City of Springdale, Arkansas, to amend Chapter 14 of the Code of Ordinances of the City of Springdale, Arkansas.

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

**Section 1:** Section 14-57 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-57. Authority.**

The police department or Mayor is hereby authorized to appoint animal control officers to carry out the provisions of this article, and to take up, impound, ~~sell~~ or destroy any animal running at large in violation of the terms of this chapter, ~~or~~ any animal that has bitten a person or another animal, ~~or~~ any animal suspected of having a disease transmissible to human beings, any vicious animal, or any potentially dangerous animal. Such animal may be taken up or impounded without the necessity of filing a complaint and shall be subject to the provisions in this article. If a citizen complaint is made, the animal control officer or police officer shall cause the complaining citizen to complete a written witness statement at the time of the incident. Any vicious animal or potentially dangerous animal shall then be impounded until otherwise directed by the Springdale District Court.

**Section 2:** Section 14-1 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-1. Definitions.**

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

**Animal** means all dogs, cats, cattle, horses and other equines, hogs, goats, rabbits, sheep, or wild mammals, reptiles, or fish that have been tamed, domesticated or captured.

**Animal shelter** means all pens, houses or fenced enclosures where animals are confined, such as, but not limited to, hutches, cotes, lofts, kennels, warrens, feed lots, barns, stables or other buildings or enclosures.

**Bite** means any actual or suspected abrasion, scratch, puncture, tear, bruise or piercing of the skin caused by any animal which is actually or is suspected of

being contaminated or inoculated with the saliva from the animal, directly or indirectly, regardless of the health of the animal causing such bite.

Breeder means any person who maintains an unaltered (unsterilized) dog or cat and breeds such animal for any consideration or profit, fee, or compensation.

Cable run means a metal cable that is mounted aboveground at a designated height to two (2) stationary objects for the purpose of attaching a pulley system that moves from one end of the cable to the other and to which a dog is tied or secured by means of a rope, chain, or cable attached to the dog's collar or harness

Cat is any member of the feline family.

City means the City of Springdale, Arkansas.

Dog is any member of the canine or dog family.

Free-roaming cat means a cat that is not kept inside of a house, business or other legal occupancy structure or kept in a fenced area enclosed with a top and containing a shelter. A cat that is allowed to go outside of such structure or fenced area is considered a free-roaming cat.

Fowl means all animals that are included in the zoological class Aves.

Habitual Animal Offender means any animal owner or harborer, who within any twelve-month period, is charged with three violations, arising out of separate incidents of this title which pertains to animals from which conviction, guilty plea, no contest plea, deferred judgment, or plea bargain results. The controlling date is the date of each animal ordinance violation, not the date of the plea entered, or the conviction resulting therefrom.

Harboring means allowing any animal to habitually remain or lodge or to be fed within a home, store, yard, enclosure or place of business of any other premises in which a person resides or controls, which shall be considered as keeping and harboring such animal.

Inhumane treatment means any treatment of any animal which deprives the animal of necessary sustenance, including food, water and protection from weather, or any treatment of any animal such as overloading, overworking, tormenting, beating, mutilating or teasing or other abnormal treatment as may be determined by the animal control officer.

Potentially Dangerous Animal means, regardless of breed:

1) any dog or other animal that has shown a propensity, tendency, or disposition to attack without provocation and is able or likely to inflict injury to another person or animal; or

2) without justification, behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of serious injury or death; or

3) without provocation, threatens to attack a person or domestic animal; or

4) approaches a person or domestic animal on a street, sidewalk or public or private property in a menacing fashion such as would put a reasonable person in fear of attack.

~~Provocation means taunting, striking, or screaming at the animal or unauthorized entry into the premises where the animal is kept.~~

Running at large (to run at large) means not confined on the premises of the owner within a fenced enclosure or animal shelter or under the control of a

person, either by lead, cord, leash, rope or chain; provided, further, that an animal may be considered confined if on a lead, rope or chain which is securely fastened or picketed in a manner which is sufficient to keep the animal on the premises. ~~Cat owners and harborers may only be charged with running at large if the cat is a habitual nuisance on the property of another or if they have failed to follow the conditions set forth under 14-37.~~ Running at large shall also include an animal not properly confined in a motor vehicle (for example, pick-up truck beds).

Swivel means pivoting hardware that can be used in a trolley system to attach a cable run to a tether or a tether to a dog's collar or harness in order to minimize twisting and tangling of the tether

Tether means a rope, chain, or cable that is attached to a dog's collar or harness for purposes of restraining the dog

Trolley system means a method of restraining a dog which utilizes a cable run, swivel and tether attached to a dog's collar or harness.

Vaccination means an injection of any vaccine for rabies approved by the state veterinarian and administered by a licensed veterinarian or the person authorized by law to administer such vaccine.

Veterinarian means a doctor of veterinary medicine licensed by the state.

Vicious dog or vicious animal means, regardless of breed, any dog or other animal that has bitten or attempted to bite any person, or caused serious injury to another domestic animal or livestock without provocation and is able or likely to inflict injury to another person.

**Section 3:** Section 14-2 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-2. Penalty.**

(a) Unless otherwise stated, any person who shall be convicted of violating any provision of this chapter shall be subject to the provisions of section 1-9 of the Springdale Code of Ordinances. Each day that a violation of this chapter occurs shall constitute a separate offense and shall be punishable as a separate violation.

(b) In addition to any fine imposed, in the case of a vicious dog or other vicious animal, or a wild animal or reptile, or potentially dangerous animal, the court may order the animal or reptile removed from the city or euthanized.

(c) Any person found guilty of harboring a vicious dog or other vicious animal, or of harboring or keeping a wild animal in the city, or harboring a potentially dangerous animal in violation of section 14-39, shall pay all reasonable expenses associated with housing, removal, or euthanizing that animal or reptile, including shelter, food, and veterinarian expenses, if any.

(d) Penalty, running at large. Conviction for running at large in violation of this section shall result in a fine as follows:

(1) For a sterilized dog:

a. The first conviction within a three-year period shall result in a minimum \$50.00 fine.

b. The second conviction within a three-year period shall result in a minimum \$75.00 fine.

c. The third and each subsequent conviction within a three-year period shall result in a minimum \$100.00 fine.

(2) For an unsterilized dog:

- a. The first conviction within a three-year period shall result in a minimum \$150.00 fine, unless by time of sentencing for the violation, proof of sterilization of the animal has been produced, in which case the fine structure applicable to sterilized dogs in subsection (d)(1) herein shall apply.
- b. The second and each subsequent conviction within a three-year period shall result in a minimum \$250.00 fine, unless by time of sentencing for the violation, proof of sterilization of the animal has been produced, in which case the fine structure applicable to sterilized dogs in subsection (d)(1) herein shall apply.
- c. The fine structure applicable to sterilized dogs in subsection (d)(1) herein shall also apply to unsterilized dogs too elderly or infirm to breed, as previously certified in writing as such at the time of the dog's rabies vaccination by a veterinarian licensed to practice within the state.

(3) Deposit of funds.

- a. The difference in the fine for unsterilized animals pursuant to subsection 14-2(d)(2) shall be deposited into a fund established for the city's low cost spay and neuter efforts.
- b. The animal shelter manager shall be responsible for establishing procedures and guidelines for the utilization of the abovementioned fund.

**Section 4:** Section 14-5 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-5. Control, protection of animals.**

It shall be unlawful for any person to:

- (1) Permit or allow any animal or fowl to run at large within the corporate limits of the city, except on property of the owner of the animal located in an agricultural (A-1) zone. However, this exception does not apply if the owner's property is in a platted subdivision, even if it is an A-1 zone.
- (2) Permit or allow any fowl within the corporate limits of the city, except on property of the owner of the fowl located in an agricultural (A-1) zone. However, no fowl shall be permitted in a platted subdivision, even if the platted subdivision is zoned A-1.  
  
Exception: This provision is not intended to apply to the ducks in Murphy Park, nor to indoor birds kept as pets, such as parakeets, nor to the lawful transportation of fowl through the corporate limits of the city.
- (3) Carry out any inhumane treatment against any animal.
- (4) Keep or harbor any animal which by loud, frequent or habitual barking, howling, yelping or other noise disturbs any person or neighborhood within the corporate limits of the city.
- (5) Keep or harbor a vicious dog or other vicious animal within the corporate limits of the city.
- (6) Allow unsprayed female dogs to be away from confinement on the premises of the owner, except on a lead and under the control of an adult person, when such dog is in season.

(7) Keep or harbor a dog or cat over four months of age within the corporate limits of the city without such dog or cat having a current vaccination against rabies performed by a veterinarian and microchipping a dog or cat over six months of age. A rabies vaccination is hereby considered current for 12 months, or per veterinarian documentation in accordance with the State Board of Health regulations, following the date of vaccination; provided, vaccination may not be required if the owner of such dog or cat shall exhibit to the city clerk a statement from a veterinarian certifying that such vaccination would be injurious to such dog due to its health. All dogs and cats shall be provided with a collar by the owner to which shall be affixed the vaccination tag.

(8) Permit unsanitary conditions to exist on the premises where any animal is kept which would cause odors, attract flies or vermin, or which would be otherwise injurious to the public health and safety, or would obstruct the free use of property so as to interfere with the comfortable enjoyment of life or property by members of the neighborhood, city, or other persons.

(9) Sell, distribute or give away animals from public property and from commercially and industrially zoned lands.

Exception: established animal business enterprises with permanent structures and the Springdale Animal Shelter

(10) Keep or harbor any potentially dangerous animal, except as provided in Section 14-39.

**Section 5:** Section 14-17 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-17. Animal bites.**

When any animal has bitten, scratched, or otherwise caused an abrasion, puncture, or break in a person's skin that person or any other person having knowledge of such incident shall immediately notify the police department. The animal shall be quarantined for a period of ten days from the date of the bite either in the facilities of Springdale Animal Services, in which case the owner shall pay Springdale Animal Services the daily board rate and a rabies observation fee for the period of quarantine, or at a veterinary hospital within the city limits at the expense of the owner, or in the alternative, the owner may relinquish the animal to Springdale Animal Service and the animal shall be euthanized and its head taken to the state health department for a pathological examination. Home quarantine is permitted only upon approval by the Animal Shelter supervisor.

The owner shall receive notice upon receipt of the animal that they must reclaim the animal by the end of the 10<sup>th</sup> day, or if the 10th day is a non-business day, on the next business day thereafter. However, any vicious animal or potentially dangerous animal shall be impounded until otherwise directed by the Springdale District Court. If the owner fails to reclaim the animal at the end of the quarantine period, Springdale Animal Services, or its designee, may euthanize the animal provided that a representative of Springdale Animal Services attempts to contact the owner by telephone at least 48 hours before the animal is euthanized.

If the owner is unknown or an address cannot be determined for the animal after a diligent search, the animal may be euthanized at the end of the ten-day quarantine period.

Exception: The provisions of this chapter do not apply to law enforcement canines who bites a person or another animal while engaged in law enforcement related duties.

If the owner is unknown or an address cannot be determined for the animal after a diligent search, the animal may be euthanized at the end of the ten-day quarantine

period. However, any vicious animal or potentially dangerous animal shall be impounded until otherwise directed by the Springdale District Court.

Exception: The provisions of this chapter do not apply to law enforcement canines who bite a person or another animal while engaged in law enforcement related duties.

**Section 6:** Section 14-39 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-39. Potentially Dangerous Animals.**

It shall be unlawful for any person to keep within the city limits any potentially dangerous animal, except in compliance with the provisions of this section.

(1) *Permit required.* A potentially dangerous animal may be kept within the city limits only so long as the owner or custodian complies with the requirements and conditions in accordance with the potentially dangerous animal permit. Before a potentially dangerous animal permit may be issued:

(a) The owner or custodian shall pay an annual permit fee of one hundred dollars (\$100.00) for possession of a potentially dangerous animal, in addition to all other required fees; and

(b) Within seven (7) days of the potentially dangerous animal determination, the owner shall provide proof of liability insurance in an amount of not less than fifty thousand dollars (\$50,000), covering the medical and or veterinary costs resulting from future actions of the animal.

(2) *Conditions for keeping a potentially dangerous animal.* The requirements and conditions for keeping or maintaining a potentially dangerous animal within the city limits shall include:

(a) *Confinement.* All potentially dangerous animals shall be securely confined:

(i) Indoors; or

(ii) In an enclosed and locked pen or physical structure upon the premises of the owner. The pen or physical structure must meet the minimum space requirements of 150 square feet and must have secure sides and a secure top attached to the sides. If no bottom is secured to the sides, the sides must be embedded into the ground no less than two (2) feet. The pen or physical structure must be capable of preventing the entry of the general public, including children, and must be capable of preventing the escape or release of the dog. Electronic containment devices shall not be used to confine dangerous dogs.

(b) *Spaying or Neutering Mandatory.* All animals that are deemed potentially dangerous must be spayed or neutered within fourteen (14) days of being designated as such.

(c) *Leash and muzzle.* The owner of a potentially dangerous animal shall not allow the animal to go outside of its kennel, pen or physical structure unless the animal is muzzled, restrained by a leash sufficient to control the animal, and under the physical control of an adult. The muzzle must not cause injury to the animal or interfere with its vision or respiration, but must prevent the animal from biting any human or animal. A muzzle is not required if the animal is:

(i) In the owner's yard if the yard is enclosed by a fence that is capable of preventing uninvited entry by other animals or people; and

(ii) Is restrained by means of a leash held by an adult.

(d) *Signs.* The owner of a potentially dangerous animal shall provide public notice of the animal's presence on the premises by displaying a warning sign. The sign shall be placed in a prominent place on the owner's property, clearly visible from the public highway or thoroughfare. Similar signs shall be posted on the animal's kennel, pen or enclosed structure.

(e) *Photograph identification and microchip identification.* Within ten (10) days of the declaration of an animal as potentially dangerous, the owner or custodian shall: 1) provide the animal services division manager with two (2) digital-quality color photographs of such animal, clearly showing the color and approximate size of the animal, or shall make the animal available for photographing by the animal services division; and 2) provide the animal services division manager with proof of microchip identification as provided in Section 14-31, or shall make the animal immediately available for the injection of a microchip identification device.

(f) *Change of status.* The owner or custodian of a potentially dangerous animal shall notify the animal services division immediately if the animal is unconfined and on the loose, or has attacked a human or a domestic animal.

(g) *Change of ownership.* If the owner of a potentially dangerous animal sells, gives away, or otherwise transfers custody of the animal, the owner shall contact the animal services division within 24 hours. The owner shall, within five (5) calendar days, provide the animal services division with written documentation containing the name, address, and telephone number of the new owner or custodian. The previous owner shall also before transferring ownership or custody of the dog, notify the new owner of the animal's designation as a potentially dangerous animal and, if the new owner resides within the city limits, of the requirements and conditions for keeping a potentially dangerous animal. This notice shall be in writing and a copy shall be provided to the animal services division. Upon being notified that a potentially dangerous animal has been removed to another jurisdiction, the animal services division is authorized, but not required, to notify the appropriate governmental department in the jurisdiction where the animal has been transferred that the animal has been declared potentially dangerous by the city.

~~(3) Failure to comply.~~ It shall be unlawful for the owner or custodian of a dangerous animal to fail to comply with the requirements and conditions set forth in this section. Any animal found by a police officer or animal services to be kept in violation of this section shall be subject to immediate seizure and impoundment, and shall be impounded until otherwise directed by the Springdale District Court. A conviction for a violation of the requirements and conditions set forth in this section shall result in a fine of \$500 per day, and the animal shall be euthanized. ~~In addition, failure to comply shall result in the immediate revocation of the potentially dangerous animal permit for such animal. In the event of permit revocation, the owner or custodian shall remove such animal from the city limits within twenty four (24) hours of receipt of the notice of revocation, or the animal shall become the property of the Springdale Animal Shelter. Notice of such revocation shall be mailed to the address the owner keeps updated with the animal shelter upon registering the potentially dangerous animal.~~

*Exemptions.* Dogs that are used regularly for law enforcement purposes shall not be subject to this section or the vicious animal section.

**~~Defense to determination of vicious or dangerous animal.~~**

~~It is a defense to the determination of an animal as vicious or potentially dangerous and to the prosecution of the owner of an animal:~~

~~(1) If the threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal;~~

~~(2) If the person was teasing, tormenting, abusing or assaulting the animal or has, in the past, been observed or reported to have teased, tormented, abused or assaulted the animal;~~

~~(3) If the person was committing or attempting to commit a crime;~~

~~(4) If the domestic animal killed was at the time teasing, tormenting, abusing or assaulting the animal;~~

~~(5) If the animal was protecting or defending a person within the immediate vicinity of the animal from an attack or assault;~~

~~(6) If the animal was injured and responding to pain; or~~

~~(7) If the animal was protecting its offspring, itself or its kennelmates.~~

**Section 7:** Section 14-59 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-59. Time period for confinement; care.**

An impounded animal that has not bitten a person or other animal, or that is not a vicious animal, or that is not a potentially dangerous animal, or that is not a diseased animal, shall be confined in the approved pound for a period of at least 72 hours before being disposed of, with such period of time beginning at 9:00 a.m. on the morning following the day of notification or of posting of the notification to the owner as provided in section 14-58. If the animal is a dog or cat that is unvaccinated and/or not covered by a permit, no notice is required and such animal shall be confined for a period of 72 hours before being disposed of, and said 72 hours begins at 9:00 a.m. of the morning following its capture. Such animal shall be provided with sufficient food, water and sanitary shelter.

**Section 8:** Section 14-65 of the Code of Ordinances of the City of Springdale is hereby amended to read as follows:

**Sec. 14-65. Confinement of animals that have bitten a person.**

The director of animal services, in the course of his duties of investigating cases in which animals have bitten persons, shall immediately notify the owner of such animal which has bitten any person to surrender the animal to Springdale Animal Services, or a licensed veterinarian, to be kept for a period of not less than ten days after the biting of such person, during which period it shall be determined whether or not such animal is suffering from any disease. In case such animal is not suffering from any disease, it may be released after the ten-day observation period, provided that the animal has not been alleged to be a vicious animal or a potentially dangerous animal, and provided that payment of all fees and costs associated with the confinement have been paid. Confinement in the owners home is permitted only upon approval by the animal shelter supervisor. Any vicious animal or potentially dangerous animal shall be impounded until otherwise directed by the Springdale District Court.

**Section 9:** Chapter 14 of the Code of Ordinances of the City of Springdale is hereby amended to create a new section, Section 14-20, to read as follows:

**Sec. 14-20. Defenses to determination of vicious or dangerous animal.**

It is a defense to the determination of an animal as vicious or potentially dangerous and to the prosecution of the owner of an animal:

(1) If the threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal;

(2) If the person was teasing, tormenting, abusing or assaulting the animal or has, in the past, been observed or reported to have teased, tormented, abused or assaulted the animal;

(3) If the person was committing or attempting to commit a crime;

(4) If the domestic animal killed was at the time teasing, tormenting, abusing or assaulting the animal;

(5) If the animal was protecting or defending a person within the immediate vicinity of the animal from an attack or assault;

(6) If the animal was injured and responding to pain; or

(7) If the animal was protecting its offspring, itself or its kennelmates.

**Section 10:** All other provisions of Chapter 14 of the Code of Ordinances of the City of Springdale, Arkansas, not specifically amended by this ordinance shall remain in full force and effect.

**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 in effect immediately upon its passage and approval.

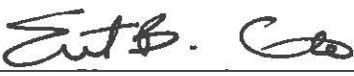
PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest B. Cate, City Attorney

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

**A RESOLUTION AUTHORIZING CHANGES IN THE  
401(a) RETIREMENT PLAN AND 457(b) DEFERRED  
COMPENSATION PLAN HELD BY THE  
INTERNATIONAL CITY MANAGER'S ASSOCIATION**

**WHEREAS**, the City of Springdale has a 401(a) retirement plan and a 457(b) deferred compensation plan with the International City Manager's Association, and

**WHEREAS**, fourteen proposals were received from a request for proposals advertised for firms to manage these plans, and

**WHEREAS**, an employee committee has reviewed these proposals and recommends transferring these plans to ING with the employment of Arvest Asset Management as the investment advisor for the plans;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor is hereby authorized to execute all necessary agreements and contracts to transfer the 401(a) retirement plan and the 457(b) deferred compensation plan from the International City Manager's Association to ING and employ Arvest Asset Management as investment advisor for these plans.

**PASSED AND APPROVED** this 11<sup>th</sup> day of February, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest B. Cate, City Attorney



## MEMORANDUM

Mayor Doug Sprouse

DATE: January 31, 2014

TO: Springdale City Council

FROM: Wyman Morgan *Wyman Morgan*  
Administration and Financial Services Director

Subject: Non-Uniformed Retirement Plan and Deferred Compensation Plans

201 Spring Street  
Springdale, Arkansas 72764  
(479) 750.8114  
(479) 750.8559 fax  
[www.SpringdaleAR.gov](http://www.SpringdaleAR.gov)

The City of Springdale has a defined contribution pension plan for non-uniform employees. The City contributes 6% of the employee's compensation to the plan and the employee contributes 3%. The investment of these funds is directed by the employee. This plan is currently with the International City Manager's Association (ICMARC) and has been for approximately fifteen years. The plan assets are in excess of \$9,000,000.

The City of Springdale has two deferred compensation plans. The City does not contribute to these plans and employee contributions are optional. These plans are with ICMARC and Nationwide.

The market possibilities and available options have changed significantly since ICMARC was selected. I felt that it was time to review our choice and see what options are currently available for administering these plans. A request for proposals was prepared and published in March of 2013. Fourteen proposals were received from the following companies.

Arvest Asset Management & ING  
BOK Financial & Bank of AR  
First Security Trust  
Wells Fargo & John Hancock  
Mutual of America  
Securian and Beasley & Co.  
U.S. Conference of Mayors

AXA Equitable  
Centurion Financial Services  
ICMARC  
Mass Mutual Financial  
Nationwide Retirement Solutions  
TIAA CREF & Wealth Plan Investment  
VALIC

A committee was formed and requested to review all proposals received and make recommendations for the selection of proposals to be invited for presentation to the committee. The committee consisted of the following people:

Doug Sprouse, Mayor	Wyman Morgan, Admin. & Financial Serv. Dir.
Gina Kincy, HR Director	Denise Pearce, City Clerk/Treasurer
Brenda Walter, HR Dept.	Lindsey Hood, Accountant
Laura Favorite, Finance Director	Karen Goodkin, Young Adult Librarian
Andrew Proffitt, Youth Center Dir.	

After reviewing all proposals received, the committee selected five companies to invite for presentation. The five selected to make presentations were:

Arvest Asset Management & ING	BOK Financial & Bank of AR
First Security Trust	ICMARC
Mutual of America	

Presentations were scheduled and attended by the committee members. After all presentations were completed, the committee members agreed to request a second presentation from Arvest Asset Management & ING and Mutual of America. Upon completion of these presentations, the committee members unanimously recommended moving the retirement plan and deferred compensation plans currently with ICMARC to ING and retain Arvest Asset Management as the Investment Advisor. The deferred compensation plan currently with Nationwide will remain with Nationwide.

If you have any questions, feel free to contact me.

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

**A RESOLUTION AUTHORIZING A CHANGE IN THE  
CITY OF SPRINGDALE ORGANIZATIONAL  
STRUCTURE AND THE RELATED CHANGES TO  
AUTHORIZED STAFF AND BUDGETS**

**WHEREAS**, the Mayor and City Council desire to create a new Public Works Division entitled the Community Engagement Division, and

**WHEREAS**, the Community Engagement Division would include the functions and activities of Bulky Waste Collection, Code Enforcement, Graffiti Abatement and Recycling Center, and

**WHEREAS**, the Supervisor of the Community Engagement Division would be under the direct supervision of the Public Works Director;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that**

Section 1. The position of Code Enforcement Coordinator in the Buildings Department and the position of Bulky Waste/Graffiti Abatement Specialist in the Public Works Department is hereby eliminated, and

Section 2. The position of Community Engagement Supervisor is hereby approved with a pay grade of 22, and

Section 3. There is hereby created the Community Engagement Division of Public works to include the functions and activities of Bulky Waste Collection, Code Enforcement, Graffiti Abatement and Recycling Center, and

Section 4. The position of Project Specialist is hereby approved in the Buildings Department with a pay grade of 16, and

Section 5. The pay grade for Chief Building Official is hereby changed from pay grade 31 to 30.

Section 6. The 2014 budget is hereby amended as follows:

<u>Department</u>	<u>Account No.</u>	<u>Description</u>	<u>Present Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Proposed Budget</u>
Street	20102014313001	Regular Salaries	243,930		24,590	219,340
Street	20102014313002	Overtime	3,000		525	2,475
Street	20102014313501	FICA/Medicare	19,170		1,880	17,290
Street	20102014313502	Insurance	38,570		9,750	28,820
Street	20102014313503	Pensions	14,640		1,475	13,165
Street	20102014313504	Worker's Compensation	6,960		345	6,615
Buildings	10104034233001	Regular Salaries	510,780		130,710	380,070
Buildings	10104034233501	FICA/Medicare	39,630		10,000	29,630
Buildings	10104034233502	Insurance	105,840		23,310	82,530
Buildings	10104034233503	Pensions	30,720		7,840	22,880
Buildings	10104034233504	Worker's Compensation	5,970		1,510	4,460

Buildings	10104034233507	Uniforms	7,000	2,180	4,820
Buildings	10104034235111	Vehicles	6,500	2,275	4,225
Buildings	10104034236001	Office & Postage	10,000	5,250	4,750
Buildings	10104034236004	Code Enforcement	4,000	3,500	500
Buildings	10104034236030	Gasoline	26,500	9,275	17,225
Buildings	10104034237001	Insurance/Property	3,050	1,000	2,050
Buildings	10104034237003	Communications	7,000	1,480	5,520
Buildings	10104034237005	Travel & Training	15,000	2,625	12,375
Buildings	10104034237010	Miscellaneous	2,000	875	1,125
Buildings	10104034237035	Contract Labor	50,000	35,000	15,000
Co Engagement	10102114423001	Regular Salary	173,800		173,800
Co Engagement	10102114423002	Overtime	1,310		1,310
Co Engagement	10102114423501	FICA/Medicare	13,300		13,300
Co Engagement	10102114423502	Insurance	30,175		30,175
Co Engagement	10102114423503	Pensions	10,430		10,430
Co Engagement	10102114423504	Worker's Compensation	2,365		2,365
Co Engagement	10102114423507	Uniforms	2,190		2,190
Co Engagement	10102114425000	Utilities/water & sewer	500		500
Co Engagement	10102114425101	Buildings & Grounds	3,500		3,500
Co Engagement	10102114425111	Vehicles	2,625		2,625
Co Engagement	10102114425119	Other Equipment	875		875
Co Engagement	10102114425202	Equipment Rent	2,800		2,800
Co Engagement	10102114426001	Office & Postage	5,250		5,250
Co Engagement	10102114426004	Code Enforcement	3,500		3,500
Co Engagement	10102114426021	Electricity	3,940		3,940
Co Engagement	10102114426030	Gasoline	12,250		12,250
Co Engagement	10102114426040	Books & Periodicals	1,320		1,320
Co Engagement	10102114427001	Insurance/Property	3,000		3,000
Co Engagement	10102114427003	Communications	8,400		8,400
Co Engagement	10102114427004	Publications & Notices	500		500
Co Engagement	10102114427005	Travel & Training	3,000		3,000
Co Engagement	10102114427010	Miscellaneous	875		875
Co Engagement	10102114427035	Contract Labor	40,000		40,000
Co Engagement	10102114428030	Equipment	2,000		2,000
			327,905	275,395	

**PASSED AND APPROVED** this 11<sup>th</sup> day of February, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest B. Cate, City Attorney

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

**A RESOLUTION AUTHORIZING THE ESTABLISHMENT OF THE  
PUBLIC WORKS DEPARTMENT COMMUNITY ENGAGEMENT  
DIVISION COMMITTEE**

**WHEREAS**, the Springdale Public Works Department has been authorized by the City Council for the City of Springdale to establish a new division of Public Works to be entitled The Community Engagement Division, and

**WHEREAS**, the Community Engagement Division desires to enhance open communication opportunities with other departments of the city and the citizens of Springdale, and

**WHEREAS**, a committee of persons directly and indirectly engaged in the day to day business of the Community Engagement Division shall be members of the committee, and

**WHEREAS**, the committee members shall have representatives from the City Attorney's office, the Mayor's office, Planning and Community Development Department, Police Department, Fire Department and the Public Works Department, and

**WHEREAS**, the Community Engagement Committee shall meet on the 1<sup>st</sup> Friday of each month at 10:00 a.m., and

**WHEREAS**, the purpose of the Community Engagement Committee meetings shall be establishment of clear communications between all interested parties, resolution of any particular issues of concern and the exchange of ideas whereby the mission and vision statements of The Community Engagement Division are being accomplished on a consistent basis and the highest level of service is being provided to the citizens of the City of Springdale.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Community Engagement Committee is hereby established with monthly meetings to be held at the Community Engagement Division of Public Works located 206 S. Blair Street in Springdale, Arkansas on the dates and times established herein.

**PASSED AND APPROVED** this 11<sup>th</sup> day of February, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest B. Cate, City Attorney

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

**A RESOLUTION AUTHORIZING THE EXECUTION OF A LEASE AGREEMENT FOR A COPIER FOR THE SPRINGDALE PUBLIC WORKS DEPARTMENT COMMUNITY ENGAGEMENT DIVISION**

**WHEREAS**, the Springdale Public Works Department has been authorized by the City Council for the City of Springdale to establish a new division of Public Works to be entitled The Community Engagement Division, and

**WHEREAS**, the Community Engagement Division is located at 206 N. Blair Street and does not currently have a copier/scanner/fax machine necessary in the course of work to be performed at that location, and

**WHEREAS**, quotes were submitted by three (3) copier supply companies and tabulated for comparison on September 19, 2013 for consideration of a copier/scanner/fax for the Public Works Department, a copy of which is attached, and

**WHEREAS**, four (4) additional quotes were submitted January 30, 2014 and January 31, 2014 and again on February 6 and February 7, 2014 a copy of which is attached, and

**WHEREAS**, Digital Printing Solutions submitted the lowest quote dated February 7, 2014 for a new Toshiba e-Studio 3055c in the amount of \$153.00 per month which provides all of the functionality required (copier, printer, fax and a scanner) as specified and includes the cost of the service agreement, and

**WHEREAS**, based on the performance of the Toshiba e-Studio 3055c currently in use at Public Works and the exemplary service provided by Digital Printing Solutions since installation, the proposed identical copier and service contract for the Community Engagement Division in the amount of \$153.00 per month is reasonable;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS**, that the Mayor is hereby authorized to enter into a 60 month lease agreement with Digital Printing Solutions for a new Toshiba e-Studio 3055c in the amount of \$153.00 per month which includes a service agreement for the term of the lease.

**PASSED AND APPROVED** this 11<sup>th</sup> day of February, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest Cate, City Attorney

**Springdale Public Works Department  
Bid Tabulation Sheet  
Lease Agreement 60-Month Copier/Scanner/Fax Machine  
Bids Evaluated on Thursday September 19, 2013**

**Additional Quotes by Corporate Business Systems and Digital Printing Solutions Submitted on January 30 and January 31, 2014 and on February 6 and February 7, 2014 for a Copier/Scanner/Fax Machine for the Community Engagement Division**

Company Name	Copier Model Submitted	Machine Demo Provided (yes or no)	Base Price (cost in dollars per month)	Black & White Allowance Per Month (copies per month)	Color Copy Allowance per Month (copies per month)	Black & White Overage Billed per Page (cost per page in dollars)	Color Overage Billed per Page (cost per page in dollars)	Maximum Annual Percentage Adjustment (percentage)	Comments After Examination of Submittals	Monthly Billing based on Average (1,429) B&W & Average 564 Color/Month	Total Cost of Five Year Lease Based on Average Monthly copies of 1,429 b&w and 564 color
Copy World	Canon ADV 2225/2230	NO	\$ 256.00	1500	500	\$ 0.0170	\$ 0.0770	Zero	Submittal Number One - Includes Check for \$2,000 for existing lease buy out	\$ 260.93	\$ 15,655.68
Copy World	Sharp MX3115N	NO	\$ 235.00	2500	500	\$ 0.0130	\$ 0.0850	Zero	Submittal Number Two - Includes Check for \$2,000 for existing lease buy out	\$ 240.44	\$ 14,426.40
Professional Business Systems	Konica Minolta Bizhub C224e	NO	\$ 256.00	1500	500	\$ 0.0150	\$ 0.0750	Zero	Submittal Includes Check for \$1,688.85 for buy out of current lease agreement with Copy World	\$ 260.80	\$ 15,648.00
Digital Printing Solutions	TOSHIBA e-STUDIO 3055c	NO	\$ 206.00	1500	500	\$ 0.0100	\$ 0.0695	Zero	Submittal does not include a check for buy out of current lease agreement with Copy World	\$ 209.45	\$ 12,566.88
Digital Printing Solutions	TOSHIBA e-STUDIO 3055c	NO	\$ 233.15	1500	500	\$ 0.0100	\$ 0.0695	Zero	Submittal Includes Check for \$1,688.85 for buy out of current lease agreement with Copy World	\$ 237.60	\$ 14,255.88
Corporate Business Solutions	Savin MP C3003	NO	\$ 184.93	1500	500	\$ 0.0065	\$ 0.0450	Zero	Quote submitted on January 30th, 2014 for a machine to be located at 206 N. Blair Street	\$ 187.81	\$ 11,268.60
Digital Printing Solutions	TOSHIBA e-STUDIO 3055c	NO	\$ 184.50	1500	500	\$ 0.0064	\$ 0.0450	Zero	Quote submitted on January 30th, 2014 for a machine to be located at 206 N. Blair Street	\$ 187.38	\$ 11,242.80
Corporate Business Solutions	Savin MP C3003	NO	\$ 153.15	1500	500	\$ 0.0065	\$ 0.0450	Zero	Quote submitted on January 30th, 2014 for a machine to be located at 206 N. Blair Street	\$ 156.03	\$ 9,361.80
Digital Printing Solutions	TOSHIBA e-STUDIO 3055c	NO	\$ 153.00	1500	500	\$ 0.0064	\$ 0.0450	Zero	Quote submitted on January 30th, 2014 for a machine to be located at 206 N. Blair Street	\$ 155.88	\$ 9,352.80



February 7, 2014

**Presented to:**

Mr. Sam Goade  
Springdale Public Works Department  
Community Engagement Division

**Proposal:**

New Toshiba eStudio3055C with Fax Board  
\$153.00 per month/60 months  
Price is fixed for term of contract  
Includes 1,500 8 ½ x 11 B\W copies/prints per month  
Includes 500 8 ½ x 11 Color copies/prints per month

**Complete Coverage Maintenance:**

Includes All Service & Supplies  
Excludes Paper, Staples & Abuse  
B\W Overages billed @ \$0.0064  
Color Overages billed @ \$0.045

LESSOR



digital printing solutions

2018 Town West Drive  
Rogers, AR 72756  
479-636-0112  
Fax 479-636-1502

CONTRACT NO.

N<sup>o</sup> \_\_\_\_\_

NAME Springdale Public Works Department  
ADDRESS Community Engagement Division  
DEPT/FLOOR 206 N. Blair Street  
CITY Springdale COUNTY \_\_\_\_\_ STATE AR  
ZIP 72764 ATTENTION Sam Goade  
TELEPHONE 479.750.8135  
SALESPERSON \_\_\_\_\_

L  
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NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
DEPT/FLOOR \_\_\_\_\_  
CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ STATE \_\_\_\_\_  
ZIP \_\_\_\_\_ ATTENTION \_\_\_\_\_  
TELEPHONE \_\_\_\_\_

ORIGINAL TERM OF CONTRACT 60 MONTHS  
TOTAL PAYMENT BEFORE APPLICABLE TAXES \$153.00  
TRADE -IN MODEL/SERIAL NO. \_\_\_\_\_ TRADE VALUE \$ \_\_\_\_\_ PAYOFF AMOUNT \$ \_\_\_\_\_

SCHEDULE OF PAYMENTS:  Monthly  Quarterly  Semiannually  Annually  
SECURITY DEPOSIT N/A SET UP CHARGE N/A

**EQUIPMENT DESCRIPTION (Quantity, Model No., Serial No.)**

Lessor hereby leases to Lessee, subject to the terms and conditions herein, the following described personal property with all replacement parts, substitutions, additions, repairs and accessories incorporated therein and affixed thereto all hereinafter referred to as "equipment".

Qty	Model Number / Description	ADDITIONAL INFORMATION
1	Toshiba eStudio3055C	Complete Coverage Maintenance: * Includes All Service & Supplies * Excludes Paper, Staples & Abuse * Includes 1,500 8 1/2 x 11 BW copies/prints per month * Includes 500 8 1/2 x 11 Color copies/prints per month * BW Overages to be billed at \$0.0064 * Color Overages to be billed at \$0.045

The Lessee shall have a purchase option at fair market value at the expiration of this lease.

**IMPORTANT INFORMATION FOR LESSEE**

The undersigned Lessee applies to Lessor for a lease of the above described property ("equipment") for commercial purposes and agrees that the lease is not to be construed as a consumer contract if Lessor accepts by signing the lease below. Lessee agrees to rent from Lessor and Lessor agrees to rent to Lessee, the equipment, on all of the terms and conditions herein. Including the terms and conditions set forth on the reverse side hereof. THIS LEASE CANNOT BE CANCELLED, and is subject to the TERMS AND CONDITIONS PRINTED ON THIS PAGE AND THE REVERSE SIDE HEREOF.

Vendor and its representatives are not the agent of Lessor and cannot waive, vary or alter the terms of the lease agreement. Lessor does not warrant the fitness, merchantability, design, condition, capacity, suitability or performance of the property leased. Lessor makes no express or implied warranties and the property "as is", "with all faults". Warranties made by the vendor and/or manufacturer are assigned by Lessor to Lessee. In the event of any claim concerning the location, installation, repair or use of the property leased or any other claim concerning the property, regardless of cause or consequence, Lessee's only remedy, if any, is against the vendor or manufacturer of the property. No defect regardless of cause or consequence shall relieve Lessee from performance under the lease agreement, including rental payments. IN WITNESS THEREOF, the undersigned hereby sign this lease the day and year hereinafter written.

**THIS CONTRACT IS NON-TRANSFERABLE**  
Digital Printing Solutions

\_\_\_\_\_  
Lessee  
Signature: \_\_\_\_\_ Title \_\_\_\_\_  
Print Name \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_ Lessor  
Date \_\_\_\_\_

**AGREEMENT OF UNCONDITIONAL GUARANTY**

This guaranty agreement is executed for the benefit of Lessor, its successors and assigns, to induce Lessor to enter into the above Lease, with the above named Lessee. The undersigned guarantor(s) jointly and severally unconditionally guarantee full performance by Lessee of the above Lease, including without limitation the prompt payment when due of each monthly rental payment due and payable under such Lease in case suit shall be brought because of the breach of any agreement of obligation contained in this Lease on the part of the guarantor(s) to be kept or performed, and a breach shall be established, the prevailing party shall be entitled to recover all expenses incurred therefor, including reasonable attorney fees. To enforce the liability of guarantor(s) under the guaranty agreement. Lessor shall not be required first (a) to give guarantor(s) notice of Lessee's default, (b) to repossess the equipment, or (c) to accept late rental payments.

The term of the foregoing Lease may be extended and the Lease may be amended from time to time without notice to the guarantor(s) and without defeating or diminishing this continuing guaranty agreement which shall continue in full force and effect with respect to the Lease, as extended or amended.

This guaranty agreement shall be governed by and construed in accordance with the laws of the State of Arkansas. Guarantor(s) hereby consent and submit to the jurisdiction of the courts of the State of Arkansas for purposes of the enforcement of the guaranty agreement. The undersigned specifically waive(s) the right to claim as against the holder the defense of impairment of collateral.

Signature: \_\_\_\_\_ Signature: \_\_\_\_\_  
SS# \_\_\_\_\_ SS# \_\_\_\_\_

## TERMS AND CONDITIONS

**1. RENTAL PAYMENTS AND TERMS.** Lessee agrees to pay as rental for the use of the equipment the payment specified in the payment schedule, with the first such rental payment due on the date of first payment described on page 1, and like payments due on the same day of each month thereafter or as otherwise specified during the lease term. If no date of first payment is inserted at the time the lease is signed by Lessee, Lessee hereby authorizes Lessor to complete this lease by inserting the date of first payment which shall not be later than sixty (60) days from the date of delivery of the equipment to Lessee. All rent and other sums payable by Lessee to Lessor under the terms of this lease shall be paid to Lessor at its office or as the Lessor may hereafter direct. Lessee agrees that Lessor may collect a late charge on each rental payment which is in arrears more than ten (10) days, said charge to be an amount equal to ten percent (10%) of said rental payment or the maximum permissible under applicable law, whichever is the lesser amount. Rent payment shall be due whether or not Lessee has received any notice that such payments are due. This lease will be effective upon the date an authorized employee of Lessor signs this lease. The term ends upon the expiration of the number of months in the initial term after the date of first payment.

**2. TITLE TO EQUIPMENT.** The equipment is, and shall at all times remain, property of Lessor, and Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this lease. The equipment is and shall at all times be and remain personal property notwithstanding that the equipment or any part thereof may now be or hereafter become in any manner affixed or attached to real property or any improvements thereon. All additions or improvements to the equipment of any kind or nature made by the Lessee shall become component parts thereof, and title shall immediately vest in Lessor and be governed by the terms of this lease.

**3. SURRENDER.** Upon termination of the Lease the equipment shall be returned at Lessee's expense to Lessor at such a place as may be designated by Lessor for such disposition.

**4. LOCATION AND MAINTENANCE.** At its own risk, Lessee shall use or permit the use of the equipment solely at the location specified in the lease, or if none is specified, at the Lessee's billing address set forth in this contract, and said equipment shall not be moved without Lessor's prior written consent. Lessee shall at its expense, maintain the equipment in good repair, condition, and functional order, shall not use the equipment unlawfully, and shall not alter the equipment without Lessor's written consent. Lessor shall not be liable for loss of profit or other consequential damages resulting from the theft, destruction or disrepair of the equipment and there shall be no abatement of rental.

**5. RISK OF LOSS AND INSURANCE.** Lessee shall bear all risk of damage, loss, theft or destruction partial or complete, with respect to each item of equipment. Unless the Lessee accepts the fire and extended coverage insurance obtained on the Lessee's behalf by the Lessor or the Lessor's Assignee in conjunction with this lease, Lessee shall at its own expense keep each item of equipment insured, at the full replacement value thereof, against fire and extended coverage and shall provide the Lessor or the Lessor's Assignee with a policy or certificate of insurance covering each item of equipment and naming the Lessor or its Assignee the Loss Payee and co-insured of such insurance. Any fire and extended coverage insurance obtained on behalf of the Lessee by Lessor hereunder protects only the interest of the Lessor or the Lessor's Assignee in the equipment. Lessee agrees at its expense to obtain and maintain with insurance companies of recognized standing general public liability insurance for the protection of Lessor as co-insured and Lessee, as their interests may appear, in amounts specified by Lessor, against claims for bodily injury or death or property damage arising out of the use, ownership, possession, operation or condition of the equipment. Each insurer shall agree by endorsement upon the policy or policies issued by it or independent instruments furnished to Lessor, that it will give Lessor ten (10) days written notice before the policy or policies in question shall be altered or cancelled, and that no act or default of any person other than the Lessor, or its agents, or those claiming under Lessor shall affect Lessor's right to recover under such policy or policies in case of loss. Lessee shall deliver to Lessor the policies or evidence of insurance satisfactory to Lessor. The failure of Lessee to procure or maintain such insurance shall constitute a default under this lease. In the event of such breach, Lessor may but shall not be obligated to obtain such insurance and an amount equal to the cost of such insurance shall be deemed additional rental to be paid forthwith by Lessee. Notwithstanding damage to leased equipment, the monthly rental shall continue to be paid by Lessee. Lessee shall have the responsibility for the repair of any damaged equipment and Lessee agrees to repair or cause such equipment to be repaired promptly after damage. As reimbursement to Lessee for any sum expended by Lessee in connection with the repair of such equipment, Lessor shall assign to Lessee any and all rights Lessor may have under insurance policies carried by or paid for by Lessee with respect to such damage. Lessor, or its Assignee, are hereby granted the right at their option, to negotiate directly with all carriers of insurance above described. Lessor hereby irrevocably designates and appoints Lessor or its Assignee, as Lessee's agent and attorney-in-fact for the purpose of executing and endorsing all drafts of checks issued pursuant to claims made under any of the above described insurance coverage.

**6. TAXES, ASSESSMENT AND LICENSES.** Lessee shall pay all sales taxes, use taxes, excise taxes, personal property taxes, assessments, ad valorem taxes, stamp and documentary taxes, and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor, Lessee or others, on or relating to the equipment or the use, registration, rental, shipment, transportation, delivery or operation thereof, other than federal or state income taxes of Lessor, and/or relating to this lease, and shall file all returns required therefor. Upon demand, Lessee shall reimburse Lessor for any such taxes, assessments, charges, fines or penalties which Lessor may be compelled to pay in connection with the equipment. Lessor assumes no liability and makes no representation as to the treatment of this lease agreement by any federal, state or local taxation authority. Lessee is advised to seek independent legal or tax counsel.

**7. LESSOR'S INDEMNITY.** Lessee shall indemnify, protect, and save and keep harmless Lessor, its agents, servants, successors, and assigns from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatsoever nature, arising out of the use, condition (including, but not limited to patent and other defects and whether or not discoverable by it), or operation of any item of equipment, regardless of who, how and by whom operated. Lessee shall assume the settlement of, and the defense of any suit or suits or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands, and expenses, and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding any termination of this lease, whether by expiration of time, by operation of law, or otherwise. Nothing contained in this lease shall authorize Lessee or any other person to operate any item of equipment so as to incur or impose any liability or obligation for or on behalf of Lessor.

**8. LIABILITY OF LESSOR LIMITED.** Lessor shall not be liable for any loss or damage which is incurred as a result of delay, strikes, storms, war emergencies, labor troubles, belated or non-receipt of equipment, fires, floods, water, acts of God, or circumstances beyond Lessor's control. Lessor shall not be held liable for any damages by reason of failure of equipment to operate or faulty operation of equipment or system. Lessor shall not be held responsible for any direct or consequential damages or losses resulting from the installation, operation or use of the equipment, products or materials furnished by Lessor.

**9. ASSIGNABILITY.** Without Lessor's prior written consent, Lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this lease, the equipment, or any interest therein or (b) subject or lend equipment or permit it to be used by anyone other than Lessee or Lessee's employees.

Lessor may assign this lease or grant a security interest in the equipment in whole or part without notice to Lessee and Lessor's assignee or secured party may then assign this lease or this security agreement without notice to the Lessee. Each such assignee or secured party shall have all the rights but none of the obligations of Lessor under this lease. Lessee shall recognize such assignments and/or security agreements and shall not assert against the assignee and for the secured parties any defense, counter-claim or offset the Lessee may have against Lessor. Notwithstanding any such assignment, Lessor warrants that Lessee shall quietly enjoy use of the equipment subject to the terms and conditions of this lease. Subject to the foregoing, the lease inures to the benefit of and is binding upon the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

**10. DEFAULT AND REMEDIES.** (A) Lessee shall be in default if Lessee shall:

(1) Fail to pay any rent, or other amount required herein within ten (10) days after the same becomes due and payable, or fail to make the payments on any other lease or indebtedness of Lessee to Lessor arising independently of this lease;

(2) Fail to perform or observe according to its terms any covenant contained in this lease, or any other instrument or document executed in connection with this lease;

(3) Become insolvent (however defined), cease business as a going concern, make an assignment for the benefit of creditors, cause a petition for receiver or in bankruptcy to be filed by or against Lessee (including a petition for reorganization or an arrangement);

(4) Commit or fail to commit any act which results in jeopardizing the rights of the Lessor or causes the Lessor to deem itself insecure as to its rights;

(B) If the Lessee is in default Lessor, with or without notice to Lessee shall have the right to exercise concurrently or separately, and without any election of remedies to be deemed made, the following remedies:

(1) Elect that the rental payments due hereunder be accelerated and the entire amount of rental be due immediately;

(2) Terminate this lease;

(3) Enter upon Lessee's premises and without any court order or other process of law repossess and remove said equipment whether with or without notice to Lessee. Any such repossession shall not constitute a termination of this lease unless Lessor so notifies Lessee in writing and Lessor shall have the right, at its option, to lease the equipment to any other person or persons upon such terms and condition(s) as Lessor shall determine;

(4) Sell the equipment to the highest bidder at public or private sale at which sale Lessor may be the purchaser.

In the event either sub-sections (B3) or (B4) are exercised, there shall be due from Lessee and Lessee will immediately pay to Lessor the difference between the total amount of rentals to be received from any third person or the purchase price at said sale, as the case may be, and the total unpaid rental provided to be paid herein, together with the estimated fair market value of the equipment for the original lease termination date, plus all costs and expenses of Lessor in repossessing, releasing, transporting, repairing, selling or otherwise handling the equipment.

Lessee shall pay all costs incurred in securing possession of property by Lessor and costs of reconditioning property. In case suit shall be brought because of the breach of any agreement or obligation contained in this lease on the part of Lessor or Lessee to be kept or performed, and a breach shall be established, the prevailing party shall be entitled to recover all expenses incurred therefore, including reasonable attorney fees.

**11. ENTIRE AGREEMENT.** THIS INSTRUMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES and neither party shall be bound except in accordance herewith. NO ORAL REPRESENTATIONS OR ASSURANCES shall in any way modify or explain any of the terms and conditions herein.

**12. NOTICES AND DEMANDS.** Service of all notices under this agreement shall be sent by United States mail, postage thereon prepaid, addressed to the party involved at its respective address herein set forth, or to such other address as the parties may hereafter substitute by written notice.

**13. FILING.** Lessee agrees, upon request, to sign any instrument necessary to the filing and recording of this lease agreement or the equipment subject hereto. Lessee further agrees and does hereby appoint Lessor its true and lawful attorney to prepare and sign any and all chattel mortgages, security agreements, financing statements, or otherwise in order to effectuate a lien on the property set forth herein, and to sign the name of the Lessee with the same force and effect as if signed by the Lessee, and to file the same at the proper location or locations.

**14. SECURITY DEPOSIT.** Any security deposit made hereunder may be applied by Lessor to cure any default by Lessee of any indebtedness to Lessor and Lessee shall promptly restore the security deposit to the full original amount.

**15. GENERAL PROVISIONS.** Failure of Lessor to enforce any of its rights shall not constitute a waiver of such rights or of any other rights. All paragraph headings and titles are for convenience only and shall in no way be held to explain, modify, amplify or aid in the interpretation of the provisions hereof. Subject to the terms and conditions of this lease, Lessee shall quietly have and enjoy the use of the equipment described during the term of this lease without disturbance from Lessor or from anyone claiming by, through or under Lessor. This lease shall not be binding on Lessor until the same, signed by Lessee, shall be received and signed by Lessor whereupon it shall become binding on and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, administrators and assigns. No amendment or modification of this lease shall be effective unless in writing and signed as herein provided for the execution of this lease, Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, financial statements and other documents (including UCC financing statements and other documents for filing or recording) as Lessor shall reasonably request from time to time. If more than one Lessee is named in this lease the liabilities shall be joint and several. Time is of the essence of this lease. If any portion of this contract is deemed invalid, it shall not affect the balance of this agreement. This lease agreement shall be governed by and construed in accordance with the laws of the state of Arkansas. Lessee hereby consents and submits to the jurisdiction of the courts of the state of Arkansas for purposes of enforcement of this lease agreement. No cancellation, purchase, termination or renewal option has been given Lessee other than as specified on the face of the lease.

**Additional Clauses for Contract:**

**If the equipment does not perform to Springdale Public Works Department bid requirement, Digital Printing Solutions, Inc. will replace it with an ideal model or equipment equal to or greater than comparable features and capabilities.**

**Includes a termination addendum with the lease that provides an option of canceling the lease without penalty at any time during the term of the lease provided we give a thirty (30) day written notice as to the problems and reason for termination provided DPS having thirty (30) days from the date of the written notice to address and correct the problems to the bid requirement.**



## RECOMMENDED SOLUTIONS

QTY	Make	ITEM DESCRIPTION
1	Savin	Savin MP C3003

Mainframe includes 9" Color Touch Control Panel, 100-Sheet ARDF, Duplex, 2 x 550-Sheet Paper Trays, 100-Sheet Bypass Tray, Drums, Developer, Scan/Print Kit, USB Host Interface, Gigabit Ethernet, DOSS, PDF Direct Print, HDD Encryption, Java VM Card, Scan to/Print From USB/SD Card, 1.5GB RAM, & 250GB HDD. Envelope feeding via standard 2nd paper drawer, & bypass tray. (The standard DOSS included with the mainframe is ISO 15408 certified).

1	Savin	LCIT PB3170 (2000 Sheet large paper pedestai)
1	Savin	Fax Option Type M3

Shipping (*Free of charge*)  
 Delivery and Set up (*Free of charge*)  
 100% PC connectivity (*Free of charge*)  
 Full on-site training by Customer Support Representative (*Free of charge*)  
 ESP Power/Network/Fax Filtration Unit / Surge Supression (*Free of charge*)

### CBS Leasing \$1.00 out Internal Value Lease

Lease Term	Lease Payment
60	\$153.15

### Total Service and Supplies Included

*All parts, labor, supplies and preventitive maintenance.*

1,500 Mono pages included per month      *Overage rate*    \$0.0065  
 500 Color pages included per month      *Overage rate*    \$0.0450

*Excludes paper and staples.*

### 100% Customer Satisfaction Guarantee

If the equipment does not perform to Springdale Public Works Department bid requirements, Corporate Business Systems will replace it with an ideal model or equipment equal or greater than comparable features and capabilities.

### Addendum to Contract

Springdale Public works contract will include a termination addendum with the lease that provides an option of canceling the lease without penalty at any time during the term of the lease provided that the Springdale Public Works Department give a thirty (30) day written notice as to the problems and reason for termination provide Corporate Busnienss Systems having thirty (30) days from the date of the written notice to address and correct the problems to the bid requirement.

#### Note:

Lease is internal with Corporate Business Systems

**BOGO (Buy One Get One Free) CBS will provide Savin/Ricoh MPC 2500 Color Copier Free of charge.**

Service and Supplies to be charged at \$16.00 per month for 1000 Mono pages and 100 Color pages. Overages @ \$0.095 mono, \$0.065 color.



Value Lease Agreement

APPLICATION NO.

AGREEMENT NO.

3348 East Cherry Street • Springfield, MO 65802 • Phone: 417-831-6400 • Fax: 417-831-3183

The words Lessee, you and your refer to Customer. The words Lessor, we, us and our refer to Corporate Business Systems of Missouri, Inc.

CUSTOMER INFORMATION

FULL LEGAL NAME Springdale Public Works Department			STREET ADDRESS 289 E. Randall Wobbe Ln.	
CITY Springdale	STATE AR	ZIP 72764	PHONE 479-750-8135	FAX 479-750-8504
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY	STATE	ZIP	E-MAIL	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES	SERIAL NO.	STARTING METER
Savin MPC 3003 with LCIT PB3170 (2000 Sht. Large paper pedestal), Fax Option Type		

together with all replacements, parts, repairs, additions, and accessories incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries.  
 See the attached Schedule A       See the attached Billing Schedule

TERM AND PAYMENT SCHEDULE

Term in <u>60</u> Months	<u>60</u> Payments* of \$ <u>153.15</u>	*plus applicable taxes
The lease contract payment ("Payment") period is monthly unless otherwise indicated.		
Payment includes <u>1500</u>	B&W Copies per month	Overages billed monthly at \$ <u>.0065</u> per B&W copy*
Payment includes <u>500</u>	Color Copies per month	Overages billed monthly at \$ <u>.045</u> per Color copy*
Payment includes _____	B&W Prints per month	Overages billed monthly at \$ _____ per B&W print*
Payment includes _____	Color Prints per month	Overages billed monthly at \$ _____ per Color print*

By initialing here, you agree that service and supplies are not included in this Agreement.

END OF LEASE OPTIONS

You may choose one of the following options within the area you check and initial at the end of the original term, provided that no event of default under the Agreement has occurred and is continuing. If no box is checked and initialed, then Fair Market Value will be your end of lease option. Leases with \$1.00 or \$101.00 purchase options will not be renewed. To the extent that any purchase option indicates that the purchase price will be the "Fair Market Value" (or "FMV"), such term means the value of the Equipment in continued use.

- 1) Purchase all but not less than all the Equipment for the Fair Market Value per paragraph 1, 2) Renew the Agreement per paragraph 1, or 3) Return the Equipment per paragraph 3. \_\_\_\_\_ Customer's Initials
- 1) Purchase the Equipment for \$1.00, or 2) Return the Equipment per paragraph 3. \_\_\_\_\_ Customer's Initials

**THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.**

LESSOR ACCEPTANCE

Corporate Business Systems of Missouri, Inc. \_\_\_\_\_  
 LESSOR: SIGNATURE TITLE DATED

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

CUSTOMER (as referenced above) X SIGNATURE TITLE DATED

FEDERAL TAX I.D. # \_\_\_\_\_ PRINT NAME \_\_\_\_\_

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promise herein will be irrevocable and unconditional in all respects. You understand that you have purchased the Equipment from the Supplier, and you may contact the Supplier for a full description of any warranty rights under the supply contract, which we hereby assign to you for the term of this Agreement (or until you default). Your approval as indicated below of our purchase of the Equipment from the Supplier is a condition precedent to the effectiveness of this Agreement.

CUSTOMER (as referenced above) X SIGNATURE TITLE DATE OF DELIVERY

1. **AGREEMENT:** For business purposes only, you agree to lease from us the goods (the "Equipment") and/or to finance certain leased software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), as described on page 1 of this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to start or insert missing Equipment identification information and to make corrections to your proper legal name and address. This Agreement becomes valid upon execution by us. If service and supplies are not included, this Agreement will start on the date we pay the supplier and interim rentable date adjustments will be in an amount equal to 1/20th of the Payment, multiplied by the number of days between the Agreement start date and the first Payment due date. This Agreement will renew for 12-month term(s) unless you purchase or return the Equipment (according to the conditions herein) or s and us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. **RENT, TAXES AND FEES:** You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimates, tax payments and other charges paid under this Agreement.

3. **MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST:** At your expense, you agree to keep the Equipment (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, if you do not purchase the Equipment, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-sale condition, full working order and complete repair. You are solely responsible for removing any debt that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A, and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due, in the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 322 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

4. **COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE:** You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, we may charge you a monthly property damage surcharge of up to .0055 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 2%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.

5. **ASSIGNMENT:** YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. **DEFAULT AND REMEDIES:** You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender; (b) you make or have made any false statement or misrepresentation to us; (c) you or any guarantor dies, discharges or terminates existence; (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition; or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 2%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A, and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due, in the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 322 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. **INSPECTIONS AND REPORTS:** We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and latest performance of the terms hereof. This may include: (i) completed, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting periods). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

8. **FAKED OR SCANNED DOCUMENTS, ETC.:** You agree to submit the original duly signed documents to us via overnight courier the same day of the scan/duplicate or scanned transmission of the documents. Any faked or scanned copy may be considered for original, and you waive the right to challenge in court the authenticity or binding effect of any faked or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intent and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, pre-recorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

9. **WARRANTY/DISCLAIMERS:** YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.

10. **LAW, JURY WAIVER:** Agreements, contracts and communications made by Lessor, concentrated loans and other credit extensions, made by, in writing, across jurisdictions and be allowed by Lessor to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with the law of the state of the principal place of business of Lessor or its assignee. You consent to jurisdiction and venue of any state or federal court in the state the Lessor or its assignee has its principal place of business and waive the defense of nonconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.

11. **MAINTENANCE AND SUPPLIES:** The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and back haul and disposal. Paper and staples must be separately purchased by you. Color toner is excluded in this Agreement. ~~and all other supplies~~ <sup>and all other supplies</sup>. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.

12. **OVERAGES AND COST ADJUSTMENTS:** You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the total per copy/print charge that exceeds the number of copies/prints originally designated in this Agreement ("Overages") by a maximum of 40% of the existing total per copy/print charge.

13. **UPGRADE AND DOWNGRADE PROVISION:** AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR COPY/PRINT VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.

14. **TRANSITION BILLING:** In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, provided on a 30-day calendar month, and will be added to your first monthly Payment.

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

**A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF SPRINGDALE, ARKANSAS TO UTILIZE FEDERAL-AID TRANSPORTATION ALTERNATIVES PROGRAM (TAP) FUNDS FOR THE CONSTRUCTION OF THE LAKE SPRINGDALE TRAILHEAD ON THE RAZORBACK REGIONAL GREENWAY PROJECT**

WHEREAS, the Northwest Arkansas Regional Planning Commission has recently approved Federal-aid Transportation Alternatives Program funds for the project at the following Federal and City participating ratios, up to the maximum Federal-aid available:

Type Work	Work Phase	Federal %	City%
Construction of Lake Springdale Trailhead Project	Construction	80	20
	Construction Engineering	80	20
City projects programmed but not let to contract	All Phases	-0-	100

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SPRINGDALE, WASHINGTON COUNTY, ARKANSAS, THAT:**

**SECTION I:** The City of Springdale will participate in accordance with its designated responsibility in this project including maintenance of this project.

**SECTION II:** The Mayor or his designated representative is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of this project.

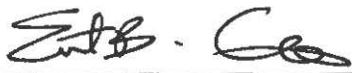
**SECTION III:** The City pledges its full support and hereby authorizes the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST: \_\_\_\_\_  
Denise Pearce, City Clerk  
(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest Cate, City Attorney

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

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH CEI ENGINEERING ASSOCIATES, INC. FOR TITLE II CONSTRUCTION PHASE SERVICES FOR CONSTRUCTION OF THE LAKE SPRINGDALE TRAILHEAD ON THE RAZORBACK REGIONAL GREENWAY.**

**WHEREAS, NWARPC, through a Tiger II grant for the Razorback Regional Greenway, entered into an Engineering Services with Alta Planning +Design and CEI Engineering Associates, Inc. to provide for engineering and design services for a trailhead at the Lake Springdale which has been completed; and**

**WHEREAS, the City has obtain funding through the Care Foundation; Illinois River Watershed Partnership funding and FY2014 TAP funds through NWARPC for construction of the trailhead; and**

**WHEREAS, the City of Springdale desires to enter into an agreement with CEI Engineering Associates, Inc. for Title II Construction Phase Services for the Lake Springdale Trailhead.**

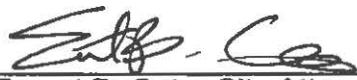
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF SPRINGDALE, ARKANSAS, that the Mayor and City Clerk are hereby authorized to execute an agreement, a copy of which is attached and made a part of this resolution, for services to be provided by CEI Engineering Associates, Inc. for the Lake Springdale Trailhead Project in an amount not to exceed \$13,400.**

**PASSED AND APPROVED this \_\_\_\_\_ day of February, 2014.**

\_\_\_\_\_  
**Doug Sprouse, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Denise Pearce, City Clerk  
APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**Ernest B. Cate, City Attorney**



**I. PROJECT DEFINITION**

Thank you for the opportunity to represent your interests regarding the development of the pedestrian trailhead in Springdale, Arkansas. Project scope to include engineering, consulting and permitting for a new trailhead and parking facility on Pump Station Road in Springdale, Arkansas.

**II. SCOPE OF BASIC SERVICES**

**A. Topographic Survey** - CEI to provide a topographic survey of the physical features as found on the subject property for the area needed for the design of a trailhead and parking lot to contain approximately 50 vehicles. Survey to include but not limited to natural ground, buildings, drive ways, fences, visible utilities and underground utilities as marked by a utility locate service and any other visible items at the time of the field work for the area. This survey shall also include 1 foot contour intervals.

**Total this phase** **\$ No Charge**

**B. Final Site/Civil Design Plans** - Provide final design development documentation as prescribed by City code from conceptual plan prepared by CEI. This includes collaboration with governmental authorities and project team consultants for the development of a trailhead and parking facility, and any civil design as prescribed by City code as well as any documentations necessary for City Planning Department submission. This includes all associated meetings through the City of Springdale development review process (administrative review only). Copying, review fees, mileage and postage/shipping charges will be billed as reimbursable expenses.

The construction drawings shall include:

- Cover Sheet
- Site Plan
- Grading Plan(s)
- Erosion Control Plan(s) & SWPPP
- Utility Plan(s)
- Landscape Plan(s)
- Detail Sheet(s)

After completion and City approval of Design Development plans CEI will provide final design documents, details, specifications and technical submissions for construction, and process permits with City of Springdale, City of Springdale Water and Sewer, and Arkansas Department of Environmental Quality SWPPP, as required for the project. This includes any City and project team meetings and representation as required.

**Total this phase** **\$ No Charge**

**C. Project Bidding** – CEI shall provide all required bidding support as requested by owner to meet all State of Arkansas Standards for bidding procedures and requirements. Services to include cost estimating, construction specifications, public notification coordination, bidding administration, contractor qualification and recommendation of award. Contract fee is for each bidding occurrence.

**Total this phase** **\$ 5,500.00**

**D. Limited Construction Administration / Observation** - Expect a certain amount of required construction administration by City Code and State requirements for site/civil public infrastructure improvements. CEI will provide administration of civil related construction, construction assistance, coordinate preconstruction meeting, review payment applications, testing of public infrastructure (if required), generate record drawing plans (not as-built survey), coordinate final inspection and all City project closeout documents.

*Anticipated are 20 site visits throughout the duration of the project by the CEI Construction Observer. This is estimated at approximately 3.0 hours per trip at \$65/Hr = \$3,900.00. To coordinate project start up, construction administration and close out items estimate is 40 hours for Project Manager at \$100/Hr = \$4,000.00. If additional services beyond the estimated 20 site visits are requested by the owner (or required by the City) the fee will be billed at CEI hourly rates as listed below and/or renegotiated.*

**Total this phase** **\$ 7,900.00**

**E. Reimbursable Expenses** - Copying, utility locate services, review fees and postage/shipping charges, and mileage will be billed as reimbursable items.

**Total this phase** **\$ As Expended**

*Note: this is a limited service agreement. CEI hereby notifies the Client that it shall assume no responsibility for any or all interpretations, coordination, and administrations of documents it did not create or for the lack of those items listed above and shall be held harmless for any and all errors as a result of the above or deviations or additions of said documents, unless otherwise specified in an executed services agreement.*

**III. RESPONSIBILITY OF CLIENT:**

Client will provide to CEI, the following items:

- Access to subject property.

**IV. SERVICES NOT INCLUDED/ADDITIONAL SERVICES**

In addition to the services described above, CEI is capable and available to provide the following services on an "as requested" basis. An Extra Work Authorization (EWA) form or contract amendment will be issued for any services outside the scope of this proposal. All EWA's or contract amendments will be approved and signed by the Client identified herein prior to beginning work. All additional services will be performed on an hourly basis per the current Schedule of Charges.

- Feasibility Study to include any or all physical, political and/or financial opportunities or constraints.
- Perspectives, renderings, and models.
- Conditional Use requests.
- Rezoning.
- Traffic studies.
- Environmental Impact Analysis.
- Preparation of estimates of probable construction costs.
- Retaining wall designs over 48".
- Sight lighting plans/Photometrics.
- Off-site utility plans other than those immediately adjacent to the subject property.
- Final surveyed as-built record drawings.
- Historical or archeological studies.
- Construction Staking.
- Irrigation design.
- Geotechnical engineering.
- Easement preparation.

**V. SCHEDULE OF CHARGES**

Charges for our services are divided into three categories: Labor, Consultants, and Reimbursable Expenses. A new schedule of charges is issued at the beginning of each year. The schedule of charges may also be revised during the year as conditions dictate.

**LABOR:** For fees billed on an hourly basis, labor charges are billed by category as follows:

<b><u>ARKANSAS (04-14-11)</u></b>	
Officer / Regional Manager	\$135.00
Department Manager	\$120.00
Program Manager	\$105.00
Registered Landscape Architect	\$100.00
Project Manager	\$100.00
Planning Project Manager	\$100.00
Project Engineer	\$100.00
Assistant Project Manager	\$ 95.00
Survey Project Manager	\$ 90.00
Project Designer	\$ 85.00
Assistant Survey Project Manager	\$ 80.00
Project / Planner Administrator	\$ 80.00
CAD Designer	\$ 75.00
Survey Party Chief	\$ 75.00
Survey Technician	\$ 70.00
CAD Technician	\$ 65.00
Construction Observer	\$ 65.00
Field Specialist	\$ 60.00
Program Assistant	\$ 55.00

**SUB-CONSULTANT SERVICES:** In cases where CEI retains another engineering consultant to provide services outside of our area of practice, cost of such services will be charged at actual invoice cost, subject to prior approval by client.

**REIMBURSABLE EXPENSES:** Outside services, and related materials, will be charged at the actual invoice cost. In addition, direct out-of-pocket costs such as postage, delivery services, travel (other than vehicle mileage), and subsistence expenses will be charged at actual costs. Vehicle mileage is billed at the applicable I.R.S. rate allowed per mile.

All impact, permitting, expediting, and review fees will be charged at 15% over the cost of the fee unless the client is willing to pay those fees directly to the service provider.

- VI. CREDIT POLICY:** Terms will be given only to clients with approved credit. Invoices will be rendered monthly, either as final or progress billing. CEI payment terms are net 30 days. Invoices past 30 days due will be subject to a monthly service charge, which will be assessed in compliance with state usury laws. Should the account be placed for collection with an outside collector, the cost of such collections will be added to the principal amount owed. CEI may stop work on any account that is 60 days delinquent. In the event that CEI elects to stop work as provided herein, Client will be assessed a resumption of work charge equal to 20% of the total contract amount. Said resumption of work charge and all outstanding invoices must be paid in full by Client prior to the resumption of work on the project. Client agrees that the balance as stated on the invoice from CEI to Client is correct, conclusive, and binding on the Client unless Client within thirty (30) days from the date of the receipt of the invoice notifies CEI in writing of the particular item that is alleged to be incorrect.

Client's Initials \_\_\_\_\_

Required for contract to be valid

**VII. STANDARD TERMS AND CONDITIONS**

**STANDARD OF PRACTICE**

Services performed by CEI under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by engineers currently practicing in the same locale under

similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this Agreement, or in any report, opinion, document, or otherwise. All other common law warranties are hereby expressly disclaimed.

Client agrees that payment of all CEI invoices under this Agreement is for services rendered on behalf of Client and payment is not conditioned on (1) the receipt of any municipal or governmental approvals, authorizations, permits, or licenses or any type; (2) the availability of any utility services; or (3) payment to Client by any third party.

#### **OWNERSHIP OF DOCUMENTS**

All documents including drawings and specifications prepared or furnished by CEI pursuant to this Agreement are instruments of service in respect to the project and CEI shall retain an ownership and property interest therein whether or not the project is completed. Client may make and retain copies for information and reference in connection with the use and occupancy of the project by Client or others.

#### **RE-USE OF DOCUMENTS**

Copies of all reports, drawings, specifications, field data, field notes, laboratory test data, calculations, estimates, and other documents provided to Client as instruments of service are for use on the project specifically described in this Agreement. Any re-use of these by the Client for any other project or extension of this project, without the express, written authorization, verification, or adaptation by CEI, will be at Client's sole risk and without liability or legal exposure to CEI or CEI's independent professional associates or consultants, and Client shall indemnify, hold harmless and defend CEI and CEI's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom.

#### **INSURANCE**

CEI maintains the following insurances:

Worker's compensation of a form and in an amount as required by law and employer's liability insurance of \$1,000,000.

Comprehensive general liability with limits of \$4,000,000 (\$2,000,000 per occurrence), and automotive liability insurance with limits of \$1,000,000 combined single limit.

Excess liability umbrella insurance of \$5,000,000.

Professional liability insurance with a limit of \$2,000,000, per claim/annual aggregate.

Upon written request of Client, CEI will provide additional insurance, if available; including increased coverage and/or limits, and the Client will pay CEI an agreed amount for the increased coverage.

#### **LIMITATION OF LIABILITY**

The Client hereby agrees that, to the fullest extent permitted by law, CEI's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising including but not limited to CEI's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed the total sum paid on behalf of or to CEI by CEI's insurance policies applicable thereto and CEI's deductible amounts (excluding fees, costs & expenses of investigation, claim adjustment, defense, and appeal)

Any service deleted from this offer by the client will become the responsibility of the client. If this proposal was written without the benefit of an on-site investigation, changes in the scope may be necessary. CEI shall be held harmless in the event that any unseen condition adversely affects the design or intended use of the property in any way.

#### **INDEMNIFICATION**

The Client will indemnify, hold harmless and defend CEI, its officers, directors, employee, agents, consultants, and subconsultants from and against any and all liabilities, damages, or expenses, including without limitations any and all legal costs and expenses; whatsoever in connection with any personal injury or property damage arising out of or in any way connected with the negligence, reckless, or intentional acts or omissions by Client, its officers, directors, shareholders, agents, employees, consultants, and subcontractors, whether said acts or omissions and negligent reckless intentional or unintentional.

Further, the Client shall, to the fullest extent of the law, indemnify, defend and hold harmless CEI, its directors, officers, employees, agents and subcontractors from and against all claims or action, based on, or arising out of, damages or injuries to persons or property caused by, or arising out of, any hazardous, and/or toxic substances present at the site where CEI and/or its subcontractors have performed work.

In accordance with generally accepted construction practices, the client and client's contractors shall be solely and completely responsible for the conditions of the job site, including the health and safety of all persons and property during performance of the work. This requirement will apply continuously and not be limited to normal working hours. Any construction observation by the engineer of the contractor's performance is not intended to include review of the adequacy of the contractor's safety measures, in, on, or near the construction site.

#### **DISPUTE RESOLUTION**

Client and CEI agree to attempt to settle all claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement by direct discussions; however, absent resolution by direct discussions, they agree to attempt to settle disputes by formal mediation according to the Construction Industry Mediation Rules of the American Arbitration Association. Absent resolution by mediation they agree to binding arbitration under the Rules of the American Arbitration Association.

#### **SEVERABILITY**

Any element of this Agreement later held to violate a law or regulation shall be deemed void, and all remaining provisions shall continue in force. However, the Client and CEI will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision.

#### **PROJECT PUBLICITY AND RECOGNITION**

During development construction, or upon completion of the project, CEI's name will be included on any public recognition / project identification display indicating design team, owners, and / or financiers. CEI shall be allowed to place or hang a temporary banner on the site during construction of the project.

#### **LIEN RIGHTS**

Client agrees that CEI shall have a lien upon real property constituting the project site for all unpaid sums due pursuant to this agreement or any addendum hereto, and that CEI is authorized to perfect a lien, enforce the lien, and foreclose the lien in the manner prescribed under local statutes for the perfection, enforcement and foreclosure of a mechanic and material man's lien upon real property.

All provisions under the heading "STANDARD TERMS AND CONDITIONS" shall survive termination or completion of this agreement.

#### **AMENDMENTS**

The duties, responsibilities, and limitation of authority of the Client or CEI shall not be made or extended without a written, executed agreement between CEI engineering Associates, Inc and the Client.

#### **SUCCESSORS AND ASSIGNS**

CEI Engineering Associates, Inc and the Client each bind themselves, their associates, directors, partners, successors, executors, administrators and assigns to the other party to this Agreement and to the associates, directors, partners, successors, executors and administrators and assigns to such other party, with the respect to all obligations contained in this Agreement. CEI Engineering Associates, Inc. may assign its rights and obligations under this Agreement at any time without the consent of the Client. However, the Client shall not assign its obligations under this Agreement or sublet as a whole, without the prior written approval by CEI Engineering Associates, Inc.'s of the successor or assignee and its ability to comply with the terms and conditions of this and/or subsequent written Agreement. All assignments made by Client without CEI Engineering Associates, Inc.'s consent shall be considered null and void.

**TERMINATION**

Either Party may terminate this Agreement in full or in part, in writing, if the other Party fails to fulfill its obligations under the Agreement through no fault of the other Party. In such event, one may declare the other in default by issuing a written Declaration of Default and terminate the Agreement for cause. Prior to, an opportunity to cure any default or breach shall be given by way of a written notice being delivered to the Breaching Party including a description of the conditions constituting default or breach of the Agreement and providing the Breaching Party a period of time of ten (10) days within which to correct such conditions. If defined default or breach is not corrected within allotted number of days, then the written Declaration of Default may be issued. Upon any termination or suspension of an Agreement, CEI Engineering Associates, Inc. shall be paid for all work performed up to the date of termination or suspension.

**PROVIDED DATA**

Any information or data provided by Owner or Owner's representatives or by a third party as directed by Owner or Owner's representative to CEI to be used as base or supplemental information or data to the scope shall be considered reliable and CEI shall be held harmless to any errors or omission due to its use.

**SITE SAFETY OR CONTROL**

In no form or fashion shall it be implied or assumed, unless expressly written into scope, that CEI has or will be responsible for an Owner's or Contractor's control of the site nor will CEI dictate the means and methods of the Owner, Contractor and Contractor's subcontracts regarding preparation of, conducting, and the completion and closeout of construction, safety, and control of site.

All provisions under the heading "STANDARD TERMS AND CONDITIONS" shall survive termination or completion of this agreement.

- VIII. APPROVAL SIGNATURE AND AUTHORIZATION TO PROCEED:** Execution of this document in all required locations shall form the entire Professional Services Agreement between the Client and CEI. Two copies of this Proposal and Agreement shall be signed by the Client and one copy shall be returned to CEI.

In the event that the Client issues a notice to proceed to CEI prior to the execution of this contract, the Client acknowledges that the services rendered by CEI will be in accordance with the terms and conditions contained in this proposal.

In the event that the client instructs services on the contract/agreement to be on hold for a period greater than forty-five days, client acknowledges that CEI will not proceed until a new contract between CEI and the client can be executed.

This proposal shall become null and void if signatures have not been obtained within forty-five days of proposal date. If authorization to proceed is not given after the proposal has been executed said agreement will become null and void within forty-five days of the date of the Client's signature.

**The following is the complete client name and address that is responsible for payment of CEI invoices:**

\_\_\_\_\_  
Complete Client Name – Responsible for payment of invoice (include Inc., LLC, etc.)

\_\_\_\_\_  
Complete mailing address to mail invoice (Street / PO Box/ Suite number if needed)

\_\_\_\_\_  
City / State / Zip Code to mail invoice

\_\_\_\_\_  
Complete Phone Number

\_\_\_\_\_  
Signature, Client

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature, CEI Engineering Associates, Inc.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## **Patsy Christie**

---

**From:** Erin Rushing [erushing@ceieng.com]  
**Sent:** Monday, December 02, 2013 3:32 PM  
**To:** Patsy Christie  
**Cc:** Tom Oppenheim  
**Subject:** RE: Pump Station Rd Trailhead 11-15-13

**Attachments:** Pump Station Rd Trailhead 12-2-13.pdf



Pump Station Rd  
Trailhead 12-2...

Patsy, sorry I am just now getting back in the groove of things being out on vacation and then Thanksgiving. Attached is a revised proposal removing the final site civil design work of the trailhead.

Please let me know if you have any questions.

Thanks.

Erin Rushing, RLA | Department Leader  
CEI Engineering Associates, Inc.  
3108 S.W. Regency Pkwy, suite 2 | Bentonville, AR 72712  
Phone: 479-273-9472 | Cell: 479-531-9147

-----Original Message-----

**From:** Patsy Christie [mailto:pchristie@springdaleark.gov]  
**Sent:** Friday, November 15, 2013 10:49 AM  
**To:** Erin Rushing; pchristie@springdaleark.org  
**Cc:** Tom Oppenheim; 'Charles Flink'; 'John McClarty'  
**Subject:** RE: Pump Station Rd Trailhead 11-15-13

Thanks Erin. John McClarty told me yesterday that the Razorback Greenway Contract with Alta included the trailhead design work up to construction management. I did not realize that, so I guess we need to work out the arrangements for construction management and inspection and we might handle inspection through the City. When you get back we can discuss it further.

Patsy Christie, Director  
Planning & Community Development  
201 Spring Street  
Springdale, AR 72764

(479) 750-8588

-----Original Message-----

From: Erin Rushing [mailto:erushing@ceieng.com]

Sent: Friday, November 15, 2013 10:36 AM

To: pchristie@springdaleark.org

Cc: Tom Oppenheim

Subject: Pump Station Rd Trailhead 11-15-13

Patsy, attached is the proposal for doing final design, permitting, bidding and construction for the trailhead on Pump Station Road.

I will be out of the office next week but please feel free to reach out to Tom Oppenheim if you have any questions or need anything while I am out.

Thanks.

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

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AGREEMENT WITH USI ENGINEERS, INC. FOR TITLE II CONSTRUCTION PHASE SERVICES FOR CONSTRUCTION OF THE SANDERS AVENUE TRAILHEAD ON THE RAZORBACK REGIONAL GREENWAY.**

**WHEREAS, NWARPC, through a Tiger II grant for the Razorback Regional Greenway, entered into an Engineering Services with Alta Planning +Design and USI Engineers Inc. to provide for engineering and design services for a trailhead at the Sanders Avenue which has been completed with the exception of the restroom facility ; and**

**WHEREAS, NWARPC applied for and received a TCSP grant for the construction of the trailhead and through agreement with the City and the Arkansas Highway and Transportation transferred grant administration responsibility to the City; and**

**WHEREAS, the City of Springdale desires to enter into an agreement with USI Consulting Engineers, Inc. for the Title II Construction Phase Services for the Sanders Avenue Trailhead (City of Springdale CIP Project NO. CPI201; AHTD Job. No. 040658/F.A/P/TCSP-12AR92; USI Project No. 1409006.00).**

**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 execute an agreement, a copy of which is attached and made a part of this resolution for services to be provided by USI Consulting Engineers, Inc., for the Sanders Avenue Trailhead Project (CIP Project NO. CPI201; AHTD Job. No. 040658/F.A/P/TCSP-12AR92; USI Project No. 1409006.00) is an amount not to exceed \$27,600.**

**PASSED AND APPROVED this \_\_\_\_\_ day of February, 2014.**

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk  
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest B. Cate, City Attorney

**ATTACHMENT 'A'**

**SCOPE OF SERVICES**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS**

**SANDERS AVENUE TRAILHEAD**

**CITY OF SPRINGDALE CIP PROJECT NO. CP1202**

**AHTD JOB NO. 040658 / F.A.P. TC SP-12AR(2)**

**USI PROJECT NO. 1409006.00**

**1. Scope of Project**

The Project shall consist of design of a trailhead at the Sanders Avenue location, previously purchased by the City, consisting of a restroom facility, ADA accessible, with parking, driveway entrance, landscaping, lighting and other amenities such as seat walls, picnic shelter, sidewalks and bus drop-off and pick-up turn out off Sanders Avenue. The project shall also include a parking lot on the north side of Sanders Avenue adjacent to the Razorback Greenway Regional Trail.

**2. Basic Services**

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

**3. Preliminary Design Phase**

Prepare preliminary design of proposed improvements on CITY standard sheet templates showing all existing facilities to an appropriate scale. Prepare a preliminary cost estimate for the project.

**4. Final Design Phase**

Prepare final design, plans, specifications, details, sections, and other items required for a complete bid package. All plan sheets are to use CITY standard sheet templates. Include required contents of bidding proposals for Federal-Aid Projects provided by AHTD.

**5. Bid/Award Phase**

Obtain written authorization from AHTD to advertise for bids. During the bidding phase of the project, the Engineer will dispense construction contract documents to prospective bidders (at the approximate cost of reproduction and handling), support the contract documents by preparing addenda as appropriate, participate in a pre-bid meeting if

necessary, attend the bid opening, prepare bid tabulation, evaluate bids, provide a recommendation regarding contract award, request concurrence of the contract award from AHTD, and prepare construction contracts.

**6. Construction Phase Services**

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

- a. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
- b. Perform construction layout surveys consisting of a suitable number of benchmarks and control points for site references as shown in the plans and specifications.
- c. 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, however, 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.
- d. Attend progress/coordination meetings with the City/Contractor.
- e. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by the Engineer on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner.
- f. Maintain a set of working drawings and prepare and furnish record drawings.
- g. When authorized by the City, prepare change orders for changes in the work from that originally provided for in the construction contract documents.
- h. Attend, along with the City's representatives, a final inspection of the project, and prepare a deficiency list to be submitted to the Contractor.
- i. Prepare a final Reconciliation Change Order and final pay estimate.

**7. Project Deliverables**

- a. Two copies of the Preliminary Plans and cost estimate.
- b. Three copies of the Final Plans, Specifications, and cost estimate (one to be submitted to AHTD).
- c. Two full-size and two half-size copies of the Construction Plans.
- d. One copy of the executed contract and two copies of the construction specifications, including addenda.
- e. Three copies of the Final Plans and Specifications to the Contractor.
- f. Two copies of the approved shop drawings and submittals from the Contractor.
- g. One hard copy set of Record Drawings.
- h. Electronic files as requested.

**8. General**

- a. All construction shall follow the guidelines described in the City of Springdale Design Standards.
- b. 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.
- c. Plans shall be reducible, and legible, to scalable half size plans on 11" x17" sheets. Provide final plans on computer disk in a format compatible with the current AutoCAD release used by the City of Springdale.
- d. Record drawings shall be provided on computer disk in AutoCAD format in addition to the reproducible drawings.
- e. Attend meetings with Owner and Agencies for plan review, and project coordination.
- h. 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".
- i. 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.

- j. 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.
- k. Subcontracting of services by the ENGINEER shall have prior approval of the OWNER.

**ATTACHMENT "B"**

**SCHEDULE**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS**

**SANDERS AVENUE TRAILHEAD**

**CITY OF SPRINGDALE CIP PROJECT NO. CIP1202**

**AHTD JOB NO. 040658 / F.A.P. TC SP-12AR(2)**

**USI PROJECT NO. 1409006.00**

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:

- Final Design                                    90 calendar days from Notice to Proceed
- Bid Services                                     30 calendar days from Notice to Proceed
- Construction Services                        90 calendar days from Notice to Proceed

**ATTACHMENT "C"**

**ADDITIONAL SERVICES**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS**

**SANDERS AVENUE TRAILHEAD**

**CITY OF SPRINGDALE CIP PROJECT NO. CIP1202  
AHTD JOB NO. 040658 / F.A.P. TC SP-12AR(2)  
USI PROJECT NO. 1409006.00**

In accordance with Article III, if Additional Services under this AGREEMENT are determined necessary, they must be approved by the CITY prior to beginning services. Such services may include but are not limited to the following:

- Perform field surveys to determine existing monumentation and establish land lines, ownership lines, rights-of-way and easements. CITY will provide ownership information for properties along project route including copies of recorded plats, legal descriptions for unplatted tracts and easements and right-of-way information.
- Reference existing monuments for replacement after construction.
- Stake proposed right-of-way and easements at intervals which will provide intervisible points for appraisal and acquisition purposes. Larger tracts shall be staked at property lines and at intervisible points. A full restaking of right-of-way and easements shall be completed for acquisition and/or construction purposes.
- Provide property record search
- Prepare right-of-way plans 1" = 50' scale or larger scale. Identify property subdivisions, existing and proposed rights-of-way and easements, ownership names, assigned tract numbers, addresses, temporary construction easements and related information.
- Provide tabulation of tracts, ownerships, and area calculations (permanent and temporary construction easements) for each acquisition, including areas of prescriptive easements.
- Provide other services not specifically set out under the above scope of work, if required, and as directed by the Owner and mutually agreed to by the Engineer.

**ATTACHMENT "D"**

**COMPENSATION**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS**

**SANDERS AVENUE TRAILHEAD**

**CITY OF SPRINGDALE CIP PROJECT NO. CIP1202**

**AHTD JOB NO. 040658 / F.A.P. TC SP-12AR(2)**

**USI PROJECT NO. 1409006.00**

- CITY shall pay ENGINEER for Basic Services rendered an amount equal to \$27,650 as follows:

Design Services	\$ 12,600
Bid Services	\$ 3,350
Construction Services	<u>\$ 11,700</u>
<b>TOTAL BASIC SERVICES</b>	<b><u>\$27,650.</u></b>

- Basic Services: Payment by CITY will be monthly based upon percentage completed for each specific phase.
- Reimbursable Expenses: CITY shall pay ENGINEER the actual cost of Reimbursable Expenses incurred in connection with Basic and Additional Services. Reimbursable Expenses must be approved by the CITY prior to the incurrence of such expenses. The estimated amount of Reimbursable Expenses to be incurred in connection with Basic Services is:

**TOTAL Reimbursable Expenses**                      **\$ 450.**

- Additional Services: Any and all Additional Services must be approved, and maximum amount to be paid for said services agreed to, in writing by CITY prior to rendering of same. CITY shall pay ENGINEER for Additional Services rendered an amount equal to the cumulative hours charged to the Project for each class of ENGINEER's employees multiplied by ENGINEER'S Hourly Rates as shown on the Attached Exhibit "1", plus approved Reimbursable Expenses and ENGINEER'S Consultant charges, if any. For ENGINEER'S Consultant charges, the CITY shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.

- **ENGINEER shall submit invoices monthly for services rendered and expenses borne. For Additional Services, the invoice will be itemized by payment categories including hours worked for each class of ENGINEER's employees multiplied by the hourly rates as shown in Exhibit 1. If requested, the invoices shall be accompanied by a copy of the timesheets for all ENGINEER's personnel working on the project.**
- **The Hourly Rates used as a basis for payment for Additional Services mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the PROJECT, including, but not limited to, engineers, architects, surveyors, designers, draftsman, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto; plus operating margin or profit, non-project operating costs, and all general and administrative overhead costs, including but not limited to, furnishing and maintaining office facilities, furniture, utilities, vehicles and equipment.**
- **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.**

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

**A RESOLUTION AUTHORIZING EXECUTION OF AN ENGINEERING DESIGN CONTRACT FOR 56<sup>TH</sup> STREET IMPROVEMENTS**

**WHEREAS**, the City of Springdale approved a bond measure in August of 2012 to provide 45 million dollars for the purpose of roadway improvement projects, and

**WHEREAS**, under this bond measure the City of Springdale is planning street improvements to 56<sup>th</sup> Street from Hwy 412 to Bleaux Avenue, and

**WHEREAS**, using the procurement procedures required by State Law, the program management team made recommendations and the CIP Committee has selected the engineering firms for each project as listed below;

<b>Project</b>	<b>Engineering Firm</b>	<b>Design Service Fee</b>	<b>Construction Service Fee</b>
56 <sup>TH</sup> Street- Hwy 412 to Bleaux Avenue	Engineering Services, Inc	8%	4%

**WHEREAS**, contracts have been submitted for review using a percentage of construction cost basis for these projects (does not include geotechnical services or traffic studies which are to be negotiated as separate subcontracts and subject to full reimbursement);

**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 execute engineering design contracts with the above listed engineering firms in amounts not to exceed the maximum fees listed above.

**PASSED AND APPROVED** this \_\_\_\_\_ day of February, 2014.

\_\_\_\_\_  
Doug Sprouse, Mayor

ATTEST:

\_\_\_\_\_  
Denise Pearce, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ernest B. Cate, City Attorney

# Memo

**To:** Mayor Doug Sprouse, CIP Committee and City Council  
**From:** Alan Pugh  
**Date:** February 5, 2014  
**Re:** 12BPS9; 56<sup>th</sup> Street-Hwy 412 to Bleaux Avenue; Design

---

As you are aware, the 56<sup>th</sup> Street improvements are currently under design. Based on the public input sessions and input from City Council regarding the initial design, improvements have been included from Highway 412 to Bleaux Avenue. These improvements include a continuous center turn lane along with sidewalks and the multi-use trail which are essentially an extension of 12BPS5 that includes the widening of 56<sup>th</sup> Street from Watkins to Highway 412.

The improvements north of Hwy 412 are intended to be bid along with the improvements south of 412 to make a contiguous project and to avoid two separate contractors working on different sections of the Highway 412 intersection. Due to the fact the design contract is a percentage of construction fees, the original intent was to modify the existing contract for the section south of Hwy 412 to include these improvements, however, it was discovered that this section was a lower percentage of construction costs due to previous work on the alignment south of Hwy 412 performed by the engineer. That necessitates a new contract for the project referenced above: 12BPS9, 56<sup>th</sup> Street Improvements-Hwy 412 to Bleaux Avenue.

If you have any questions or comments please feel free to contact staff at any time. This will also be discussed in detail during the upcoming CIP Committee meeting at 5:30 p.m., February 11<sup>th</sup> just before the City Council meeting.

**PROFESSIONAL SERVICES AGREEMENT**  
**between**  
**THE CITY OF SPRINGDALE, ARKANSAS**  
**and**  
**ENGINEERING SERVICES, INC.**  
**for**  
**2012 STREET BOND PROGRAM**  
**for**  
**56TH STREET IMPROVEMENT PROJECT**  
**(HIGHWAY 412 TO BLEAUX AVENUE)**

**CITY OF SPRINGDALE PROJECT NO. \_\_\_\_\_**  
**ESI WORK ORDER NO. 14903**

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, and Engineering Services, 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:

Widen and reconstruct approximately 1,600 linear feet of 56th Street to a five lane street with two driving lanes each direction, a center turn lane, and sidewalks from the northern side of the intersection of 56th Street and Highway 412 (West Sunset Avenue) to the intersection of 56th Street and Bleaux Avenue, 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:  
 ENGINEERING SERVICES, INC.  
 1207 South Old Missouri Road  
 Springdale, AR 72764 (Physical Address)  
 P.O. Box 282  
 Springdale, AR 72765-0282 (Mailing Address)

- 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.

**ARTICLE VI  
INSURANCE**

Sec. 6.0. The ENGINEER shall carry Public Liability Insurance in at least the amounts specified below and shall deliver Certificates of Insurance from carriers acceptable to the CITY specifying satisfaction of such limits prior to commencing work under this AGREEMENT. In addition, the insurer must agree to give the CITY 30 days notice of any modification or cancellation of coverage.

Sec. 6.1. Workmen's Compensation and Employer's Liability

Coverage A - Statutory Requirements  
Coverage B - \$100,000 Per Occurrence  
Coverage C - \$100,000/\$100,000 Accident and/or Disease  
All States Endorsement

Sec. 6.2. Automobile Liability, including Owned, Non-Owned and Hired Car Coverage.

Limits of Liability:

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
	OR
Single Limit:	\$2,000,000 each occurrence
Bodily Injury	
Property Damage	

Sec. 6.3. Comprehensive General Liability

Limits of Liability:

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence
	OR
Single Limit:	\$2,000,000 each occurrence
Bodily Injury	
Property Damage	

- a. Completed Operation/Products
- b. Contractual Liability for Specified Agreement
- c. Personal Injury
- d. Medical Malpractice

**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:**

<b>Aggregate</b>	<b>\$1,000,000</b>
<b>Per Claim</b>	<b>\$1,000,000</b>

**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. 7.4. 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**

**ENGINEERING SERVICES, INC.**

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

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

Honorable Doug Sprouse, Mayor  
Title

Brian Moore, Vice-President  
Title

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Attest

Denise Pearce, City Clerk  
Title

Tim Mays, Secretary/Treasurer  
Title

**ATTACHMENT 'A'**

**SCOPE OF SERVICES**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS  
2012 STREET BOND PROGRAM**

**56TH STREET IMPROVEMENT PROJECT  
(HIGHWAY 412 TO BLEAUX AVENUE)**

**CITY OF SPRINGDALE PROJECT NO. \_\_\_\_\_  
ESI WORK ORDER NO. 14903**

**1. Scope of Project**

- a. Widen and reconstruct approximately 1,600 linear feet of 56th Street to a five lane street with two driving lanes each direction, a center turn lane, and sidewalks from the northern side of the intersection of 56th Street and Highway 412 (West Sunset Avenue) to the intersection of 56th Street and Bleaux Avenue.
- b. Street improvements shall include concrete curb and gutters, an underground drainage system, lighting, and sidewalks.
- c. Coordinate street design and construction facilities with franchise utility companies' relocations to assure adequate space for all facilities and timely relocations.
- d. Coordinate with relevant regulatory agencies (FEMA and others) to resolve environmental issues and obtain permits.
- e. Provide related design services including but not limited to surveys, geotechnical, and easement and right of way acquisition documents.
- f. If needed, the relocation of water and sanitary sewer facilities owned by the Springdale Water Utility are to be included in the design and street construction contracts.

**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 (with references) along existing roadway. Set monuments on proposed centerline at 400 foot intervals and, if necessary, at intervisible points between, with a minimum of 2 monuments per site. Survey control shall be established on the State Plane Coordinate System.
- b. Locate all structures, streets, driveways, storm drains, trees larger than 6 inches in diameter, and other features within 75 feet of centerline, including intersecting streets for the lengths designated for inclusion in the project, plus additional structures on parcels from which acquisition will be made.
- 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 at approximately 500 foot intervals.
- e. All surveys shall be performed to a minimum of third order accuracy.

### **4. Right-of-Way Surveys**

- a. CITY will provide ownership information for properties along project route including copies of recorded plats, legal descriptions for unplatted tracts and easements and right of way information.
- b. Perform field surveys to determine existing monumentation and establish land lines, ownership lines, rights-of-way and easements.
- c. Reference existing monuments for replacement after construction.
- d. Stake proposed right-of-way and easements at intervals which will provide intervisible points for appraisal and acquisition purposes. Larger tracts shall be staked at property lines and at intervisible points. A full restaking of right-of-way and easements shall be completed for acquisition and/or construction purposes.
- e. As necessary, provide a property record search

### **5. Utility Surveys and Coordination**

- a. Request location and size of existing overhead and underground utilities from the utility companies.

- b. Field locate known, marked and/or observable utilities within the project area. Where conflicts with new construction will or may occur, determine elevations of existing utilities by excavation methods. Excavation and exposure of the utility facilities will be provided by the owner of the utility.
- c. Using utility field survey data, show existing utilities on plans.
- d. Submit a half-size copy of the plans at each plan development phase. Attend meetings as necessary with each affected utility company to discuss necessary adjustments or relocations and later to discuss their methods and schedule to accomplish the work. The ENGINEER will arrange all meetings with utility companies.
- e. Review utility adjustment plans and costs with CITY to determine most feasible combination of street and drainage construction and/or utility relocation to be utilized. Prepare construction plans as directed by CITY to accommodate utility relocations, including identification of utility easements on right-of-way plans.

**6. Geotechnical Investigations (If Needed)**

- a. Perform geotechnical investigations in accordance with AASHTO, AHTD, and CITY criteria.
- b. Perform sampling of subgrade soils by boring and excavation of test pits. A minimum of one boring or test pit shall be provided for every 500 lineal feet of street and at planned locations of structures. A test pit shall be completed for every 4 borings taken. For road widening projects, a portion of the tests shall be taken in ditch lines, or adjacent thereto, over which pavement structure may be constructed. Provide a boring and test pit plan for approval before beginning work.
- c. Perform soil tests to determine soil classifications, moisture content, gradations, and other appropriate tests. Soil classifications (both Unified and AASHTO) to be determined for each type of soil encountered in each boring for depths between subgrade and 8 to 10 feet below. Determine if an impervious soil layer exists (and depth thereto) which would inhibit or prevent free drainage of subgrade soils. Note and inform CITY of suspected hazardous substances encountered.
- d. After establishment of final profile grades, review soil data to determine the adequacy of the in-situ soils as a pavement subgrade assuming wet weather conditions and construction season. Make recommendations as to anticipated soil conditions and reactions to be encountered, amount of undercut to be required, stabilization with admixtures and/or utilization of geotextile/geogrid materials, utilization of permanent underdrains, and/or other construction methods or

materials to achieve a stable subgrade.

- e. Analyze the data, develop recommendations for structural foundations, slope stability, excavations, embankments, pavement geotechnical investigations not listed above, and pavement designs, and prepare a geotechnical report for the Project.

## **7. Conceptual Design Phase**

Prepare plan and profile drawings on CITY standard sheet templates showing all existing facilities. Horizontal scale of drawings to be 1 inch equals 20 feet or larger and vertical scale to be 1 inch equals 5 feet. Plans and data shall include the following information:

- a. Survey data, centerline and stations, existing improvements, boring locations, bench marks and horizontal control, and existing and proposed right-of-way.
- b. Proposed centerline, street widths, and profile grades for streets. Identify sidewalk locations.
- c. Top of bank and toe of slope lines and cross sections.
- d. Soils boring information including existing pavement sections. Soils laboratory data are not required in the concept phase.
- e. Drainage information on concept plans shall include approximate location, size and type of major structures. A drainage area map shall be furnished showing major subareas. CITY will provide storm water data, as available, for primary drainage ways.

## **8. Preliminary Design Phase**

- a. Prepare plan and profile drawings on CITY standard sheet templates showing all existing facilities. Horizontal scale of drawings to be 1 inch equals 20 feet or larger and vertical scale to be 1 inch equals 5 feet. Prepare preliminary plans, documents and data to include the following:
  - (1) Design and layout all proposed street horizontal and vertical alignment on plan and profile sheets, including TOB and TOS lines.
  - (2) Design and prepare typical street paving sections for all streets.
  - (3) Plot existing and proposed cross sections, including driveway and cross streets.

- (4) Prepare plans of intersecting streets which depict all construction required to provide a smooth transition from the proposed to the existing pavement. Show top of curb elevations or edge of pavement elevations.
  - (5) Perform drainage design calculations and show all existing and proposed drainage facilities on the plans, on both the plan and profile. Show horizontal and vertical location, elevations, grades and structure detail. A drainage area map shall be furnished showing sub areas for each inlet. Preliminary hydrology data shall include runoff quantities for the 10, 25, 50, and 100 year design storms.
  - (6) Identify water and sewer facilities requiring relocation. Meet with Springdale Water Utilities to develop project approach for water and sewer designs.
  - (7) Provide list of Engineer-developed details to be incorporated into plans.
  - (8) Draft preliminary notes on plans to fully describe the construction work to be performed.
  - (9) Prepare recommendations for sequence of construction and prepare preliminary layout of construction phasing and detours.
  - (10) Prepare preliminary storm water and erosion control plans.
  - (11) Prepare draft copy of special provisions (special conditions) to the construction specifications.
  - (12) Prepare cost estimates for preliminary design.
  - (13) Provide design report including calculations and support data.
- b. Prepare right-of-way plans to include the following:
- (1) Plans shall be drawn at 1" = 50' scale or larger scale.
  - (2) Identify property subdivisions, existing and proposed rights-of-way and easements, ownership names, assigned tract numbers, addresses, temporary construction easements and related information.
  - (3) Provide tabulation of tracts, ownerships, and area calculations (permanent and temporary construction easements) for each acquisition, including areas of prescriptive easements.
- c. Attend monthly design progress meetings with CITY.

## **9. Easement Document Preparation**

- a. Easement document preparation should not begin before review and approval; of the right of way plans.
- b. Prepare individual easement documents as necessary. This may include right-of-way, drainage, utility or temporary construction easements. Drawing and legal descriptions shall be on letter size paper.
- c. Easement document shall include title, parcel number, CITY project number, tract number (if applicable), property description, description of easement, and whatever else necessary for a legal easement.
- d. Easement drawing shall include the entire applicable property, easement(s), bearings and distances, scale and north arrow. Scale shall be such as to provide a legible, easily discernable drawing.
- e. The CITY shall make all contact with the individual property owners for the actual acquisition of easement and its execution thereof.
- f. Both one hard-copy, and one electronic copy of the drawing and description shall be provided. Electronic drawing shall be provided in AutoCAD format. At the discretion of the CITY a .pdf drawing may be requested.

## **10. Final Design Phase**

- a. Prepare final design calculations, plans, profiles, details, paving sections, cross sections, pavement designs, detours and other items. All plan sheets are to use CITY standard sheet templates.
- b. Prepare construction details which depict all typical items, including but not limited to, curbs, drainage inlets and junction boxes, underdrains, driveways, sidewalks and pavement markings utilizing the CITY format and standard detail drawings where applicable
- c. Prepare final special provisions (special conditions) to the construction contract for items not included in the CITY Standard Construction Specifications, including building demolition.
- d. Calculate construction quantities in accordance with the CITY standard construction specifications and format and submit copy of calculations.
- e. Provide construction bid proposal form in accordance with CITY format.
- f. Recommend construction contract time.

- g. Prepare complete construction specifications using City standard documents as available.
- h. Prepare opinions of probable costs.
- i. Prepare design report to include complete calculations and data.
- j. Attend monthly design progress meeting with CITY.
- k. Prepare written response to design review comments provided by CITY.
- l. Prepare a Storm Water Pollution Prevention Plan (SWPPP). According to ADEQ requirements, complete SWPPP application, for submittal, either, by the City to ADEQ, or for small acreage, permitting by the City. Plan details shall provide CONTRACTOR with necessary details to maintain a SWPPP.

#### **11. Bid/Award Phase**

During the bidding phase of the project, the Engineer will dispense construction contract documents to prospective bidders (at the approximate cost of reproduction and handling), support the contract documents by preparing addenda as appropriate, participate in a pre-bid meeting if necessary, attend the bid opening, prepare bid tabulation, evaluate bids, provide a recommendation regarding contract award, and prepare construction contracts.

#### **12. Construction Phase Services**

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

- a. Issue a Notice to Proceed letter to the Contractor and attend preconstruction meeting.
- b. Perform construction layout surveys consisting of the establishment of baselines for locating the work, with a suitable number of benchmarks and control points for site references as shown in the plans and specifications.
- c. 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.

- d. Furnish a Construction Observer to assist the Engineer in observing the progress and quality of the Work. Through the Construction Observer's observations of the Contractor's work in Progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for City against defects and deficiencies in the work. Duties and responsibilities of the Construction Observer shall consist of the following:

(1) While not required to be at project site during all construction activities, Construction Observer will be present during the majority of construction activities. Construction Observer will be present to observe all significant events, such as all testing and inspections, installation of key infrastructure components, excavations and boring activities, start-up operations of proposed facilities, and other technically demanding activities.

(2) Construction Observer shall be responsible for observing and recording the activities of the Contractor, but shall not supervise, direct, or have control over Contractor's work, nor have control or responsibility over the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the project site, for safety precautions or programs incident to Contractor's work in progress, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performance. The Engineer, through provision of the Construction Observer, neither guarantee the performances of the Contractor nor assumes the responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.

(3) In general, Construction Observer shall act as the representative of the Engineer at the Project Site, and shall act as directed by and under the supervision of the Engineer. Construction Observer shall in general coordinate with Engineer and Contractor regarding Contractor's performance, and shall only deal with Sub-Contractors through or with full prior knowledge and approval of Contractor. Construction Observer in general shall only communicate with City with prior knowledge of or at the direction of the Engineer. Construction Observer is an agent of the Engineer, and shall not be subject to instructions or direction from City or Contractor.

(4) Review the progress schedule, schedule of Shop Drawing submittals, and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.

(5) Attend meetings with Contractor, such as preconstruction meetings, progress meetings, job conferences, and other project-related meetings, and prepare and circulate copies of minutes thereof.

(6) When clarifications and interpretations of the Contract Documents are needed

by the Contractor, an RFI (Request for Information) shall be submitted to the Engineer. The Engineer will provide clarification in a written response on the RFI document, and issued back to the Contractor.

(7) Consider and evaluate Contractor's suggestions for modifications in Drawings and Specifications and report such suggestions along with Construction Observer's recommendations to Engineer. Transmit in writing to the Contractor the decision of the Engineer. Modifications to the documents should also be approved by the City.

(8) Conduct on-site observations of the Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.

(9) Report to Engineer whenever Construction Observer believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that Construction Observer believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

(10) Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

(11) Construction Observer shall prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.

(12) Construction Observer shall maintain records for use in preparing Project documentation.

(13) Construction Observer shall not:

- Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- Exceed limitations of Engineer's authority as set forth in this Agreement.
- Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
- Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.

- Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
  - Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  - Accept shop drawing or sample submittals from anyone other than Contractor.
  - Authorize Owner to occupy the Project in whole or in part.
- e. Attend progress/coordination meetings with the City/Contractor.
  - f. Set up, prepare for and attend utilities coordination meeting.
  - g. Evaluate and respond to construction material submittals and shop drawings. Corrections or comments made by the Engineer on the shop drawings during this review will not relieve Contractor from compliance with requirements of the drawings and specifications. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner.
  - h. Maintain a set of working drawings and prepare and furnish record drawings.
  - i. When authorized by the City, prepare change order for changes in the work from that originally provided for in the construction contract documents.
  - j. Attend, along with the City's representatives, a final inspection of the project, and prepare a deficiency list to be submitted to the Contractor.
  - k. Prepare a final Reconciliation Change Order and final pay estimate.

### **13. Project Deliverables**

- a. Two copies of the Traffic Study Report.
- b. One copy of the Geotechnical Report.
- c. Two copies of the hydraulic modeling calculations and drainage design.
- d. Two copies of the Concept Plans, design report and cost estimates.
- e. Two copies of the Preliminary Plans, design report, cost estimates and other supporting documents.

- f. One copy of applicable sheets of the Concept, Preliminary, and Final Plans to each potentially affected utility company.
- g. Two copies of the Final Plans, Specifications, design report, cost estimates and other supporting documents.
- h. One copy of the revised Final Plans and Specifications (Bid Set), design report, cost estimates and other supporting documents.
- i. Two full size and 2 half-size copies of the Construction Plans.
- j. One copy of the executed contract, and two copies of the construction specifications, including addenda.
- k. Three copies of the Final Plans and Specifications to the Contractor.
- l. Two copies of the right of way plans, easements and acquisition documents.
- m. Two copies of the approved shop drawings and submittals from the Contractor.
- n. One hard copy set of Record Drawings.
- o. Electronic files as requested.

**14. General**

- a. All street construction shall follow the guidelines described in the City of Springdale Street Design Standards.
- b. 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.
- c. 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.
- d. Record drawings shall be provided on computer disk in AutoCAD format in addition to the reproducible drawings.
- e. Attend meetings with Owner and Agencies for plan review, project coordination and right-of-way.
- h. 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".

- i. 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.
- j. 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.
- k. Subcontracting of services by the ENGINEER shall have prior approval of the OWNER.

**ATTACHMENT "B"**

**SCHEDULE**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS  
2012 STREET BOND PROGRAM**

**56TH STREET IMPROVEMENT PROJECT  
(HIGHWAY 412 TO BLEAUX AVENUE)**

**CITY OF SPRINGDALE PROJECT NO. \_\_\_\_\_  
ESI WORK ORDER NO. 14903**

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:

- Geotechnical Investigation        30   calendar days from Notice to Proceed
- Surveys – Design and Property        30   calendar days from Notice to Proceed
- Conceptual Design        30   calendar days from Notice to Proceed
- Preliminary Design        30   calendar days after approval of Conceptual Design
- Property Acquisition Documents        30   calendar days after approval of Preliminary Design
- Final Design        30   calendar days after approval of Preliminary Design

**ATTACHMENT "C"**

**ADDITIONAL SERVICES**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS  
2012 STREET BOND PROGRAM**

**56TH STREET IMPROVEMENT PROJECT  
(HIGHWAY 412 TO BLEAUX AVENUE)**

**CITY OF SPRINGDALE PROJECT NO. \_\_\_\_\_  
ESI WORK ORDER NO. 14903**

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

- Services during out-of-town travel required of ENGINEER, other than visits to the site or CITY's office as required by the AGREEMENT, or off-site visits not required for the work as described in Attachment "A".
- Providing materials testing and inspection services.
- Prepare to serve or serving as a consultant or witness for CITY in any litigation or other legal or administrative proceeding involving the PROJECT, unless the litigation or other proceeding is one for which ENGINEER is required to indemnify CITY under this AGREEMENT.
- Assisting in claims mitigation, claims management and claims adjudication.
- Providing additional or extended construction phase services made necessary by (a) work damaged by fire or other cause during construction, (b) a significant amount of defective or neglected work of any CONSTRUCTION CONTRACTOR(s), (c) acceleration of the progress schedule involving services beyond normal working hours, (d) default by any CONSTRUCTION CONTRACTOR(s), and (e) failure of the CONSTRUCTION CONTRACTOR(s) to complete the work within the construction contract time.
- Preparing applications and supporting documents in addition to those provided for in Attachment "A" for private or governmental grants, loans, or advances in connection with the PROJECT
- Providing services resulting from changes that are significant changes in the general scope, extent or character of the PROJECT or its design, including, but not limited to, changes in size, complexity, CITY's schedule, character of construction or method of financing.
- Revising previously accepted studies, reports, design documents or contract documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents.
- Providing services resulting from the award of additional prime contracts for construction of the PROJECT.
- Preparing additional bidding documents or contract documents for alternate bids or prices requested by CITY for the construction of the PROJECT or a portion thereof.

- Providing assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
- Providing construction surveys and staking to enable CONSTRUCTION CONTRACTOR(s) to perform its work other than that required by Attachment "A".
- Providing assistance in resolving any Hazardous Environmental Condition in compliance with current laws and regulations.
- Providing re-design for the CITY's convenience or due to changed conditions after previous approval.
- Providing design of any utilities relocation other than specifically provided for Attachment "A".
- Providing property record research.
- Providing an environmental assessment per AHTD requirements (for STP-A funding).

**ATTACHMENT "D"**

**COMPENSATION**

**PROFESSIONAL SERVICES AGREEMENT**

**CITY OF SPRINGDALE, ARKANSAS  
2012 STREET BOND PROGRAM**

**56TH STREET IMPROVEMENT PROJECT  
(HIGHWAY 412 TO BLEAUX AVENUE)**

**CITY OF SPRINGDALE PROJECT NO. \_\_\_\_\_  
ESI WORK ORDER NO. 14903**

- CITY shall pay ENGINEER for Basic Services rendered an amount equal to 8.0% of the actual construction cost of the project, plus \$5,000 for Geotechnical Investigation, and approved reimbursable expenses.
- Basic Services: Payment by CITY shall be based on percentage of actual construction cost and shall approximate the following payment categories. Payment for a specific phase shall not exceed the scheduled amount prior to completion of that phase. Because an actual construction cost will not be known until the bid process is completed, payments for Basic Services rendered prior to the bid/award phase will be made based on the Engineer's Estimate of Probable Construction Costs. Once the project is bid and an actual construction cost is established, payments made based on estimated construction cost shall be adjusted to reflect actual construction cost. At completion of the job, payment to the ENGINEER will be adjusted based on the final construction costs including any change orders to ensure that the actual compensation to the ENGINEER for Basic Services is equal to 8.0% of actual construction costs. Underruns in one phase may be used to offset overruns in another phase as long as the total contract amount is not exceeded.

Geotechnical Investigation	<u>\$ 5,000</u>
Concept Design Phase, to include Topographic, Right of Way and Utility Surveys	<u>2.25%</u>
Preliminary Design Phase and Right of Way Document Preparation	<u>1.75%</u>

Final Design Phase	<u>2.00%</u>
Bid/Award Phase	<u>2.00%</u>
SUB-TOTAL Basic Services	<u>8.00% Plus \$5,000 for Geotechnical Investigation</u>

- Construction Phase: Payment by CITY shall be based on actual construction cost. CITY shall pay ENGINEER for Construction Services rendered an amount equal to 4% of the actual construction cost, plus approved reimbursable expenses. Actual construction cost shall be adjusted to reflect any change orders approved by the City. Payments for Construction Services shall be made monthly and shall be proportional to the amount of work completed by the CONTRACTOR during the preceding month. The final payment for Construction Services shall be adjusted to ensure that total project compensation paid by the CITY to the ENGINEER is equal to 8.0% of total construction cost (inclusive of any change orders approved by the City) for Basic Services rendered and 4.0% of total construction cost (inclusive of any change orders approved by the City) for Construction Services rendered, \$5,000 for Geotechnical Investigation, plus approved reimbursable expenses.
- The maximum payment to the ENGINEER for Basic Services and Construction Services under this Agreement shall not exceed 12.0% of actual construction cost, inclusive of any change orders approved by the City, plus \$5,000 for Geotechnical Investigation, and approved reimbursable expenses.
- Additional Services: Any and all Additional Services must be approved, and maximum amount to be paid for said services agreed to, in writing by CITY prior to rendering of same. CITY shall pay ENGINEER for Additional Services rendered an amount equal to the cumulative hours charged to the Project for each class of ENGINEER's employees multiplied by ENGINEER'S Hourly Rates as shown on the Attached Exhibit "1", plus approved Reimbursable Expenses and ENGINEER'S Consultant charges, if any. For ENGINEER's Consultant charges, the CITY shall pay the ENGINEER the amount billed to the ENGINEER times a factor of 1.00.

An allowance for Additional Services is established as part of this Agreement. The ENGINEER shall proceed with Additional Services only upon the written authorization of the CITY that specifically states the scope of work to be accomplished and paid for under the additional services allowance.

SUB-TOTAL Additional Services Allowance      \$ 10,000.



**EXHIBIT 1**

**ENGINEER'S HOURLY RATES**

<b><u>CLASSIFICATION</u></b>	<b><u>RATE / HOUR</u></b>
Engineer (Principal)	\$ 225.00
Engineer (Project)	\$ 150.00
Engineer (Design)	\$ 130.00
Surveyor (PLS)	\$ 130.00
Technician / Draftsman	\$ 68.00
Clerical	\$ 46.00
Survey Crew (Two-Man Crew)	\$ 175.00
Survey Crew (Three-Man Crew)	\$ 225.00