

AGENDA
FORT SMITH BOARD OF DIRECTORS
SPECIAL MEETING & STUDY SESSION
NOVEMBER 8, 2005 - 12:00 NOON
FORT SMITH PUBLIC LIBRARY
COMMUNITY ROOM

SPECIAL MEETING

ROLL CALL

1. Resolution accepting the bid of and authorizing a contract with SSI, Inc. of Northwest Arkansas for the Lake Shepherd Springs Recreational Area Group Two Buildings (visitor's center and group cabin) Trade Package No. 6 - Carpentry (\$592,000.00)

ADJOURN

STUDY SESSION

1. Presentation of new city website
2. Review utility relocation policy for street and drainage projects
3. Review preliminary agenda for the November 15, 2005 regular meeting

RESOLUTION NO. _____

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING
A CONTRACT WITH SSI, INC. OF NORTHWEST ARKANSAS FOR THE
LAKE SHEPHERD SPRINGS RECREATIONAL AREA GROUP TWO BUILDINGS
(VISITOR'S CENTER & GROUP CABIN) TRADE PACKAGE NO. SIX - CARPENTRY

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

SECTION 1: The bid of SSI Incorporated of Northwest Arkansas in the amount of
\$592,000.00 for the construction of the Lake Shepherd Springs Recreational Area, Group Two
Buildings, Trade Package 6 - Carpentry, is hereby accepted.

SECTION 2: The Mayor is hereby authorized to execute a contract with SSI Incorporated of
Northwest Arkansas in an amount of \$592,000.00 for performing said construction.

This Resolution adopted this _____ day of November 2005.

APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM

_____
npr

INTER-OFFICE MEMO

TO: Bill Harding, City Administrator

DATE: November 2, 2005

FROM: Steve Parke, Director of Utilities

SUBJECT: Lake Shepherd Springs Recreational Area
Award of Bid for Group Two Buildings - Trade Package No. 6

On October 25, 2005, the Board authorized construction contracts for a number of trade packages necessary for the construction of the Visitor's Center and Group Cabin. Trade Package 6-Carpentry, however, was not included in the resolution authorizing those contracts.

✓ Bids for Trade Package 6 were originally requested with those opened on September 1, 2005, for the construction of Group 1 and 2 Buildings. No bids were received for this trade package and it, along with three other trade packages and Residence Number 3, were re-advertised and bids opened on October 4, 2005. SSI Incorporated of Northwest Arkansas submitted the only bid.

✓ Subsequent to this bid opening the decision was made to reduce the original scope of the Group 2 Buildings to include only the Visitor's Center and Group Cabin. SSI's bid for these two structures totaled \$637,500. This bid amount exceeded the engineer's estimate for these two structures. We believe the uncertainty in material prices following the recent gulf coast storms was a significant factor and influenced the bidding. This was discussed with SSI and they were asked to re-evaluate their bid price for these two structures. Early this week SSI advised that the lumber market had somewhat stabilized and that they could reduce their bid by \$45,500. However, their lumber supplier is only willing to hold their price until November 9, 2005.

It is staff's opinion that rejecting SSI's revised bid price of \$592,000 and rebidding this work for the third time will not likely result in a lower cost. For this reason it is staff's recommendation that Trade Package Number 6 be awarded to SSI Incorporated for the bid amount of \$592,000. A Resolution authorizing bid award is attached.

Should you or the Board have any questions or need any additional information, please contact me.

attachment

pc: Ray Gosack



MEMORANDUM
November 3, 2005

SS1

To: Bill Harding, City Administrator

From: Dean Kruithof, Deputy City Administrator

Subject: City of Fort Smith Web Site Redesign

The City of Fort Smith has engaged the services of Ad + to redesign the City's web site to make it more appealing and useful to citizens. Ralph Smith and other Ad + staff members will attend the November 8th Board of City Directors Study Session to introduce the project.

Please let me know if there are any questions.

Presentation by Ralph Smith - Ad Plus



*Parish / Campbell
elec. 6th mtg*

SS 2

MEMORANDUM

November 4, 2005

TO: Bill Harding, City Administrator

FROM: Ray Gosack, Deputy City Administrator

SUBJECT: Utility Relocation Costs

The board of directors requested discussion about the policy of utility relocation costs for roadway and drainage construction projects. The following report provides background information, options and analysis.

BACKGROUND

Franchised utilities (electric, telephone, and gas) and the cable TV company occupy public rights-of-ways under authority granted by franchise ordinances. When the city undertakes roadway construction work, these utilities may have to be relocated. This occurs with roadway widening projects and other significant roadway and drainage work. Typically, neighborhood street overlay projects don't require utility relocations.

When the street sales tax passed in 1985, the city made a decision to pay the utility relocation costs (but not for cable TV) associated with roadway projects. As best staff can determine, the rationale for this decision was twofold.

- 1) There was a need to get projects underway quickly following the passage of the sales tax. With little advance notice, the utilities would have had difficulty or been unable to keep pace with the city's construction schedule. To avoid delays, the city determined to bear the cost of utility relocations.
- 2) A majority of the sales tax revenue is paid by non-residents (estimate is 55%). By using sales tax money to pay for utility relocation costs, Fort Smith utility

customers were avoiding some of this expense. It was believed that Fort Smith citizens would pay the relocation costs via their utility bills if the city didn't use sales tax funds to pay for the relocation COSTS (see attached letter from former city administrator). As discussed later in this report, this logic isn't as valid as once thought.

In 2000, the board passed a resolution requiring utility companies to pay their relocation costs. The resolution passed by a vote of 4-3. The resolution was vetoed, and the veto wasn't overridden. (Resolution and veto statement are attached.) Subsequently, a resolution adopting a policy to pay for utility relocations was adopted (Resolution No. R-291-00 attached). When the board approved the 2006 street and drainage budget last month, it did so with the condition that the city delay paying relocation costs until the board discussed the relocation policy.

Over the last 19 years, Fort Smith has spent \$12.1 million of its sales tax revenues for the relocation of franchised utilities. Street sales tax funds also pay for the relocation of water and sewer lines owned by the city. Cost data for water and sewer line relocations paid by sales tax funds isn't available.

The city currently doesn't bear any expense for relocating cable TV facilities from rights-of-way. The cable TV franchise agreement provides that the city will begin paying these expenses in 2006 unless the policy for other utilities is changed. We estimate this expense to be an average of \$150,000 per year.

POLICIES OF OTHER CITIES

The staff surveyed other cities in the three-state region and the Arkansas Highway and Transportation Department to determine their policies regarding utility relocations in rights-of-way. The following table summarizes the results. As you can see, the prevailing practice is for the utility to pay the relocation costs.

<i>CITY</i>	<i>WHO PAYS FOR UTILITY RELOCATIONS</i>
Little Rock, Arkansas	Utility
Hot Springs, Arkansas	City pays some but not full cost
Fayetteville, Arkansas	Utility
Springdale, Arkansas	Utility
Arkansas Highway and Transportation Dept.	Utility
Jonesboro, Arkansas	City pays some but not full cost
Norman, Oklahoma	Utility

CITY	WHO PAYS FOR UTILITY RELOCATIONS
Tulsa, Oklahoma	Utility
Broken Arrow, Oklahoma	Utility
Oklahoma City, Oklahoma	Utility
Joplin, Missouri	Utility
Springfield, Missouri	Utility

OPTIONS

The staff has identified the following options for utility relocations necessitated by street and drainage projects.

- 1) Continue the current practice of paying for 100% of the utility relocation expenses. Fort Smith is more aggressive with street widening work than most other cities. This can burden a smaller utility's rate base unless the city pays the relocation expenses. If this option continues, we recommend the city engage utility engineers to review each utility's relocation requirements and cost estimates. The cost for relocations will increase next year when the city must begin paying for cable TV relocations. This will leave us fewer resources for street and drainage work.
- 2) Reimburse the utility for the remaining value (the depreciated value) of the facilities that have to be relocated. Facilities which have to be relocated still have a remaining value. Rather than the city paying for the entire cost of replacing the facility, it would be more appropriate to pay for only the remaining value of the facility that's being relocated.
- 3) Require the utility to pay 100% of the cost of relocation. The city acquires rights-of-way for its projects. Utilities are permitted to use vacant space in the rights-of-way for their facilities. Utilities don't pay the city any compensation for using the rights-of-way. For roadway widening projects, the city expends public funds to acquire rights-of-way which are used by the utilities. The utilities don't contribute to right-of-way acquisition costs. (Franchise fees are a tax paid by the utility's customers, not a payment by the utility for use of the rights-of-way. Franchise fees aren't a part of the utility's cost of doing business.) When the city needs the rights-of-way for its projects, the city ought to be able to claim use of the right-of-way it needs.

The utility companies ask that the city's policy be applied equally to all franchised utilities. Because the utilities

compete with each other to some extent, they don't want a competitor receiving an advantage that the others don't.

CONSEQUENCES OF CHANGING POLICY

If the utility companies are required to pay the cost of relocation, staff believes that decision would have the following consequences.

- 1) More sales tax funds would be available for street and drainage projects. If the decision affects only the franchised utilities` (not water and sewer), an average of approximately \$780,000 (\$930,000 if estimated cable TV costs are included) would become available each year. If all utilities are affected (including water and sewer), a higher amount would become available each year.
- 2) The utilities would have to recover the relocation expenses from their customers. The Arkansas Public Service Commission (PSC), the agency which approves rates for the franchised utilities, reports that standard utility relocation costs typically apply to all customers in the utility's rate base. Representatives of Southwestern Bell and OG&E have confirmed this is how their utilities recover relocation expenses incurred in other cities. This means that **relocation expenses in a particular city are shared by all customers in the utility's rate base, not just the customers in the city where the relocation occurs.** OG&E and Southwestern Bell report that a change in Fort Smith's policy wouldn't affect their Arkansas rates. Cox Communications reports that its rates won't be affected regardless of who pays the relocation costs. Because of AOG's smaller customer base, the change would have a more dramatic effect on its customers. The PSC would allow AOG to file for rates which would recover Fort Smith's relocation expenses from only AOG's Fort Smith customers.
- 3) The utility companies would need advance notice of a policy change so that they can budget accordingly. The staff suggests that any policy change become effective with projects beginning construction in 2007.
- 4) If water and sewer relocation expenses aren't paid from street sales tax funds, these expenses would have to be built into the water and sewer rates. All or nearly all of this cost would be borne by water and sewer customers located in Fort Smith.
- 5) The city could experience some delays with its construction projects while it waits for the franchised utilities to move their facilities. Other cities

reported this problem. The other cities also offered suggestions for minimizing the occurrence of this problem.

- 6) If the city mandates steel electric poles, undergrounding or other non-standard facilities, the city would have to pay the cost difference between the standard item and the non-standard item. When the utilities are paying the relocation expenses, the city can't require more expensive installations unless it's willing to pay the cost difference. The city may not place unfunded mandates on the utility companies.

SUMMARY

Over the last 19 years, Fort Smith has spent approximately \$12.1 million in street sales tax funds to relocate utilities from rights-of-way for roadway construction projects. Most cities in this region require the utilities to bear these expenses.

If the board of directors desires to alter the policy for utility relocation expenses, the staff will prepare a resolution and policy statement reflecting one of the three policy options outlined above or another policy developed from the board's discussion.

If there's any questions or a need for more information, please call me at 784-2202.

Attachment

cc: Mike Carter, Arkansas Oklahoma Gas Corporation
Kenny Sparks, OG&E Electric Service
Tom Timmerman, Arkansas Valley Electric
Ricky Cross, Southwestern Bell
Fred Guerra, Cox Communications

- Ray



CITY OF HIGH POINT
NORTH CAROLINA

STRIB BOYNTON
CITY MANAGER

August 4, 2000

Honorable C. Ray Baker, Mayor
City of Fort Smith
623 Garrison
Fort Smith, Arkansas 72901

Dear Ray:

I want to follow-up on our conversation concerning Fort Smith's long-standing practice of using street sales dollars for utility reimbursement expenses.

The practice of using street sales tax dollars for utility reimbursement expenses was established in early 1986 following voter approval of the initial sales tax program in 1985.

The practice was based on a promise that we made to Fort Smith citizens that we would minimize their cost of utility relocations. The concept is relatively simple - using sales tax dollars for utility relocation expenses saves Fort Smith citizens money.

About one-half of the sales tax comes from people living outside the City. As such, the practice shifts about one-half of the cost of utility relocations to those people living outside the city who come to shop in Fort Smith. The practice was intentionally designed to minimize the financial burden that Fort Smith citizens would have to bear.

It was a good public policy. The practice of using sales tax dollars for utility relocation expenses grew into a commitment that was openly discussed with various community and neighborhood leaders and citizens throughout various meetings during my twelve years as City Administrator.

It was good to talk with you, and I hope this clarifies the basis for using sales tax dollars for utility relocation expenses.

Sincerely,

Strib Boynton
City Manager

cc: Bill Harding, City Administrator

Override of veto failed 1.
4-3

RESOLUTION NO. R-161-00

**A RESOLUTION ADOPTING
A UTILITY RELOCATION POLICY
FOR THE CITY OF FORT SMITH, ARKANSAS**

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

SECTION 1: The Board of Directors hereby adopts the Utility Relocation Policy described,
outlined and specified in Section 2.

SECTION 2: In the interest of the public health, safety and welfare and consistent with the
City's ordinances and master plans, the City of Fort Smith may make or cause to be made
improvements, repairs, or replacements of the public facilities located on public rights-of-way. Such
construction activity commonly requires adjustment or relocation of installations of public utilities.
The City deems the right of public utilities to use public rights-of-way to be permissive and
subordinate to the reasonable exercise of the City's police power, the City's right to control public
rights of way held in trust for the public, and the rights of the City pursuant to state law, applicable
franchise agreements, or permits issued by the City. Thus, the cost of relocating public utility
installations which are not owned by the City should not be borne by the City.

For purposes of this policy, the term "public utility" shall mean any organization performing
a public utility service in the City of Fort Smith and which organization has utility facilities in public
rights of way.

The policy of the City of Fort Smith is to require a public utility to promptly adjust its facilities
in, upon, under or above any right-of-way administered by the City of Fort Smith and by officials,
boards, commissions, and departments of the City of Fort Smith to accommodate construction,

Approved and adopted by the Board of Directors
JSE
Public Works

improvements, alterations or maintenance of public facilities when directed to do so by the City Administrator or his duly authorized agent. Public utilities shall make adjustments at their own expense, except as otherwise provided hereinafter, in connection with any public works project approved and/or performed by the City regardless of the source of funds for the project.

As a matter of policy the City will seek to minimize current and future installation adjustment costs for utilities by such measures as regular and systematic consultation in public works planning, advance engineering to the extent feasible, and careful consideration of public utility needs and installations in both planning and design.

The City will reimburse a public utility for the direct cost of required adjustments in an amount directly proportionate to any federal funds which the City may receive on such projects that specifically provide for a line item reimbursable allowance for utility relocation or adjustment.

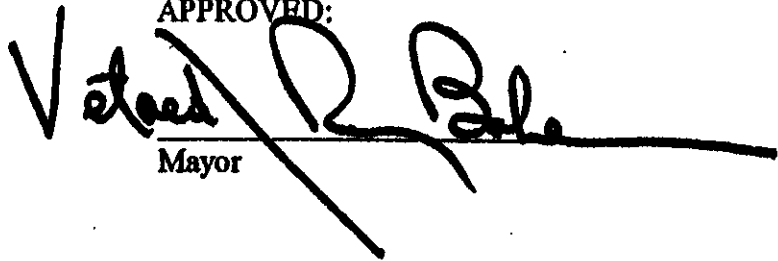
The City will also reimburse a public utility for the direct costs of required adjustments when the utility can demonstrate that the utility acquired the right-of-way or otherwise occupied it prior to the dedication of the right-of-way either to the City of Fort Smith or to any other unit of government. Adjustment costs shall be reimbursed, when appropriate, under an agreement between the City and the utility for the particular project. Such agreement shall describe the scope of the utility's adjustment work and allocate costs. The cost allocation shall not require the City to reimburse for betterments which are only occasioned by the adjustments required. Also, the cost allocation shall consider and be reduced for depreciation of the utility facilities which are to be adjusted.

All appropriate provisions of this policy will be incorporated into all future franchise agreements required by the City.

SECTION 3: Said Utility Relocation Policy shall become effective beginning with the year 2001 projects.

This Resolution adopted this 18th day of July, 2000.

APPROVED:

A handwritten signature in black ink, appearing to read "Victor R. Bal", is written over a horizontal line. The signature is slanted and includes a large, stylized flourish at the end.

Mayor

ATTEST:

City Clerk

MAYOR'S VETO STATEMENT

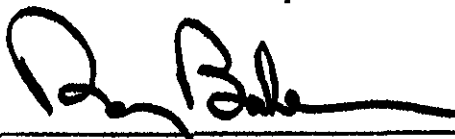
RESOLUTION ADOPTING A UTILITY RELOCATION POLICY FOR THE CITY OF FORT SMITH, ARKANSAS R-161-00

To: Member of the Board of Directors, City Administration and Citizens

When the 1¢ Sales Tax pledged to streets and drainage projects was passed in 1985, the citizens were told in the campaign that the city would assume the costs associated with the relocation of utility lines.

This policy has been followed since by the city in the street and drainage projects undertaken. It is very important that the elected officials of the city keep the commitment made to the citizens of Fort Smith. While it might sound good to say the utility companies should pay for the cost of relocation of utility lines that fall within these street and drainage projects, there is a cost factor to the utility companies in the relocation. This will call upon the utility companies to pay monies from their operating budgets. Ultimately the cost of these relocations will be passed on to the citizens in the form of higher utility bills. While some may say the costs passed on will not be much each month, to many of our citizens it is a lot. We do not need higher utility bills passed on to our citizens because of utility relocation costs associated with street and drainage projects undertaken as a part of the 1¢ Sales Tax programs.

The citizens of Fort Smith are already helping to pay for these utility relocations when they pay the 1¢ Sales Tax earmarked for street and drainage improvements. Let the present policy continue to work until such time as the citizens with their approval agree to change what was promised to them as part of the campaign to pass the 1¢ Sales Tax pledged to streets and drainage. As elected officials we must honor and keep our word in commitments made.



Mayor Ray Baker

RESOLUTION NO. R-128-85

A RESOLUTION OF COMMITMENT BY THE
CITY OF FORT SMITH BOARD OF DIRECTORS
FOR THE ADMINISTRATION OF SALES TAX PROCEEDS

WHEREAS, a City wide Sales Tax Election for City roads, streets and bridges, and associated drainage has been called for September 17, 1985; and

WHEREAS, the Board of Directors wishes to officially record how the proceeds from the City sales tax for City roads, streets and bridges, and associated drainage will be administered if approved by the citizens of Fort Smith;

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

SECTION 1: Proceeds from the City sales tax will be deposited in a separate fund entitled the Sales Tax Fund, and all expenditures for City roads, streets and bridges, and associated drainage from the Sales Tax Fund will require budget approval by the Board of Directors.

SECTION 2: The City staff shall be directed to furnish monthly reports to the Board of Directors and to the news media regarding the revenues, expenditures, and use of the sales tax receipts.

SECTION 3: It is the intention of the Fort Smith Board of Directors to call an election at the end of ten years from the effective date of the adoption of the Sales Tax for reconsideration by the Citizens of Fort Smith.

PASSED AND APPROVED this 13 day of August, 1985.

APPROVED:



Mayor

ATTEST:



City Clerk

*Approved on the part of the Mayor
GSC*

RESOLUTION NO. R-291-00

**A RESOLUTION ADOPTING A UTILITY RELOCATION POLICY
FOR THE CITY OF FORT SMITH, ARKANSAS**

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

SECTION 1: The Board of Directors hereby adopts the Utility Relocation Policy described, outlined and specified in Sections 2 and 3.

SECTION 2: In the interest of the public health, safety and welfare and consistent with the City's ordinances and master plans, the City of Fort Smith may make or cause to be made improvements, repairs, or replacements of the streets, bridges, and drainage facilities located on public rights-of-way. Such construction activity commonly requires adjustment or relocation of installations of public utilities. The City deems the right of public utilities to use public rights-of-way to be permissive and subordinate to the reasonable exercise of the City's police power, the City's right to control public rights of way held in trust for the public, and the rights of the City pursuant to state law, applicable franchise agreements, or permits issued by the City.

For purposes of this policy, the term "public utility" shall mean any organization performing a public utility service in the City of Fort Smith available to all residences and businesses located within the City of Fort Smith and which organization has utility

*Approved as to form & substance
JLR
Publish this*

facilities in public rights of way.

The policy of the City of Fort Smith is to pay the expense of adjusting or relocating a public utility's facilities in, upon, under or above any right-of-way administered by the City of Fort Smith to accommodate construction, improvements, alterations or maintenance of public streets, bridges, and drainage facilities. Relocations and adjustments to public utilities shall be made at the City's expense, except as otherwise provided hereinafter, in connection with any street, bridge, or drainage project approved and performed by the City. Reimbursement to a public utility shall be based on customary, ordinary, and reasonable costs for relocating or otherwise adjusting the public utility's facilities.

As a matter of policy the City will seek to minimize current and future installation adjustment costs for utilities by such measures as regular and systematic consultation in public works planning, advance engineering to the extent feasible, and careful consideration of public utility needs and installations in both planning and design.

The City may pay for the cost of required adjustments or relocations using federal funds which the City may receive on such projects that specifically provide for a line item reimbursable allowance for utility relocation or adjustment.

If a public utility's franchise agreement, use permit, or license approved by the City provides that the utility shall relocate or adjust its facilities at its own expense, the policy adopted by this Resolution shall not apply to said public utility. Said public utility shall be required to relocate its facilities at the utility's sole expense.

The cost reimbursement shall not require the City to reimburse a public utility for betterments, even if such betterments are occasioned only because the adjustments are necessitated by the City's street, bridge, or drainage project. Betterments shall include, but not be limited to:

- a) increases in line sizes or other service capacity improvements**
- b) improvements in materials used to construct the utility's facilities**
- c) the addition of fixtures or other appurtenances which weren't present prior to the relocation or adjustment.**

SECTION 3: In order to facilitate the timely implementation and completion of City street, bridge, and drainage projects, each utility shall:

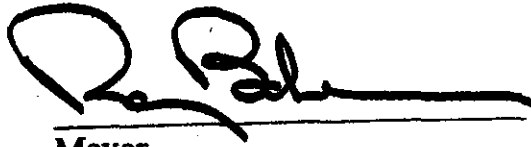
- a) Designate an employee or other person as the utility's contact for City projects. Such designation shall be made to the City's director of engineering.**
- b) Respond timely to the City's requests for:
 - 1) utility line locates**
 - 2) review of preliminary plans and final plans**
 - 3) cost estimates**
 - 4) commencement of relocation work; and**
 - 5) final billings for projects****

Such responses from utility companies shall normally be provided within thirty (30) days of the City's request.

- c) Install its facilities to meet the City's standard construction specifications for backfill and compaction of trenches underneath and adjacent to streets, for traffic control, and for other specifications pertinent to the utility's construction work.

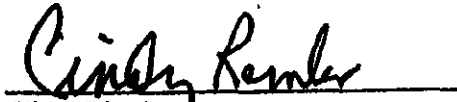
This Resolution adopted this 7th day of November, 2000.

APPROVED:



Mayor

ATTEST:


City Clerk