



Regular Meeting of the Board of Directors

City of Texarkana, Arkansas

216 Walnut Street

Agenda - Monday, March 21, 2022 - 6:00 PM

Call to Order

Roll Call

Invocation given by Director Laney Harris.

Pledge of Allegiance led by Finance Director TyRhonda Henderson.

CITIZEN COMMUNICATION

A limit of five (5) minutes per person is allotted for citizens to express their concerns to the Board of Directors, with a maximum of fifty (50) minutes reserved for Citizens Communication. The Board of Directors cannot respond to citizens' concerns during this time.

Be respectful of the Board of Directors, city staff, and the public by refraining from abusive conduct, personal charges, or verbal attacks.

PRESENTATION(S)

1. Presentation of the City's Comprehensive Plan given by City Planner Mary Beck. (Admin)
2. Animal Care and Adoption Center update. (ACAC) Director Lenor Teague.

CONSENT

3. Approval of the minutes of the regular meeting March 7, 2022. (CCD) City Clerk Heather Soyars
4. Adopt a Resolution authorizing the purchase of 54 sets (coats and pants) of structural firefighting gear for the Texarkana, Arkansas Fire Department. (TAFD) Fire Chief David Fletcher

REGULAR

5. Consider the following action concerning substandard structures:
Conduct a Public Hearing regarding the condemnation of 13 substandard structures.
Adopt a Resolution condemning 13 substandard structures. (PWD) Building Official Shawn Maxey

6. Adopt a Joint Resolution of the Board of Directors of the City of Texarkana, Arkansas, and the City Council of the City of Texarkana, Texas, reaffirming the express approval of the Board of Directors under the 1985 Millwood Contract for cities and customers served by Texarkana, Texas, to also receive treated water from Millwood Reservoir; reaffirming that title to all supplied water purchased by Texarkana, Texas, from Texarkana, Arkansas, under the 1985 Millwood Contract, passed to Texarkana, Texas, at the point of delivery; resolving all matters under the 1985 Millwood Contract ordered to arbitration; and establishing an effective date. (ADMIN) City Manager E. Jay Ellington
7. Adopt an Ordinance amending and updating Sec. 2-133 of the *City of Texarkana, Arkansas Code of Ordinances* as related to the Public Facilities Board. (Admin) City Manager E. Jay Ellington
8. Adopt an Ordinance authorizing the City Manager to purchase a three-year Microsoft Enterprise License Agreement for licenses used by all departments of Texarkana Water Utilities. (TWU) IT Manager Brandon Uselton
An emergency clause is requested. An emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the Board.
9. Adopt an Ordinance to amend the Personnel Policy. (FIN) Finance Director TyRhonda Henderson
An emergency clause is requested. An emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the Board.

EXECUTIVE SESSION

10. Adopt a Resolution making an appointment to the Planning Commission. (CCD) City Clerk Heather Soyars
11. Adopt a Resolution making appointments to the Public Facilities Board. (CCD) City Clerk Heather Soyars

BOARD OF DIRECTORS' COMMENTARY

CITY MANAGER REPORT

NEXT MEETING DATE: Monday, April 4, 2022

ADJOURN

2022 City Calendar

Dance Fitness - Texarkana Rec Center - Tuesdays - 6-8PM

Texarkana Home Builders Show - Crossties - Saturday, March 26th - 8AM - 9PM

**Life Skills & Risk Avoidance Classes - 6th, 7th, & 8th Graders - Texarkana Rec Center -
Monday, April 5th - Girls 5-6PM - Boys 6-7PM**

2022 College Fair - Texarkana Rec Center - Tuesday, April 5th - 5-8PM

Breakfast with the Easter Bunny - Texarkana Rec Center - Saturday, April 9th - 9-11AM

Twin City Meat Up & 5K - Friday & Saturday, April 22nd - 23rd

Food Truck Festival - Bobby Ferguson Park - Saturday, April 30th - 10AM - 8PM

Twin City Black History Association Parade - Saturday, April 30th - 10AM - noon

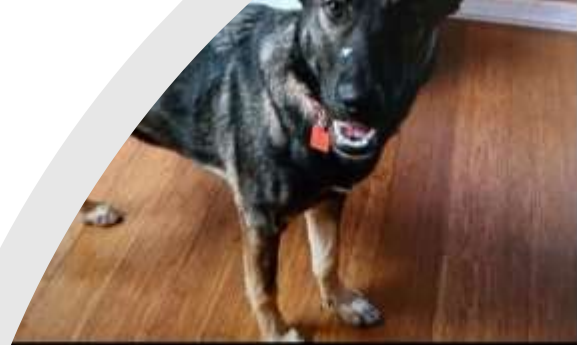
Gateway Farmer's Market – Opening Saturday, May 7th - 7AM till noon

The Greater Texarkana Autism Awareness Fundraiser - Saturday, May 21st - 7AM - 5PM

**Texarkana Down Syndrome Society Awareness Walk & Fun Day - Saturday, October 8th -
Front Street - 8AM - 4PM**

Universal Vibes - Crossties & Front Street - Saturday, October 22nd - 10AM - 11PM

Animal Care & Adoption Center Update



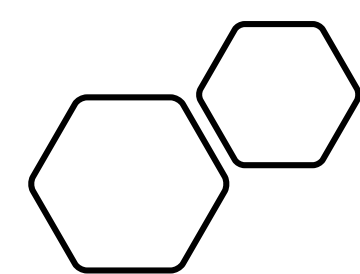


New Adoption Center





Kennels Have Finally Arrived!



New
Donation
Closet



Pending Cat Room Improvements

A wide, open grassy area with a concrete path curving through it. The grass is a mix of green and brown, suggesting it might be a recently mowed or partially dormant lawn. In the background, there are utility poles with power lines, a few trees, and a clear blue sky. The overall scene is a large, open outdoor space.

Future Play Yard Location



Improvements to existing facility

New Animal Control Vehicle arriving in March



DEERSKIN MANUFACTURING INC.
PO BOX 127 ~ SPRINGTOWN, TX 76082
4078 WEST HWY 199 ~ SPRINGTOWN, TX 76082
PHONE (800)880-6089 FAX (817)523-6685
SALES@DEERSKINMFG.COM



ACCM 6 6 COMPARTMENT CHASSIS MOUNT ANIMAL CONTROL UNIT 56" CAB TO AXLE TRUCK/MINIMUM ¾ TON VEHICLE

Rear Storage Compartment:	22"W x 35"H x 80"D
Animal Compartments:	
Front:	28"W x 35"H x 40"D (With Pass Through Divider)
Front Center:	25"W x 26"H x 40"D (With Pass Through Divider)
Rear Center:	25"W x 26"H x 40"D (With Pass Through Divider)



**Over 50
adoptions
So far this
year!**



Public Forum

March 31st 6pm

Animal Care & Adoption Center

203 Harrison Street - Texarkana, Arkansas



**Share your concerns, views, and recommendations
for the new renovated facilities**

**Hosted by City Manager Jay Ellington
and Adoption Center Director Lenor Teague**



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Approval of the minutes of the regular meeting March 7, 2022. (CCD) City Clerk Heather Soyars
AGENDA DATE:	March 21, 2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Other <input checked="" type="checkbox"/> : Minutes
DEPARTMENT:	City Clerk Department
PREPARED BY:	Heather Soyars, City Clerk
REQUEST:	Approval of meeting minutes.
EMERGENCY CLAUSE:	N/A
SUMMARY:	Approval of meeting minutes
EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A
RECOMMENDED ACTION:	The City Clerk recommends Board approval.
EXHIBITS:	Meeting minutes.



Regular Meeting of the Board of Directors

City of Texarkana, Arkansas

216 Walnut Street

Minutes - Monday, March 07, 2022 - 6:00 PM

Mayor Allen Brown called the meeting to order at 6:00 PM.

PRESENT: Mayor Brown, Ward 1 Director Terry Roberts, Ward 2 Director Laney Harris, Ward 4 Director Ulysses Brewer, Ward 5 Director Barbara Miner, and Ward 6 Director Jeff Hart.

ALSO, PRESENT: City Manager E. Jay Ellington, City Attorney George Matteson, City Clerk Heather Soyars and Deputy City Clerk Jenny Narens.

ABSENT: Assistant Mayor Ward 3 Steven Hollibush

Invocation given by Director Terry Roberts.

Pledge of Allegiance led by District Court Clerk Karen Reed.

CITIZEN COMMUNICATION

- Phyllis Haynes, 1915 Dudley, asked if a mission statement were complete and posted yet. Ms. Haynes inquired about the million-dollar donation and what the leftover money was being spent on. She asked if the City asked dog food manufactures or a big company like Sam's, if they were willing to donate dog food. Ms. Haynes requested a special meeting just to discuss the Animal Care and Adoption Center.
- David Peavy, 105 Olive Street, said he was all for the redoing of the downtown plaza. He said the City should raise its standards and think big. It could be a great entertainment district if the City did it the right way.
- Dawn Smith, Passion for Pooches, said thank you for the ordinance that removed dogs from being chained, but now there were an abundance of roaming dogs. Ms. Smith said there needed to be more adoptions. She said the rescue groups could not absorb the number of dogs being turned away from the shelter every day. Ms. Smith said there needed to be a spay and neuter law and the City enforce it.
- Christina Tutt, Texarkana Animal Coalition Team, said she sent all the Board members an email with pictures regarding the filth, smell, and poor ventilation in the Animal Care and Adoption Center building. She said she would put together a citizen volunteer team to help correct as many of the problems they could. Ms. Tutt also said she would pay for a

consultant to come in and give suggestion not only for the animals, but for the employees that care for them.

- Susan Moore, Fix TXK, said she would like to see Texarkana, Texas, and Texarkana, Arkansas, work together to create a spay and neuter law. She said Texarkana was supposed to be “Twice as Nice” and the rescuers and fosters really needed help.
- Diane Hand, 6 Broadmoor Drive, read a statement and wanted to know why citizens who wanted to adopt could not walk through the entire shelter to look for an animal. She said the shelter would bring animals to the new building that they thought were a good fit, leaving all the other animals in the old building not seen by potential adopters.
- Elizabeth Crawford, said she was a volunteer at the Animal Care and Adoption Center and when the new director came, she was told to stay in a back room and not to speak with citizens coming in. She said her ex-husband donated a washer so they could wash the linens for the animals.
- Dannisha Willard, said the laundry room was covered in mold and rats. She said not only the humans working there but also the animals would end up having breathing issues due to the unhealthy environment.

PRESENTATION(S)

1. Proclamation declaring Tuesday, March 8, 2022, as “Les Minor Day” for recognition of his service to the community. (ADMIN)
2. Presentation of the City of Texarkana, Arkansas Employee Service Awards. (CCD)

Marian Holder	TAFD-Admin	10 Years
David Fletcher	TAFD	30 Years
Garrett Baker	TWU	5 Years
Robert Poelstra	TWU	5 Years
James Daffern	TWU	10 Years

CONSENT

Director Roberts made the motion to adopt the Consent agenda, Seconded by Director Hart. The motion carried and the following items were approved:

3. Approval of the minutes of the rescheduled regular meeting February 22, 2022. (CCD) City Clerk Heather Soyars

4. Resolution No. 2022-17 authorized the City Manager to enter into a contract with RBIS, LLC, for the Chelsea Street and Delaware Street 6” Water Main Project. (TWU) Interim Executive Director Gary Smith
5. Resolution No. 2022-18 reappointed City staff to the Personnel Policy Committee: TAPD Finance Officer Dara Cornett, Assistant Public Works Director Tracie Lee and Deputy Clerk Jenny Narens. (CCD) City Clerk Heather Soyars

REGULAR

6. Resolution No. 2022-19 accepted the 2021 Public Facilities Board Annual Report. (Admin) City Manager E. Jay Ellington

Motion to adopt the resolution made by Director Hart, Seconded by Director Brewer.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the Mayor declared the resolution adopted.

7. Resolution No. 2022-20 accepted a donation of land located at 121 Jackson Street. (Admin) City Manager E. Jay Ellington

Motion to adopt the resolution made by Director Roberts, Seconded by Director Brewer.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the Mayor declared the resolution adopted.

8. Ordinance No. 6-2022 amended Ordinance No. M-123 to amend the City’s Financial Policy. (FIN) Finance Director TyRhonda Henderson

After a brief discussion the motion to suspend the rules and place the ordinance on its first reading in abbreviated form made by Director Roberts, Seconded by Director Hart.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the ordinance was read the first time in abbreviated form.

Motion to suspend the rules and place the ordinance on its second reading in abbreviated form made by Director Brewer, Seconded by Director Roberts.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the ordinance was read the second time in abbreviated form.

Motion to suspend the rules and place the ordinance on its third and final reading in abbreviated form made by Director Hart, Seconded by Director Roberts.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the ordinance was read the third time in abbreviated form.

Motion to adopt the ordinance made by Director Miner, Seconded by Director Hart.

Mayor Brown asked if anyone would like to speak for or against this ordinance.

No one came forward.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the Mayor declared the ordinance adopted.

9. Ordinance No. 7-2022 to amend Ordinance No. M-59 to update the purchasing policy for recent changes in State Statute. (FIN) Finance Director TyRhonda Henderson

After a brief discussion the motion to suspend the rules and place the ordinance on its first reading in abbreviated form made by Director Roberts, Seconded by Director Hart.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the ordinance was read the first time in abbreviated form.

Motion to suspend the rules and place the ordinance on its second reading in abbreviated form made by Director Brewer, Seconded by Director Hart.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the ordinance was read the second time in abbreviated form.

Motion to suspend the rules and place the ordinance on its third and final reading in abbreviated form made by Director Miner, Seconded by Director Hart.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the ordinance was read the third time in abbreviated form.

Motion to adopt the ordinance made by Director Hart, Seconded by Director Brewer.

Mayor Brown asked if anyone would like to speak for or against this ordinance.

No one came forward.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the Mayor declared the ordinance adopted.

BOARD OF DIRECTORS' COMMENTARY

- Director Roberts said he spoke with several of the business owners downtown and they had great ideas for making it great downtown. He said we should set a time when the business owners could meet and tell the Board what their ideas were in making a better downtown Texarkana.

- Director Hart said it would be a great idea if the Board held a workshop to hear all the different ideas the business owners had.

CITY MANAGER REPORT

City Manager E. Jay Ellington gave the following report:

- He said Senate Bill 103 passed, and it would give each certified police officer \$5000.00.
- He said he would set up a meeting with the downtown businesses.
- He said he was working on plans to bring forward to the Board: street plan, drainage plan, and public facilities plan.
- He said an event called Pitch-It, would be held at Crossties March 31, 2022.
- The Chamber of Commerce was hosting their Annual Meeting and the State of the City Breakfast.
- The Miller County Quorum Court was meeting tonight regarding the Juvenile Detention Center (JDC). He said the City was not ready to discuss this matter yet, maybe in 2-3 weeks.
- He said he spoke with 6-8 Arkansas High School students and asked for their input to help plan for the future.

NEXT MEETING DATE: Monday, March 21, 2022

ADJOURN

Motion to adjourn made by Director Roberts, Seconded by Director Brewer.

Voting Yea: Mayor Brown, Director Roberts, Director Harris, Director Brewer, Director Miner, and Director Hart.

The motion carried 6-0 and the meeting adjourned at 7:10 PM.

APPROVED this the 21st day of March 2022.

Allen L. Brown, Mayor

Heather Soyars, City Clerk



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE: Adopt a Resolution authorizing the purchase of 54 sets (coats and pants) of structural firefighting gear for the Texarkana, Arkansas Fire Department. (TAFD) Fire Chief David Fletcher

AGENDA DATE: March 21, 2022

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: TAFD

PREPARED BY: Fire Chief David Fletcher

REQUEST: Board approval to accept the proposal from Municipal Emergency Services for the purchase of 54 sets of structural firefighting gear.

EMERGENCY CLAUSE: N/A

SUMMARY: This purchase will provide a second set of structural firefighting gear for each firefighter. Research has linked negative health effects to the wearing of contaminated gear. Having two sets of gear will allow firefighters to have a clean set while the other is being decontaminated.

EXPENSE REQUIRED: \$154,746.90

AMOUNT BUDGETED: \$170,000

**APPROPRIATION
REQUIRED:** \$0.00

**RECOMMENDED
ACTION:** The City Manager and staff recommend Board approval.

EXHIBITS: Resolution and three bids.

RESOLUTION NO. _____

WHEREAS, upon advertising, a low bid in the amount of \$154,746.90 was submitted by Municipal Emergency Services for fifty-four (54) sets of structural firefighting gear for the Texarkana, Arkansas Fire Department; and

WHEREAS, funds are budgeted and available; and

WHEREAS, the City Manager and Fire Chief and staff recommend approval;

NOW, THEREFORE, BE IT RESOLVED, that City Manager is authorized to purchase structural firefighting gear as described above and upon the amount so indicated.

PASSED AND APPROVED this the 21st day of March, 2021.

Allen Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George M. Matteson, City Attorney



TEXARKANA ARKANSAS FIRE DEPARTMENT
416 E 3RD Street
Texarkana, Arkansas 71854

TAFD - OAC

21 January 2022

MEMORANDUM FOR RECORD

SUBJECT: TAFD Structural Fire Fighting Gear Requirements

1. TAFD is poised to purchase 54 sets (coat/pants) of structural fire fighting gear compliant with NFPA standards 1971, 1500, 1581, 1851, 1951, 1992, 1994, 1999 as well as all Federal, State and Local regulations to include OSHA 29 CFR 1910.132-140 AND 29 CFR 1910.156. In addition to meeting a minimum TPP of 35 and minimum THL of 205, TAFD is seeking bids for gear with the following options included:

COAT

- Hook and Loop Closure
- Left side Radio Pocket
- Hand warmer pockets (lined) behind lower pockets
- Rolled Pocket Flaps
- Mic Clip
- Flashlight Clip
- Clip/Tab each side of coat (glove attachment)
- Hanging Nameplate – 3” Lettering
- 3” Triple Lime/Silver Reflective striping – solid

PANTS

- Hook and Loop Closure with D Hook
- Wide Belt Loops (Truck Cc style) with Belt
- Suspenders with Locking Tabs
- Rear Belt Clip/Tab for Radio Strap attachment
- Kevlar Lined Pockets
- Rolled Pocket Flaps
- Right Side compartmentalized pocket

3. Point of Contact for this memorandum is the undersigned and can be reached at 903.908.1282 or william.smith@txkusa.org.

William J. Smith

WILLIAM J. SMITH
Assistant Chief
TAFD



MES - Texas
 600 Century Plaza Dr.
 Suite C-160
 Houston, TX 77073

Quote

Date 01/19/2022
 Quote # QT1544449
 Expires 02/03/2022
 Sales Rep Long, Rusty A
 PO #
 Shipping Method FedEx Ground

Bill To
 TEXARKANA FIRE DEPT
 PO BOX 2711
 Texarkana TX 75504

Ship To
 TEXARKANA FIRE DEPT
 416 E.3RD STREET
 TEXARKANA AR 71854

Item	Alt. Item #	Units	Description	QTY	Unit Sales Pri...	Amount
TECGEN71-Custom -Coat	FWID: 153435		FWID: 153435 Custom TecGen 71 Coat 6.5 oz. TECGEN71 5.6 oz CoreCXP™ 1 - Layer 4.7oz CROSSTECH® Black, 2F TPP 35 cal/cm2, THL 339.6 W/m2. TAFD Custom Spec	54	1,495.00	80,730.00
TECGEN71-Custom -Pant	FWID: 153435		FWID: 153435 Custom TecGen 71 Pant 6.5 oz. TECGEN71 5.6 oz CoreCXP™ 1 - Layer 4.7oz CROSSTECH® Black, 2F TPP 35 cal/cm2, THL 339.6 W/m2. TAFD Custom Spec	54	1,095.00	59,130.00

Subtotal 139,860.00
Shipping Cost (FedEx Ground) 500.00
Tax Total 14,386.90
Total \$154,746.90

Thank you for considering MES. Please let me know if you have any questions.

This Quotation is subject to any applicable sales tax and shipping & handling charges that may apply. Tax and shipping charges are considered estimated and will be recalculated at the time of shipment to ensure they take into account the most current local tax information.

All returns must be processed within 30 days of receipt and require a return authorization number and are subject to a restocking fee.

Custom orders are not returnable. Effective tax rate will be applicable at the time of invoice.



QT1544449



EMERGENCY VEHICLE SPECIALISTS

SALES QUOTE

800-233-5053
www.gwevs.com

CONWAY, AR

OLIVE BRANCH, MS

MEMPHIS, TN

NASHVILLE, TN

KNOXVILLE, TN

Quote Number 00005255

Date 2/1/2022

Expiration Date 2/28/2022

Contact Name David Fletcher

Phone (870) 779-4968

Company Name Texarkana Fire Department (AR)

Account Number 3699

Bill To 416 E 3Rd Street
Texarkana, Arkansas 71854
United States

Ship To 416 E 3Rd Street
Texarkana, Arkansas 71854
United States

Telephone

Salesperson Topf Will

Freight To Be Added On Order

Salesperson Email wtopf@gwevs.com

Quantity	Vendor	Part Number	Description	Unit Price	Total Price
54.00	Fire-Dex	FXR	FXR TG71 Coat, Pants and Suspenders	\$2,606.41	\$140,746.14

Quoted By Jessi Collums

Subtotal \$140,746.14

Quoted By Email jcollums@gwevs.com

Tax \$14,426.48

Total \$155,172.62



HEADQUARTERS: SHREVEPORT, LA 71148-8007

SERVING ARKANSAS

SOLD TO: Texarkana, Arkansas Fire Department
416 East 3rd St.
Texarkana, AR 71854

SHIP TO: Texarkana, Arkansas Fire Department
216 Walnut
Texarkana, AR 71854

ATTN: William J. Smith, Asst Fire Chief
PHONE: 870-779-4968
EMAIL: william.smith@txkusa.org

ATTN: William J. Smith, Asst Fire Chief
PHONE: 870-779-4968
EMAIL: william.smith@txkusa.org

CREDIT CARD:	DIST	CUST PO NUMBER	SALES REP	SALES REP REF #	
NAME/EXP DATE				115	
NUMBER/CODE/ZIP		TERMS	FREIGHT	DATE	FORM TYPE
TRANSACTION ID#		30	ALLOW	2/14/2022	QUOTE

ITEM	LOC	DESCRIPTION		QTY	SHIPPED	PRICE	AMOUNT
			\$ -			\$ -	\$ -
1		GLO-A42N2G10 Athletix Coat, Kombat Stretch, Gold	\$ -	54		\$ 1,997.50	\$ 107,865.00
2		GLO-B42N2G10 Athletix Pant, Kombat Stretch, Gold	\$ -	54		\$ 1,397.50	\$ 75,465.00
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ADDITIONAL COMMENTS BELOW		DIST TOTAL: \$ 202,121.32	Subtotal	\$ 183,330.00
			ALLOW	Tax
				\$ 18,791.32
				Freight
				\$ -
			TOTAL	\$ 202,121.32



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Consider the following action concerning substandard structures: Conduct a Public Hearing regarding the condemnation of 13 substandard structures. Adopt a Resolution condemning 13 substandard structures. (PWD) Building Official Shawn Maxey
AGENDA DATE:	March 21, 2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Public Works Department
PREPARED BY:	Shawn Maxey, Building Official
REQUEST:	Condemn 13 substandard structures.
EMERGENCY CLAUSE:	N/A
SUMMARY:	This resolution will condemn 13 substandard structures.
EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A
RECOMMENDED ACTION:	The City Manager and staff recommend Board approval.
EXHIBITS:	Resolution and description of properties.

RESOLUTION NO. _____

WHEREAS, the Public Works Department has requested an order of condemnation under Section 11-87 of the *City of Texarkana, Arkansas, Code of Ordinances* for the following property:

Address/Parcel	Legal Description	Owner
1208 Arkansas St. Parcel – 5370630	Legal: All of Lots 9 & 10 Block: 011, Lot: 010 Subdivision: Texarkana Loan & Trust	Jessi & Rosetta Boyd Heirs c/o Deone Calhoun 1208 Arkansas St. Texarkana, AR 71854
809 Artesian St. Parcel – 4110090	Legal: ALL LOTS 5 & 6 Block: 052, Legal: 006 Subdivision: MUDFORD'S	Leonard & Barbara A. Sanford 809 Artesian St. Texarkana, AR 71854
810 Ash St. Parcel – 1010060	Legal: N 13' OF LOT 9 & S/2 OF LOT 10 Block: 006, Lot: 010 Subdivision: ORIGINAL CITY	Henry & Freddie Mae Baxter 810 Ash St. Texarkana, AR 71854
615 Charles St. Parcel – 4490040	Legal: ALL LOT 8 Block: 001, Lot: 008 Subdivision ORR'S 3RD	Anthony C & Patricia Stevenson 513 Burton St. Texarkana, AR 71854
801 & 805 Cleveland St. Parcel – 1610580	Legal: ALL LOTS 1 THRU 4 Block: 020, Lot: 004 Subdivision: BRAMBLE HIGHLAND PARK REV.	Eugene Edward Walls, Jr. 24661 Amador St. Apt. 19 Hayward, CA 94544
6433 Edgehill Circle Parcel – 2520150	Legal: LOT 15 2.208AC Block: N/A, Lot: 015 Subdivision: EDGE HILL	Joni Wade Newton 29 Broadmoor Dr. Texarkana, AR 71854
316 Hickory St. Parcel – 1050040	Legal: All of Lot 5 Block: 002, Lot: 005 Subdivision: AHERNS	Earl & Lelia F. Wilsmann c/o Earlene Tyson 21 Brookside Dr Texarkana, AR 71854

209 Jackson St. Parcel – 5610220	Legal: ALL OF LOTS 1 & 2 Block: 008, Lot: 002 Subdivision: Williams S Side	Ruby Lee Larey 209 Jackson St. Texarkana, AR 71854
706 Jackson St. Parcel –1691170	Legal: All of Lot 10 Block: 014, Lot: 010 Subdivision: BRONWAY HGTS.	Marvin H. Pierce 1417 Booker Texarkana, AR 71854
1007 Jackson St. Parcel – 1691720	Legal: ALL LOT 2 Block: 022, Lot: 002 Subdivision: BRONWAY HGTS.	Leon & Moore Callie Collins 1007 Jackson Texarkana, AR 71854
711 Pecan St. Parcel: 1010790	Legal: LOT 4 & STRIP OF LAND 7'X140' OFF S SIDE OF LOT 3 Block: 014 Lot: 003 Subdivision: ORIGINAL CITY	David Lee Mendoza 1712 E Riverside Dr #14 Austin, TX 78741
2028 Washington Parcel: 00347900	Legal: LOT 36 NE SW Block: N/A Lot: N/A Subdivision: 29-15S-28W	Chas Jr. & Johnson A. Carnell 2028 Washington Texarkana, AR 71854
2206 Washington Parcel: 5251070	Legal: ALL OF LOT 9 Block: 011 Lot: 009 Subdivision: SUNSHINE	Stephenette Marie Dansby 2206 Washington Texarkana, AR 71854

WHEREAS, owners of the listed properties have been notified that the structure on the property is in violation of applicable code, including any applicable violation at the Arkansas Fire Prevention Code and the International Property Maintenance Code, but little or no work has been done on the structure and the allowed time period has lapsed for the owners to voluntarily bring the structure into code compliance; and

WHEREAS, the Public Works Department has attempted to notify, by certified mail, the last owner of record of each property informing them that the Board of Directors will consider declaring the structure (including all structures on the property) a nuisance; and

WHEREAS, notice of the condemnation will be sent to the owner of record allowing thirty days to obtain a permit for repairs or a permit to demolish the structure and clear the property, failing which the City will have the right to demolish the structure after giving the property owner at least ten days in which to remove any personal property; and

WHEREAS, the City Manager and Staff recommend approval;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Texarkana, Arkansas, that the above property is condemned under the provisions of Section 11-87 and other applicable sections of the *City of Texarkana, Arkansas, Code of Ordinances*; that the Public Works Department shall provide the owner of record with notices of the condemnation and allow thirty days for repairs or demolition by such property owner; that the Public Works Department is authorized to demolish any of the above-described structures that are not repaired or demolished within the thirty-day period after giving the owner at least ten days in which to remove any personal items.

PASSED AND APPROVED this 21st day of March, 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney



2022 Proposed Condemnations |

CLASSIFICATIONS

- A1- TAGGED UNSAFE BUT COULD BE REHABILITATED
- A2- TAGGED UNSAFE AND NEEDS MODERATE REPAIR
- A3- TAGGED UNSAFE AND NEEDS MAJOR REPAIR
- A4- TAGGED UNSAFE AND IS COLLAPSED AND OR BURNED BEYOND REPAIR

1208 ARKANSAS

- TAGGED **2/19/2020**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A2- NEEDS MODERATE REPAIR
- STAFF RECOMMENDS CONDEMNATION
- WARD 3



809 ARTESIAN

- TAGGED **1/10/22**
- INVITATION TO BOD MEETING SENT **2/9/22**
- CLASSIFIED A4- BURNED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



810 ASH

- TAGGED **4/20/21**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4 – BURNED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



615 CHARLES

- TAGGED **3/15/21**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4
- STAFF RECOMMENDS CONDEMNATION
- WARD 3



801 & 805 CLEVELAND

- TAGGED **2/22/18**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A3
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



6433 EDGEHILL

- TAGGED **7/14/20**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A3
- STAFF RECOMMENDS CONDEMNATION
- WARD 6



316 HICKORY

- TAGGED **4/20/21**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4 – BURNED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



209 JACKSON

- TAGGED **3/2/20**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A3
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



706 JACKSON

- TAGGED **8/23/21**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



1007 JACKSON

- TAGGED **1/10/22**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4 – BURNED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



711 PECAN

- TAGGED **1/10/22**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4 – BURNED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



2028 WASHINGTON

- TAGGED **1/10/22**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4 – BURNED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



2206 WASHINGTON

- TAGGED **8/7/19**
- INVITATION TO BOD MEETING **2/9/22**
- CLASSIFIED A4 – COLLAPSED
- STAFF RECOMMENDS CONDEMNATION
- WARD 2



Address/Parcel	Legal Description	Owner
1208 Arkansas St. Parcel – 5370630 Ward 3	Legal: All of Lots 9 & 10 Block: 011, Lot: 010 Subdivision: Texarkana Loan & Trust	Jessi & Rosetta Boyd Heirs c/o Deone Calhoun 1208 Arkansas St. Texarkana, AR 71854
809 Artesian St. Parcel – 4110090 Ward 2	Legal: ALL LOTS 5 & 6 Block: 052, Legal: 006 Subdivision: MUDFORD'S	Leonard & Barbara A. Sanford 809 Artesian St. Texarkana, AR 71854
810 Ash St. Parcel – 1010060 Ward 2	Legal: N 13' OF LOT 9 & S/2 OF LOT 10 Block: 006, Lot: 010 Subdivision: ORIGINAL CITY	Henry & Freddie Mae Baxter 810 Ash St. Texarkana, AR 71854
615 Charles St. Parcel – 4490040 Ward 3	Legal: ALL LOT 8 Block: 001, Lot: 008 Subdivision ORR'S 3RD	Anthony C & Patricia Stevenson 513 Burton St. Texarkana, AR 71854
801 & 805 Cleveland St. Parcel – 1610580 Ward 2	Legal: ALL LOTS 1 THRU 4 Block: 020, Lot: 004 Subdivision: BRAMBLE HIGHLAND PARK REV.	Eugene Edward Walls, Jr. 24661 Amador St. Apt. 19 Hayward, CA 94544
6433 Edgehill Circle Parcel – 2520150 Ward 6	Legal: LOT 15 2.208AC Block: N/A, Lot: 015 Subdivision: EDGE HILL	Joni Wade Newton 29 Broadmoor Dr. Texarkana, AR 71854
316 Hickory St. Parcel – 1050040 Ward 2	Legal: All of Lot 5 Block: 002, Lot: 005 Subdivision: AHERNS	Earl & Lelia F. Wilsmann c/o Earlene Tyson 21 Brookside Dr Texarkana, AR 71854
209 Jackson St. Parcel – 5610220 Ward 2	Legal: ALL OF LOTS 1 & 2 Block: 008, Lot: 002 Subdivision: Williams S Side	Ruby Lee Larey 209 Jackson St. Texarkana, AR 71854
706 Jackson St. Parcel – 1691170 Ward 2	Legal: All of Lot 10 Block: 014, Lot: 010 Subdivision: BRONWAY HGTS.	Marvin H. Pierce 1417 Booker Texarkana, AR 71854
1007 Jackson Parcel – 1691720 Ward 2	Legal: ALL LOT 2 Block: 022, Lot: 002 Subdivision: BRONWAY HGTS.	Leon & Moore Callie Collins 1007 Jackson Texarkana, AR 71854

711 Pecan St.
Parcel: 1010790
Ward 2

Legal: LOT 4 & STRIP OF
LAND 7'X140'
OFF S SIDE OF LOT 3
Block: 014 Lot: 003
Subdivision: ORIGINAL CITY

David Lee Mendoza
1712 E Riverside Dr #14
Austin, TX 78741

2028 WASHINGTON
Parcel: 00347900
Ward 2

Legal: LOT 36 NE SW
Block: N/A Lot: N/A
Subdivision: 29-15S-28W

Chas Jr. & Johnson A. Carnell
2028 Washington
Texarkana, AR 71854

2206 WASHINGTON
Parcel: 5251070
Ward 2

Legal: ALL OF LOT 9
Block: 011 Lot: 009
Subdivision: SUNSHINE

DANSBY, STEPHENETTE
MARIE 2206 WASHINGTON
TEXARKANA, AR 71854



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE: Adopt a Joint Resolution of the Board of Directors of the City of Texarkana, Arkansas, and the City Council of the City of Texarkana, Texas, reaffirming the express approval of the Board of Directors under the 1985 Millwood Contract for cities and customers served by Texarkana, Texas, to also receive treated water from Millwood Reservoir; reaffirming that title to all supplied water purchased by Texarkana, Texas, from Texarkana, Arkansas, under the 1985 Millwood Contract, passed to Texarkana, Texas, at the point of delivery; resolving all matters under the 1985 Millwood Contract ordered to arbitration; and establishing an effective date. (ADMIN) City Manager E. Jay Ellington

AGENDA DATE: March 21, 2022

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: Administration

PREPARED BY: Heather Soyars, City Clerk

REQUEST: To adopt a joint resolution reaffirming certain aspects of the 1985 Millwood Contract.

EMERGENCY CLAUSE: N/A

SUMMARY: The Board of Directors of the City of Texarkana, Arkansas, and the City Council of the City of Texarkana, Texas, reaffirming the express approval of the Board of Directors under the 1985 Millwood Contract for cities and customers served by Texarkana, Texas, to also receive treated water from Millwood Reservoir; reaffirming that title to all supplied water purchased by Texarkana, Texas, from Texarkana, Arkansas, under the 1985 Millwood Contract passed to Texarkana, Texas, at the point of delivery; resolving all matters under the 1985 Millwood Contract ordered to arbitration; and establishing an effective date.

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**RECOMMENDED
ACTION:** The City Manager and staff recommend approval.

EXHIBITS:

Joint Resolution, 1985 Millwood Contract, and Case No. 4:10-CV-04067

**TEXARKANA, ARKANSAS:
RESOLUTION NO. _____**

**TEXARKANA, TEXAS:
RESOLUTION NO. 2022-007**

A JOINT RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF TEXARKANA, ARKANSAS, AND THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, REAFFIRMING THE EXPRESS APPROVAL OF THE BOARD OF DIRECTORS UNDER THE 1985 MILLWOOD CONTRACT FOR CITIES AND CUSTOMERS SERVED BY TEXARKANA, TEXAS, TO ALSO RECEIVE TREATED WATER FROM MILLWOOD RESERVOIR; REAFFIRMING THAT TITLE TO ALL SUPPLIED WATER PURCHASED BY TEXARKANA, TEXAS, FROM TEXARKANA, ARKANSAS, UNDER THE 1985 MILLWOOD CONTRACT PASSES TO TEXARKANA, TEXAS, AT THE POINT OF DELIVERY; RESOLVING ALL MATTERS UNDER THE 1985 MILLWOOD CONTRACT ORDERED TO ARBITRATION; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Cities of Texarkana, Arkansas, and Texarkana, Texas, have for decades contracted for provision of treated water from Lake Wright Patman; and

WHEREAS, in 1985, the Cities contracted with each other for provision of treated water from Millwood Reservoir in an Amended and Restated Water System Agreement (“the 1985 Millwood Contract”); and

WHEREAS, with the water systems of the two Cities being interconnected, water from the Millwood Reservoir has been and continues to be necessarily and inextricably commingled with water from Lake Wright Patman and sold to all purchasers, including municipalities, who have contracted with either Texarkana, Arkansas, or Texarkana, Texas;

WHEREAS, the Cities desire to reaffirm particular provisions in the 1985 Millwood Contract and, in so doing, resolve legal issues that had been ordered to arbitration by federal court opinion and order issued July 6, 2012, in Case No. 4:10-CV-04067, U.S. District Court, Western District of Arkansas, Texarkana Division; and

WHEREAS, the Cities' respective governing bodies desire to commend their respective city managers for their collaborative consultation on matters of bi-city public welfare and interest and to provide the managers with further direction on matters pertaining to water.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF TEXARKANA, ARKANSAS, AND THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: Pursuant to Section 1 of the 1985 Millwood Contract, Texarkana, Arkansas, reaffirms its “express approval” for cities and customers currently being served by Texarkana, Texas, to also receive water from the “Initial Project” as defined in the 1985 Millwood Contract for treated water from Millwood Reservoir.

SECTION 2: Pursuant to Section 17 of the 1985 Millwood Contract, Texarkana, Arkansas, reaffirms that title to all supplied water purchased by Texarkana, Texas, under the 1985 Millwood Contract passes to Texarkana, Texas, at the point of delivery.

SECTION 3: The Cities mutually declare and affirm that all matters ordered to arbitration in Case No. 4:10-CV-04067 have either been resolved or otherwise mooted.

SECTION 4: The Cities' respective city managers are commended for their collaborative consultation on matters of bi-city public welfare and interest and are directed to develop both short-term and long-term bi-city goals on all matters pertaining to water.

SECTION 5: This Joint Resolution shall be in full force and effect from and after its passage and approval by both Cities.

Texarkana, Arkansas: PASSED AND APPROVED this ____ day of _____, 2022.

Texarkana, Texas: PASSED AND APPROVED in Regular Council Session on this the ____ day of _____, 2022.

TEXARKANA, ARKANSAS:

TEXARKANA, TEXAS:

Allen L. Brown, Mayor

Bob Bruggeman, Mayor

ATTEST:

ATTEST:

Heather Soyars, City Clerk

Jennifer Evans, City Secretary

APPROVED:

APPROVED:

George Matteson, City Attorney

Jeffery C. Lewis, City Attorney

AMENDED AND RESTATED
WATER SYSTEM AGREEMENT

Dated as of October 15, 1985

Between

CITY OF TEXARKANA, ARKANSAS

and

CITY OF TEXARKANA, TEXAS

Pertaining To

\$17,930,000

WATERWORKS FACILITIES REVENUE REFUNDING BONDS
Series 1985

Prepared by:

ROSE LAW FIRM,
a Professional Association
120 East Fourth Street
Little Rock, Arkansas 72201

85 NOV 22 AID: 13

CLERK
TEXAS

AMENDED AND RESTATED
WATER SYSTEM AGREEMENT

THIS AGREEMENT is executed as of October 15, 1985 by and between the CITY OF TEXARKANA, ARKANSAS, a municipality created and existing under the laws of the State of Arkansas (the "Arkansas City") and the CITY OF TEXARKANA, TEXAS, a municipality created and existing under the laws of the State of Texas (the "Texas City"). This agreement amends, restates and replaces that certain 1982 Water System Agreement executed as of December 1, 1982 (the "1982 Water Agreement") by and between the Arkansas City and Texas City.

W I T N E S S E T H:

WHEREAS, by agreements dated August 5, 1948, April 12, 1957 and May 20, 1969, respectively, Texas City has contracted to supply Arkansas City with treated water in amounts at all times sufficient to satisfy demands imposed upon the municipal water system of Arkansas City by its customers, under the conditions and provisions set forth in such agreements, from Lake Wright Patman (formerly Texarkana Reservoir), located in Bowie County, Texas; and

WHEREAS, under the "Texarkana, Arkansas-Texas Water Supply Agreement," dated May 20, 1969 (the "1969 Water Agreement") between the Arkansas City and the Texas City, it was expressly recognized that the two cities were authorized, under certain circumstances, to pump or take water in the future from sources of supply other than the Lake Wright Patman source authorized under the 1969 Water Agreement, including but not limited to circumstances wherein (i) the needs and demands of Arkansas City for water exceeded the ability of Texas City to deliver same, or (ii) Arkansas City reasonably anticipated that its needs and demands for water would exceed the ability of Texas City to deliver same, or (iii) Texas City and Arkansas City agreed to resume the pumping of water from some other supply; and

WHEREAS, in 1982 the parties recognized that the growth of both cities and the surrounding areas, and the increasing needs and demands for water of the citizens and residents of the areas of both cities would cause needs for water to exceed the available capacity by the year 1986; and

WHEREAS, the need of the parties to secure other sources of water through other facilities than the Lake Wright Patman source, and to have such other source acquired, developed, constructed and capable of delivering treated water to customers by the year 1986, was confirmed by studies and research conducted by independent consulting engineers; and

WHEREAS, pursuant to a Water Supply Contract dated October 12, 1978 (the "Water Supply Contract"), between Arkansas City and The Southwest Arkansas Water District (the "District"), a regional water distribution district existing under the laws of the State of Arkansas, Arkansas City reserved for future municipal or industrial use up to fifty million (50,000,000) gallons of raw water per day in storage space allocated the District in Millwood Reservoir, said reservoir being located in portions of Little River and Hempstead Counties, Arkansas; and

WHEREAS, in order to meet anticipated water needs the Arkansas City entered into agreements pursuant to which the City of Texarkana, Arkansas Public Facilities Board (the "Issuer") has undertaken the acquisition, construction and equipping of certain waterworks, water supply, transmission, treatment and distribution facilities (the "Initial Project") involving the securing and developing of the Arkansas City's water supply source at Millwood Reservoir; and

WHEREAS, the Issuer obtained necessary funds for the acquisition, construction and equipping of the Initial Project, for refunding certain outstanding water and sewer revenue bond indebtedness of the Arkansas City, and for paying the cost of issuing the bonds, through the sale of the Issuer's Waterworks Facilities Revenue Bonds, Series 1982, in the principal amount of \$19,535,000 (the "Prior Bonds"); and

WHEREAS, pursuant to that certain Sale Agreement dated as of December 1, 1982 (the "Prior Agreement"), between the Issuer and City, the Initial Project was sold to the City in consideration of payments sufficient to provide for payment of principal of, premium, if any, and interest on the Prior Bonds; and

WHEREAS, to make more definite and certain their agreements with respect to the acquisition, use and payment of the cost of the Initial Project and the ability of Texas City to obtain water from and through Arkansas City's interest in the Initial Project, the Arkansas City and Texas City entered into that certain Texarkana, Arkansas-Texas 1982 Water System Agreement, dated as of December 1, 1982 (the "1982 Water Agreement"); and

WHEREAS, the Issuer is authorized under the Act to issue and sell revenue bonds for the purpose of refunding the Prior Bonds; and

WHEREAS, it has been determined that refunding the Prior Bonds will result in interest savings to the Issuer, Arkansas City and Texas City and that in order to provide funds therefor, that the Issuer will issue its Waterworks Facilities Revenue Refunding Bonds, Series 1985, in the principal amount of \$17,930,000 (the "Refunding Bonds"), pursuant to the terms of a Trust Indenture, dated as of October 15, 1985 (the "Indenture"), between the Issuer and The State First National Bank of Texarkana, of Texarkana, Arkansas, as trustee; and

WHEREAS, the Issuer and the Arkansas City have entered into a Sale Agreement, dated as of October 15, 1985 (the "Agreement") under which the Prior Agreement will be terminated and the Issuer will sell the Initial Project to the Arkansas City for payments sufficient to provide for payment of principal of, premium, if any, and interest on the Refunding Bonds; and

WHEREAS, the Arkansas City and Texas City desire to enter into this agreement to amend and restate the 1982 Water Agreement as necessary to accomplish the issuance of the Refunding Bonds;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, and in consideration of the payment by Texas City to Arkansas City of the sum of \$1.00 and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Supply Treated Water to Texas City. From and after the Date of Commercial Operation of the Initial Project (defined herein to mean the date on which the Initial Project is capable of producing and transmitting potable treated water for consumption and use by customers of Arkansas City, as evidenced by a certificate of Arkansas City's consulting engineer delivered to the Trustee and to Texas City), Arkansas City agrees to furnish, supply and make available to Texas City, at the various points where the water system of Arkansas City now makes or may hereafter make contact or connection with the water system of Texas City, or at such other points of delivery as may be mutually agreed upon, potable treated water from the Initial Project (of the same quality, purity and fitness as that which may be sold by Arkansas City to its consumers), at all times sufficient in amount, pressure and rate of flow to satisfy all demands imposed upon Texas City's system by customers attached thereto, and the total requirements of said customers existing from time to time, or at any time, to the extent that such customers cannot conveniently be served by Texas City from Lake Wright Patman; provided, however, that in no event shall the Texas City water demands under this Agreement exceed the lesser of the capacity of the Initial Project or the amount of water made available to Arkansas City under the Water Supply Contract; provided further, that those other cities and customers currently being served by Texas City from the Lake

Wright Patman supply under separate contracts with Texas City, shall not, without the express approval of Arkansas City's Board of Directors, receive water from the Initial Project, but shall continue to be served by Texas City under their separate contracts with Texas City to obtain water from Lake Wright Patman.

2. No Priorities as Between Customers in Either City. Arkansas City agrees that it will maintain the Initial Project, and all related facilities, as part of its own water system and will keep the same in good and efficient operating condition for the purpose of furnishing water to both Arkansas City and Texas City, and Arkansas City agrees that water shall be furnished to Texas City on the same basis as if the customers connected to the Texas City's water system were actually located within the city limits of Arkansas City, and in the event it should become necessary to ration water supplies, the same method of rationing and priorities of usage shall be applied to Arkansas City to the customers in both cities without discrimination. Further, in the event of any such rationing of water, the requirements of public health of both cities shall be equally recognized, and the amount of water available for human use and consumption will not be diminished solely in order to continue to supply industrial or commercial customers in or out of either Arkansas City or Texas City.

3. Determination of Amounts of Water Delivered to Texas City. Because of the many existing points of interconnection between the respective water systems of both Arkansas City and Texas City, the parties agree that it is not feasible to measure the amount of water actually delivered by Arkansas City to Texas City from the Initial Project. Accordingly, the periodic payments to be made by Texas City pursuant to Paragraph 5 hereof, for receiving the benefit of potential future access to and use of water from the Initial Project, without regard for the actual amount of water delivered to Texas City from the Initial Project, shall be based upon the same proportion as the amount of water sold by Texas City to its metered customers during any relevant period of time bears to the total amount of metered water sold by both cities during such period of time.

4. Computation of Water Charges. Texas City agrees that for water received by it at any time under this Agreement, subject to Paragraph 5, it shall pay Arkansas City the same amount per 1,000 gallons of water as shall be computed to be the cost to Arkansas City for water used by it from the Initial Project.

5. Payments. It is agreed and understood that Arkansas City will prepare and furnish monthly bills or statements for all amounts collected as being required to be paid or incurred under the provisions of Arkansas City's then current budget requirements pertaining to the Initial Project (supplemented if

necessary). In particular, so long as the Issuer's Refunding Bonds, or any interest thereon, remain outstanding and unpaid, regardless of the actual quantity of water delivered from the Initial Project, Texas City will make minimum monthly payments adequate to discharge its pro rata share (determined as provided in Paragraph 3) of the following items:

(a) All amounts required for amortization of the cost of the Initial Project, including amounts represented by the Refunding Bonds (provided, however, that solely for the purpose of calculation of the Texas City's proportionate share of the cost of the Initial Project there shall be excluded from such share a proportion related to the sum of \$1,106,800, that being the amount of proceeds of the Prior Bonds used to refund certain outstanding water and sewer revenue refunding bonds of Arkansas City issued in 1976, the cost of such refunding to be borne and amortized separately by Arkansas City under the Sale Agreement out of its water and sewer system revenues, so that at any time Texas City shall not be obligated to pay, with respect to the Refunding Bonds, more than its proportionate share, determined as provided in Paragraph 3, of 95.33% of the aggregate principal amount of the Refunding Bonds), and amounts represented by any Additional Bonds required under the Indenture to provide and complete the Initial Project as planned, including without limitation, payment of all principal, interest, premium, if any, fees and charges of the Trustee and any paying agent or agents, amounts, if any, required to establish, maintain or replenish any reserve, contingency or other funds specified by the Indenture and relating to the Issuer's revenue bonds issued for the purpose of providing and constructing the Initial Project. A true and correct copy of the amortization table reflecting scheduled annual principal and interest requirements with respect to the Refunding Bonds, is attached hereto as Exhibit A and made a part hereof for reference purposes. The parties agree that if any Additional Bonds are issued to provide and complete the Initial Project as planned, a copy of the schedule of annual principal and interest requirements with respect to such Additional Bonds will be affixed to this Agreement at or prior to the time of issuance of such Additional Bonds. Notwithstanding the rendering of monthly bills or statements, as set forth above, if for any reason required or specified under the Indenture, payments of the type or kind specified in this Subparagraph (a) are required to be made at more frequent or different intervals of time, any such payments made under this Subparagraph (a) shall be made in such time and manner as to insure compliance by the Arkansas City and the Issuer with their respective covenants under the Sale Agreement and the Indenture. It is further understood that upon payment and discharge of all indebtedness of the Issuer under the Indenture with respect to revenue bonds issued to refinance

10

the Initial Project, the provisions of this Subparagraph (a) shall no longer apply in computation of monthly payments to be made by Texas City.

(b) All amounts for which Arkansas City may be obligated under the Water Supply Contract, after deducting therefrom such future sum as may be obtained by Arkansas City from other users of water supplied through the Initial Project facilities, in partial reimbursement for Arkansas City's obligations to the District under the Water Supply Contract.

(c) All amounts reasonably required for the maintenance, operation and administration of all properties and facilities acquired, constructed and equipped pursuant to the Sale Agreement. The Arkansas City shall keep detailed and accurate accounts reflecting all direct expenses of operation and maintenance, including labor and materials chargeable to the source of supply, power and pumping, purification and transmission. In addition, indirect expenses, including but not limited to insurance, administration and supervision, transportation clearing account, general and administrative expenses including labor and supplies, telephone and telegraph expense, rents and all other overhead expenses, shall be accounted for and properly allocated to the operation and maintenance of the Initial Project facilities.

(d) All amounts reasonably required to pay the Issuer's administration expenses attributable directly to its activities under the Sale Agreement.

The monthly bills or statements to be furnished Texas City shall be prepared so as to be received by Texas City on or before the first day of the month in which such bill or statement shall be payable. Texas City agrees to pay to Arkansas City, at the office of the Texarkana Water Utilities, or such other place where the Arkansas City's water system offices shall be located in the future, on or before the fifteenth day of the month in which such payment is due, the amount specified in the bill or statement rendered as aforesaid, except that if at any time Texas City shall dispute the correctness of the statement so rendered, payment shall be made by Texas City in such amount as it concedes to be correct, but in no event in an amount less than Texas City's average monthly payment for the preceding six calendar months. The disputed portion of any such statement shall thereafter be determined by agreement between the parties, if possible, or by arbitration in the manner prescribed by Paragraph 16. In the absence of any agreement or arbitration, the disputed amount shall be determined by appropriate decree or judgment of a court of competent jurisdiction in the matter. Should Texas City fail to pay the amount of any bill or statement when due, and such amount is valid and proper under this Agreement, interest on such unpaid amounts shall accrue from the time due until paid in

full, at the rate of six percent (6%) per annum. If Texas City does not receive any bill or statement required or permitted hereunder until after the first day of the month, the time for payment of such bill or statement shall be extended accordingly. Without the express written consent of Texas City, payments to be made by Texas City pursuant to this Agreement shall never be increased by reason of the issuance or sale of Additional Bonds by the Issuer over and above those amounts required to provide for and complete the Initial Project facilities as planned by Arkansas City and approved by Texas City. Further, Arkansas City agrees that it shall not issue and sell Additional Bonds for the purpose of (i) refunding any cost of any additional pumping, transmission, storage, treatment or other facilities for the joint use of both cities (herein called an "Additional Project") unless and until Texas City shall have consented to the issuance and sale of such Additional Bonds, whether by the Issuer, Arkansas City, or other entity or agency. Any consent of Texas City as contemplated by this Paragraph shall be evidenced by resolution of its City Council.

6. Records of Both Cities Open to Inspection. All records and accounts kept by Texas City and Arkansas City pertaining to the operation by each of its water system including but not limited to records of all sales of water, shall be open to inspection during regular business hours by the other City and its accredited representatives.

7. Water Quality. Water to be delivered to Texas City under this Agreement shall be of the same quality as that furnished by Arkansas City to its own consumers and customers, and to this end Arkansas City agrees that the Initial Project and all facilities associated therewith will be operated and maintained in such manner as may be required to assure approval by the Health Department of the State of Arkansas or any other cognizant governmental agency.

8. Water Measurement. As part of its plans regarding construction of the Initial Project, Arkansas City shall provide for or cause the Issuer to provide for the installation, at an appropriate location, of a master meter of standard type for properly measuring the quantity of water delivered for use of the two cities under this Agreement. Arkansas City shall provide access to such metering equipment at all times to Texarkana Water Utilities, or such other jointly operated utility, department or agency as shall in the future perform the functions of managing the water systems of both cities, and all periodic reading, calibration and adjustment of such master metering equipment shall be performed by agents or employees of Texarkana Water Utilities or such other jointly operated department or agency, as aforesaid.

9. Term of Agreement. This Agreement and the obligation of Texas City to promptly make all prescribed monthly and other payments specified herein shall continue for the period that any of the Issuer's revenue bonds secured or supported by such payments and issued to finance the Initial Project are outstanding and unpaid. Thereafter, either city shall have the right to an extension of the term of this Agreement beyond its initial term, upon such terms, provisions and conditions as may be agreed upon between them at the time. Determinations of monthly charges to be billed and paid at such time shall be determined as hereinabove provided for the initial term, in Paragraph 5, except that no payment shall be made in respect of the costs and items specified in Subparagraph 5(a).

10. Texarkana Water Utilities to be Representative. The parties agree and acknowledge that the separate water and sewer system of each is currently operated and managed by Texarkana Water Utilities, under joint operating arrangements previously approved by both cities. The parties hereby confirm and approve the continued joint operation of their respective water and sewer systems by Texarkana Water Utilities. So long as Texarkana Water Utilities continues to operate and manage the water system of Arkansas City, performance by Texarkana Water Utilities of any duties, responsibilities or obligations of Arkansas City hereunder shall be complete and sufficient performance of Arkansas City. *

11. Payment of Taxes. Arkansas City agrees that, unless required by law to do so, it will not impose or attempt to impose ad valorem property taxes on the Initial Project or any Additional Project provided or constructed by or on behalf of the Issuer, payment for which is to be made in part by Texas City pursuant to Paragraph 5 hereof. In the event any sales, use or other gross receipts taxes, or taxes of similar nature, are hereafter imposed by any taxing authority upon the use or consumption of water delivered or to be delivered under this Agreement, the amount of such taxes shall be borne and paid for by the city upon which such taxes are imposed, if such taxes are separately imposed. If such taxes shall be imposed with regard to water furnished from the Initial Project and served to both cities collectively, each city shall pay its pro rata share of such taxes, determined in the manner provided in Paragraph 3 hereof.

12. Regulatory Compliance. This Agreement and the obligations of the parties hereunder shall be subject to all valid rules, regulations and laws applicable thereto, as duly promulgated by the State of Arkansas, the State of Texas, the United States of America, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them.

13. Cities to Fix Adequate Rates. (a) Texas City represents and warrants that all payments to be made by it hereunder shall be made from surplus net revenues of its water and sewer system, after payment or provision for expenses of operation and maintenance of said water and sewer system, and all payments required to be made in respect of any revenue bonds of Texas City secured by a first lien or pledge on the net revenues of said water and sewer system, and Texas City hereby pledges such surplus net revenues to the payment of its obligations hereunder.

(b) Texas City further agrees to fix, establish, maintain and collect such rates, fees, and charges for the sale of water and use or service of its water and sewer system, as now in existence or hereafter extended or improved, as will, in combination with any other funds legally available and reasonably assured for the purpose, yield surplus net revenues of its water and sewer system, after payment of all expenses of operation and maintenance thereof, and payment of all amounts required under any first lien water and sewer revenue bonds of Texas City, equal to at least 125% of Texas City's proportionate obligation with respect to the annual debt service requirements of the Refunding Bonds and certain Additional Bonds, as provided in Paragraph 5(a).

(c) Arkansas City agrees to fix, establish, maintain and collect rates, fees and charges with respect to its water and sewer system in such amounts and at such times to comply with Arkansas City's covenants and at such times to comply with Agreement, which covenants Arkansas City represents and warrants to be at least equal to those of Texas City set forth above.

14. Pledge of Contract Proceeds. It is recognized that the proceeds of this Agreement are to be pledged by Arkansas City under the Sale Agreement, to secure in part Arkansas City's obligations to the Issuer, and, in turn, that the Issuer will pledge its rights under the Sale Agreement, including Arkansas City's right to receive the proceeds of this Agreement, to the Trustee under the Indenture, to secure payment of the Refunding Bonds. In this regard, Texas City agrees that the Issuer or the Trustee may enforce any obligations owed Arkansas City by Texas City should Arkansas City for any reason fail to pursue appropriate remedies against Texas City for the enforcement of the payments which are to be derived from this Agreement for the payment of the Issuer's indebtedness.

15. Force Majeure. Neither Arkansas City nor Texas City shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, revolutions, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, walkouts, arrests and

resistance of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or pipelines, temporary failure of water supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind enumerated or otherwise not within control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence, or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall any of such causes or contingencies affecting the performance of this Agreement relieve either party from its obligation to make payments of amounts due hereunder in the time and manner required to assure timely payment of the Issuer's revenue bonds secured in part hereby.

16. Arbitration of Disputes. In the event that any dispute shall arise as to any amounts due hereunder, or the carrying out of any of the rights, duties, or obligations arising out of this Agreement, such dispute shall be settled by arbitration, and to that end each city shall select a disinterested representative who shall be either a qualified registered engineer or certified public accountant experienced in waterworks accounting matters and the two thus selected shall choose a third person similarly qualified and the three so selected shall constitute an arbitration board to make investigation and to fix the amount so payable, or otherwise determine the matter in dispute, which determination shall be binding on both Arkansas City and Texas City. The cost of each arbitration shall be borne equally by the two cities.

17. Title to Water. Title to all water to be supplied under this Agreement shall remain in Arkansas City to the point of delivery to Texas City, at which point title to water delivered to Texas City shall pass to Texas City. Each party agrees to save and hold the other harmless from all claims, demands and causes of action which may be asserted by any person on account of the transportation, delivery or disposal of water delivered under this Agreement after title has passed to such party.

18. Future Interest of Texas City in Initial Project. It is agreed by Arkansas City that at such time as all Refunding Bonds or any Additional Bonds issued in connection with the acquisition and construction of the Initial Project by the Issuer shall have been fully paid and discharged, Arkansas City will, upon Texas City's request, convey to Texas City an undivided interest in the treatment plant, distribution lines

and other facilities, if any, used to serve Texas City under this Agreement, such interest to be determined by the percentage that the amount paid by Texas City under Paragraph 5(a) hereof bears to the total amount paid to retire bonds issued to finance the Initial Project and any Additional Project serving Arkansas City and Texas City jointly. Texas City's undivided interest in the facilities serving it, as above described, shall be that proportion of Arkansas City's interest in such facilities that Texas City's payments, as above described, bear to Texas City's future interests, it being understood that such interests shall be confined to those facilities aforementioned which are used in serving Texas City. It is further agreed that the Initial Project and any Additional Project serving Texas City shall never be sold to any third party without the consent of Texas City expressed by ordinance or resolution of its City Council, and that should such facilities ever be sold, Texas City shall be paid a percentage of the proceeds received upon sale, derived in the same manner as aforementioned with regard to determination of Texas City's interest in such facilities.

19. Reaffirmation of 1969 Water Supply Agreement. The parties hereby reaffirm their mutual understanding that the 1969 Water Agreement shall remain in full force and effect as to all of its provisions, and shall not be considered amended, modified or superceded in any respect by virtue of the agreements of the parties evidenced under the provisions hereof. *

20. Notice. Any notice, request, demand, statement, bill or other document provided for in this Agreement shall be in writing and shall be considered to have been duly delivered when sent by registered mail, if to Arkansas City, addressed to the City Manager, City Hall, Texarkana, Arkansas, or if to Texas City, addressed to the City Manager, City Hall, Texarkana, Texas; provided, however, that routine communications may be sent by ordinary mail, postage prepaid to the addresses indicated above, or, upon the filing of an appropriate written notice specifying some other individual or address to whom communications thereafter are to be addressed, to such other address.

21. Severability. The parties agree that if any provision of this Agreement contravenes or is held invalid or unenforceable under any law, the same shall not invalidate the entire Agreement, but it shall be construed as though not containing the unenforceable or invalid provision, and the rights and obligations of the parties shall be construed and continued in force accordingly.

22. Approval of Financing Documents; Modifications. Texas City acknowledges that it has received true and correct copies of the Indenture and the Sale Agreement, and further, that the execution and delivery of this Agreement by Texas City shall be

conclusively deemed to be approval and consent of Texas City to the terms and provisions therein relating to the refunding of the Prior Bonds and operation of the Initial Project. Upon execution and delivery of this Agreement, the 1982 Water Agreement shall be amended, restated and replaced in its entirety by this Agreement. This Agreement shall not be further amended or modified except by an instrument in writing, executed by both parties, duly authorized thereunto by their respective governing bodies and, so long as the Refunding Bonds or any Additional Bonds remain outstanding and unpaid, upon the express written consent of the Issuer and the Trustee in the manner and under the circumstances provided in Article XIII of the Indenture regarding amendment of the Sale Agreement.

IN WITNESS WHEREOF, the City of Texarkana, Arkansas, pursuant to resolution or ordinance duly and properly adopted by its Board of Directors, has caused this Agreement to be executed in its behalf by its Mayor and City Manager, and attested by its City Clerk and its corporate seal to be impressed hereon, and the City of Texarkana, Texas, pursuant to resolution or ordinance duly and properly adopted by its City Council, has caused this Agreement to be executed in its behalf by its Mayor and City Manager and attested by its City Secretary and its corporate seal to be impressed hereon, all as of the date first hereinabove written.

CITY OF TEXARKANA, ARKANSAS

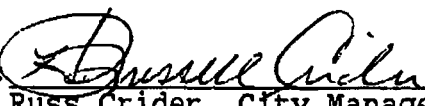
By: 
Roger C. Ford, City Manager

ATTEST:

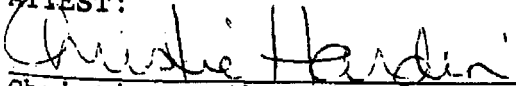

Sandra Powell, City Clerk

By: 
Bobby Ferguson, Mayor

CITY OF TEXARKANA, TEXAS

By: 
Russ Crider, City Manager

ATTEST:


Christie Hardin, City Secretary

By: 
Darwood Swanger, Mayor

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

CITY OF TEXARKANA, ARKANSAS

PLAINTIFF

v.

Case No. 4:10-CV-04067

CITY OF TEXARKANA, TEXAS

DEFENDANT

OPINION AND ORDER

The Plaintiff in this action, City of Texarkana, Arkansas (“Arkansas City”) filed an Application to Compel Arbitration and to Stay Administrative Actions Pending Arbitration (Doc. 1) against the Defendant, City of Texarkana, Texas (“Texas City”) concerning disputes over the operation of the integrated water and sewer systems between the two border cities.

I. INTRODUCTION

Arkansas City instituted this action to compel arbitration of disputes under the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* Arkansas City alleges that the disputes it has identified as being subject to arbitration arise out of a written contractual agreement between the two cities known as the Amended and Restated Water System Agreement dated October 15, 1985 (“1985 Agreement”). The 1985 Agreement contains an arbitration clause that provides that “any dispute” between the parties as to “any of the rights, duties, or obligations arising out of this Agreement” shall be resolved through arbitration. (Doc. 1-1, ¶ 16). Arkansas City has enumerated the following disputes, which it alleges are subject to arbitration pursuant to the 1985 Agreement (as submitted by Arkansas City pursuant to the Court’s Order (Doc. 34)):

(AR1) The following unilateral actions taken by City Manager of Texas City on April 1, 2010:

- (a) Withdrew the TWU Director's authority to act and speak on behalf of Texas City;
- (b) Ordered that Texas City assume direct and exclusive control over all TWU "purchases or projects that involve more than fifty percent (50%) of funding received or derived from Texas funds;" and
- (c) Ordered that Texas City assume direct and exclusive control over all TWU employment activities involving Texas funds.

(AR2) Texas City's sale and distribution of treated water from Millwood Reservoir to Texas users outside the City of Texarkana, Texas, without the approval of the City of Texarkana, Arkansas and Southwest Arkansas Water District.

(AR3) Texas City's failure to allow Arkansas City to inspect attorney's fee statements sent to the Texas City by its legal counsel, the amount of which TWU was directed to pay by Texas City's City Manager.

(AR4) Texas City's planned transfer of the water treatment function of its water system to Riverbend Water Resources District.

Texas City denies that any of Arkansas City's enumerated disputes fall within the scope of the arbitration clause of the 1985 Agreement or are otherwise subject to arbitration. Further, Texas City separately seeks an order of the Court compelling arbitration as to the following enumerated disputes, should the Court find that they are governed by the 1985 Agreement (as submitted by Texas City pursuant to the Court's Order (Doc. 34), but omitting certain legal arguments):¹

¹ Texas City filed a Motion for Leave to File Amended Answer on January 12, 2012 (Doc. 32), which Arkansas City opposed (Doc. 33). The Court denied Texas City's Motion by Order dated January 25, 2012 on the grounds that the proposed amended answer asserted new affirmative defenses and counterclaims which appeared to inappropriately go the merits of the disputes between the parties. (Doc. 34). In that same Order, however, the Court directed the parties to define the actual disputes existing in this action by submitting to the Court either a stipulation or a separate statement by each party as to its proposed definition of the actual disputes. Texas City submitted three defined disputes that had appeared as "counterclaims" in its proposed amended answer. Arkansas City, therefore, had at least some notice of Texas City's disputes by January 12, 2012. The disputes were also submitted to the Court, with a copy to Arkansas City's counsel, on April 3, 2012. In the interest of judicial efficiency, the Court will consider the disputes presented by Texas City as well as those originally presented in this action by Arkansas City, as Texas City presented those disputes to the Court in compliance with a Court Order.

(TX1) From 2000 to date, Texas City overpaid its contracted share of bonded indebtedness under the 1985 contract in excess of \$200,000.00.

(TX2) Paragraph 17 of the 1985 contract — providing for title to water purchased under the contract passing to Texas City at the point of delivery, and providing for a hold harmless provision after title has passed — is an essential provision of the 1985 contract and is not severable. Arkansas City’s contention of restrictions on Texas City’s title to water purchased and delivered under the 1985 contract is a repudiation of paragraph 17.

(TX3) Texas City overpaid the funding allocation for fiscal years 2001 through 2009.

A. JURISDICTION

This action was brought pursuant to the provisions of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 *et seq.* There is no dispute that the agreement at issue in this case involves interstate commerce and is, therefore, covered by the provisions of the FAA. The FAA “bestows no federal jurisdiction but rather requires an independent jurisdictional basis.” *Northport Health Servs. of Ark., LLC v. Rutherford*, 605 F.3d 483, 486 (8th Cir. 2010) (internal quotation omitted). Complete diversity exists in this case, as the parties are two municipalities which straddle the border between two states – Arkansas and Texas. The amount in controversy requirement is also met, as the total value at stake in this litigation, which involves the management of the water and sewer systems for both municipalities, exceeds \$75,000, exclusive of interest and costs. This Court, therefore, has jurisdiction under 9 U.S.C. § 4 in conjunction with 28 U.S.C. § 1332(a).

B. PROCEDURAL HISTORY

Arkansas City filed its Application to Compel Arbitration and Stay Administrative Actions on May 20, 2010. (Doc. 1). On June 14, 2010, Texas City filed a Motion for Referral to Mediation. (Doc. 6). After several rounds of briefing from the parties, this action was ultimately scheduled for

a settlement conference by Order of Magistrate Judge Barry Bryant on December 3, 2010. The case was reassigned from District Judge Harry Barnes to the undersigned on March 10, 2011. From at least April through June of 2011, the parties engaged in continuing mediation with Magistrate Judge Bryant. The two Cities, however, were ultimately not able to amicably resolve their issues. The Court held a status conference in the Texarkana federal courthouse on September 26, 2011. After hearing arguments at the status conference and conferring with the parties on an agreeable date, a bench trial was set in this matter for April 9, 2012. The Final Scheduling Order allowed the parties to conduct limited discovery concerning the issue of arbitrability only. The Court conducted a non-jury trial of this action on April 10-11, 2012.²

Arkansas City and Texas City jointly submitted written Stipulations of Facts before the trial which both sides referred to during the trial. Those Stipulations, along with the testimony of the witnesses at trial and the exhibits received into evidence, as well as the parties' lengthy pleading history, form the basis for the Court's findings of fact set forth below. To the extent there were conflicts in the testimony of witnesses, the Court weighed the credibility of the witnesses and their testimony in making its findings of fact. *See United States v. Mendoza*, 677 F.3d 822, 827 (8th Cir. 2012) (stating that, where a trial judge's credibility determination is not contradicted by extrinsic evidence or not internally inconsistent, such determination "can virtually never be clear error"). Both parties also submitted Post-Trial Briefs, which have been read and considered by the Court. (Docs. 67-68).

C. CONSIDERATION OF PAROL EVIDENCE

² The Court re-scheduled the bench trial to move it one day later from the previously-scheduled April 9th date.

The Court's findings of fact include information regarding the parties' contracting history and course of performance as such facts relate to interpretation of the 1985 Agreement. As those facts are external to the 1985 Contract, before setting forth the facts relevant to resolution of this case, the Court will first address the admissibility of such parol evidence in this action. Before trial, the parties – through their various pleadings – addressed the issue of whether or not the Court should consider parol evidence as to the parties' prior contracting history and the parties' overall course of dealing in determining whether the enumerated disputes were within the scope of the arbitration provision of the 1985 Agreement. The Court raised the issue with the parties again just prior to trial. Arkansas City contended that parol evidence was admissible to explain the terms of the contract. Texas City contended that parol evidence was inadmissible because the terms of the contract were unambiguous.

“Whether a contract is ambiguous is a question of law for the court, and extrinsic evidence should not be considered to create an ambiguity where there otherwise would be none.” *Cont'l Holdings, Inc. v. Crown Holdings, Inc.*, 672 F.3d 567, 578 (8th Cir. 2012) (internal quotation omitted). However, if the Court finds that a contract term is ambiguous, the proper procedure is to allow the parties to present extrinsic evidence. *Id.*; see also *C & A Construction Co. Inc. v. Benning Construction Co.*, 256 Ark. 621 (1974) (“[T]he initial determination of the existence of an ambiguity rests with the court and if ambiguity exists, then parol evidence is admissible and the meaning of the term becomes a question for the factfinder.”). “Arkansas’s parol evidence rule bars the introduction into evidence of any prior agreement of the parties that contradicts the terms of an unambiguous contract. See Ark. Code Ann. § 4-2-202. However, the Arkansas Supreme Court has declared that evidence of ‘a course of dealing that explains or supplements a contract is competent evidence of

the parties' intent and can become part of a contract.” *P & O Nedlloyd, Ltd. v. Sanderson Farms, Inc.*, 462 F.3d 1015, 1019 (8th Cir. 2006) (quoting *Bank of Am. v. C.D. Smith Motor Co.*, 353 Ark. 228 (Ark. 2003)); accord Ark. Code Ann. § 4-2-202(a) (allowing the terms of a contract to be “explained or supplemented by course of performance, course or dealing, or usage of trade”). Further, in interpreting Minnesota’s parol evidence rule, MINN. STAT. § 336.2-202, which is identical to Arkansas’s parol evidence rule, the Eighth Circuit has stated that “explanatory or supplemental evidence of the course of dealing *or course of performance* by the parties is admissible, as is evidence of consistent additional terms unless the writing is intended by the parties to be a complete and exclusive statement of the terms of the agreement.” *Best Buy Co. v. Fedders N. Am., Inc.*, 202 F.3d 1004, 1008 (8th Cir. 2000) (emphasis added). The 1985 Agreement does not contain an integration clause, such that extrinsic evidence would not otherwise be barred if the terms of the Agreement are found by the Court to be ambiguous. *PlaNat Prods. v. Shank*, 119 F.3d 729, 732 (8th Cir. 1997) (stating that an integration clause “is a strong indication that the parties intended for the Agreement to be complete and final” in reference to applicability of the parol evidence rule). Parol evidence is also admissible under Arkansas law to “bring out [a] latent ambiguity” in a contract. *Jet Asphalt & Rock Co. v. Angelo Iafrate Constr., LLC*, 431 F.3d 613, 617 (8th Cir. 2005) (quoting *Countryside Cas. Co. v. Grant*, 269 Ark. 526 (Ark. 1980)).

The Court made a preliminary ruling at trial that certain provisions of the 1985 Agreement concerning the joint operation of the Cities’ respective water and sewer systems were ambiguous, and that extrinsic evidence of the parties’ course of dealing and course of performance would be admissible to aid the Court in interpreting the intended meaning of that provision of the contract. After the trial of the case, the Court requested that the parties submit post-trial briefs, and in

particular, the Court asked the parties to address the parol evidence rule as it relates to evidence of course of performance, particularly the parties' course of conduct post-1985, as to which the Court heard a substantial amount of evidence at trial.

Based on all the briefings presented to the Court, as well as the arguments presented at trial, the Court upholds its preliminary finding of ambiguity. Specifically, the Court finds that the phrases "joint operating arrangements previously approved by both cities" and "joint operation of [the] respective water and sewer systems" in the 1985 Agreement are ambiguous. The Court is entitled, therefore, to consider the extrinsic evidence presented by the parties (both pre-1985 course-of-dealing evidence and post-1985 course-of-performance evidence) as it relates to clarifying – not amending – the meaning of the ambiguous provisions.

The Court finds, further, that due to the nature of the parties' joint operating history, parol evidence is admissible in this case to bring out and clarify a latent ambiguity in the term "Texarkana Water Utilities," as used at various points throughout the 1985 Agreement. It appears to the Court that the parties have entered into no written agreement concerning the "joint operation" of the two Cities' water and sewer systems by "Texarkana Water Utilities" or any other entity, even though the evidence indicates that the systems have been jointly operated since prior to 1948. Furthermore, "Texarkana Water Utilities" has not been consistently referenced by the parties as the entity in control of the operation, and the parties are in disagreement over what "Texarkana Water Utilities" actually is – a department of Texas City or an entity independent of either city but jointly controlled by each. As there is no written agreement specifically concerning either the organization or management of Texarkana Water Utilities or the general joint operation of the two cities' water and sewer systems, the Court heard extrinsic evidence to clarify what "Texarkana Water Utilities" was

and what was intended by the parties in reaffirming the “joint operation” of the two Cities’ water and sewer systems by TWU.

The Court, therefore, includes in its recitation of the facts, certain relevant facts pertaining to the parties’ contracting history and course of performance as they relate to the joint operation of the two Cities’ water systems. Any evidence that the Court ultimately found to be irrelevant or inadmissible was not considered by the Court and is not included in this opinion.

D. FACTUAL BACKGROUND – CONTRACTING HISTORY

Arkansas City and Texas City are adjoining municipalities separated by the border between the states of Arkansas and Texas. Each city has a water and sewer system to serve their respective customers, and the two systems have been interconnected and operated together since at least 1948. The Cities entered into their first contract related to the Cities’ water and sewer systems in 1948 (“1948 Contract”). (Doc. 4-1). The 1948 Contract was for a term of 30 years. Under Section 3 of the 1948 Contract, the cities agreed that the water and sewer system of Texas would be operated by a special board appointed by the City Council of Texas City, and the water and sewer system of Arkansas would be operated by a special board appointed by the City Council of Arkansas City. Section 3 further provided that since the systems were interconnected and, even then – prior to the signing of the contract in 1948 – operated as a single unit, a general manager would be selected with the approval of both boards whose duty it would be to look after the general management and operation of the water and sewer systems of both Cities. Section 14 of the 1948 Contract contains an arbitration clause that is basically identical to the arbitration clause in the 1985 Agreement.

Section 3 of the 1948 Contract was amended in 1965 (“1965 Amendment”) to state that the Texas system would be operated as an administrative department of Texas City, and the Arkansas

system would be operated by a Special Board known as the Texarkana, Arkansas Board of Public Utilities. (Pl. Trial Exh. 3). The 1965 Amendment further provided that all matters pertaining to the operations of both systems would be under the control and jurisdiction of the City of Texarkana, Texas and the Texarkana, Arkansas Board of Public Utilities. The 1965 Amendment further provided that the “systems of both cities shall be placed under the general supervision of an individual to be selected with the approval of both cities, whose duty it shall be to look after the operations of the water and sewer systems of both cities . . .” *Id.* The compensation of the supervisory individual was to be “prorated between Texas and Arkansas in the same proportion as water distributed by the two water systems is allocated to the two cities . . .” *Id.* The 1948 Contract, as amended in 1965, expired in 1978.

The parties entered into a contract in 1957 (“1957 Contract”) (Doc. 4-2) to govern the rights of the Cities to a new supply of water from Lake Wright Patman³ located in the state of Texas. The 1957 Contract was for a term of 50 years. The 1957 Contract acknowledged the 1948 Contract, and stated that the new contract did not supercede or amend the 1948 Contract. The 1957 Contract did not contain any new substantive provisions regarding the operation and management of the two cities’ water and sewer systems. Section 12 of the 1957 Contract did provide that Texas City would keep detailed and accurate accounts of all direct and indirect expenses for the operation and maintenance of the supply and transmission system as well as the distribution system. Section 12

³ In both the 1957 and 1969 Contracts, Lake Wright Patman is referred to by its former name, Texarkana Reservoir. *See* 1982 Contract, Doc. 37-2, p. 59 (noting that Texas City had formerly contracted with Arkansas City – in 1948, 1957, and 1969 – to supply Arkansas City with water “from Lake Wright Patman (formerly Texarkana Reservoir)”). Since Texarkana Reservoir is presently referred to as Lake Wright Patman, and that is how the parties have referred to it, the Court will refer to Lake Wright Patman throughout this Opinion and Order, in order to maintain consistency.

further provided that the Board created for the operation of the Texas City water system would allocate costs based on a detailed study made by an independent accountant selected jointly by the Texas City Board and the Arkansas City Board. Any disputes were to be resolved by the arbitration provision contained in Section 18, which is almost identical to the arbitration provision of the 1985 Agreement.

The two Cities signed another water supply contract in 1969 (“1969 Contract”) (Doc. 4-3), which governs the rights of the Cities to an increased supply of water from Lake Wright Patman over and above what had been contemplated by the parties in 1957. The 1969 Contract is for a term of 50 years (Doc. 4-3, § 9) and was specifically reaffirmed by the 1985 Agreement (Doc. 1-1, § 19). The 1969 Contract states that, “except for the retention of some features of a contract previously entered into by [the two cities],” the 1969 Contract is to supersede all prior contractual arrangements relating to Texas City’s obligation to supply treated water to Arkansas City. In the 1969 Contract, it is acknowledged and understood that Texas City has water contracts with other Texas cities. Texas City therefore has obligations to those “other area cities” regarding the increased water supply from the Texarkana Reservoir that had been acquired by Texas City pursuant to a permit issued by the Texas Water Rights Commission in 1968. The Contract does not contain any new provisions for the operation and maintenance of the two Cities’ water systems.⁴ Section 15 of the 1969 Contract again contains an arbitration clause that is basically identical in every material respect to the arbitration clause in the 1985 Agreement.

In 1982, the two Cities entered into a new contract (“1982 Contract”) (Doc. 37-2, p. 59-87)

⁴ The 1969 Contract expressly covers only water and did not supersede or amend any prior arrangements between the parties as to sewer services. (Doc. 4-3, p. 5).

to develop a new supply of water from the Millwood Reservoir located in Arkansas. The 1982 Contract was amended by the Cities in 1985, with the amendments primarily relating to the amount of the refunding bonds issued to finance the acquisition, construction and equipping of certain waterworks from the Millwood Reservoir. The remaining provisions are materially identical in both contracts. The 1985 Agreement, amending the 1982 Contract, is the agreement which contains the arbitration clause at issue in this case.

In both the 1982 and 1985 contracts, the two Cities recognize, acknowledge, and agree as follows⁵: Arkansas City had a pre-existing water supply contract with the Southwest Arkansas Water District, a regional water distribution district, which reserved a certain quantity of water allocated to the district from the Millwood Reservoir. (Doc. 1-1, p. 3). Arkansas City agrees to supply Texas City with treated water from the Millwood Reservoir at various points on the interconnected water system. (§ 1). Other Texas cities being supplied water from Lake Wright Patman under separate contracts are not to receive water from the Millwood Reservoir without the express approval of Arkansas City's Board of Directors. *Id.* The 1969 Contract is to remain in full force and effect and is not superseded or modified by either the 1982 Contract or 1985 Agreement. (§ 19). The 1982 Contract and 1985 Agreement also contain the following provisions of particular relevance to the case at hand:

6. Records of Both Cities Open to Inspection. All records and accounts kept by Texas City and Arkansas City pertaining to the operation by each of its water system including but not limited to records of all sales of water, shall be open to inspection during regular business hours by the other City and its accredited representatives.

...

⁵ Citations to particular sections refer to the same section in both the 1982 Contract and the 1985 Agreement.

10. Texarkana Water Utilities to be Representative. The parties agree and acknowledge that the separate water and sewer system of each is currently operated and managed by Texarkana Water Utilities, under joint operating arrangements previously approved by both cities. The parties hereby confirm and approve the continued joint operation of their respective water and sewer systems by Texarkana Water Utilities. So long as Texarkana Water Utilities continues to operate and manage the water system of Arkansas City, performance by Texarkana Water Utilities of any duties, responsibilities or obligations of Arkansas City hereunder shall be complete and sufficient performance of Arkansas City.

...

16. Arbitration of Disputes. In the event that any dispute shall arise as to any amounts due hereunder, or the carrying out of any of the rights, duties, or obligations arising out of this Agreement,⁶ such dispute shall be settled by arbitration, and to that end each city shall select a disinterested representative who shall be either a qualified registered engineer or certified public accountant experienced in waterworks accounting matters and the two thus selected shall choose a third person similarly qualified and the three so selected shall constitute an arbitration board to make investigation and to fix the amount so payable, or otherwise determine the matter in dispute, which determination shall be binding on both Arkansas City and Texas City. The cost of each arbitration shall be borne equally by the two cities.

17. Title to Water. Title to all water to be supplied under this Agreement shall remain in Arkansas City to the point of delivery to Texas City, at which point title to water delivered to Texas City shall pass to Texas City. Each party agrees to save and hold the other harmless from all claims, demands and causes of action which may be asserted by any person on account of the transportation, delivery or disposal of water delivered under this Agreement after title has passed to such party.

(Docs. 1-1 and 37-2).

The 1985 Agreement has a term that began with the issuance of the refunding bonds for the waterworks project and continues for a period that any of the bonds are outstanding and unpaid.

(Doc. 1-1, § 9). Thereafter, either City has the right to extend the term of the Agreement upon terms

⁶ The arbitration clause contained in the 1982 Contract and 1985 Agreement is essentially the same as the arbitration clauses used in the previous contracts between the two cities, except that the word "Agreement" was capitalized for the first time in the 1982 Contract, and then again in the 1985 Agreement.

agreed upon at the time. The 1985 Agreement is still in effect.

II. DISCUSSION AND ANALYSIS

A. NATURE OF ACTION

Arkansas City seeks an order under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 4, compelling Texas City to submit the Arkansas disputes to binding arbitration. Texas City likewise seeks an order of the Court compelling its identified disputes to arbitration. “By its terms, the FAA ‘leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.’” *Pro Tech Indus. v. URS Corp.*, 377 F.3d 868, 871 (8th Cir. 2004) (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985)) (emphasis in original). “A court’s role under the FAA is therefore limited to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute.” *Id.* The parties do not dispute that the arbitration provision of the 1985 Agreement is valid. The only issue for the Court to determine, then, is whether the parties’ disputes are encompassed by that arbitration provision. In deciding this issue of arbitrability, the Court is mindful that it is not to weigh the merits of the parties’ disputes, but to simply determine arbitrability of all the identified disputes – not merely those which the Court deems meritorious. *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 651-52 (1986). “An order to arbitrate [a] particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” *United Steelworkers of Am., AFL-CIO-CLC v. Duluth Clinic, Ltd.* 413 F. 3d 786, 788 (8th Cir. 2005) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960)).

B. SCOPE OF THE ARBITRATION PROVISION IN THE 1985 AGREEMENT

In deciding whether the parties' disputes are encompassed by the arbitration provision in the 1985 Agreement, the Court must first decide if the arbitration clause is broad or narrow. *Duluth Clinic*, 413 F.3d at 788. The Eighth Circuit has construed as "broad" an arbitration clause encompassing "[a]ny controversy or claim arising out of or *relating to* [the] Agreement." *Fleet Tire Serv. of North Little Rock v. Oliver Rubber Co.*, 118 F.3d, 619, 620-621 (8th Cir. 1997) (emphasis added). Such a broad provision would subject to arbitration collateral disputes that were merely *related to* the agreement. *Id.* at 621. On the other hand, the Eighth Circuit has construed as "narrow" arbitration clauses which have scopes limited to disputes arising under the agreement in which the arbitration clause is contained. *See Duluth Clinic* 413 F. 3d at 789 (finding as narrow a clause requiring all "grievances" be submitted to arbitration when "grievances" was defined in agreement as "any claim . . . alleging a violation of a specific contract provision or adherence to the terms and provisions of this Agreement"); *Lebanon Chem. Corp. v. United Farmers Plant Food, Inc.*, 179 F.3d 1095, 1101 (8th Cir. 1999) (finding as narrow a clause requiring arbitration of all disputes "arising from a contract started or concluded under *these rules*" (emphasis added)).

The Court finds that the arbitration clause in the 1985 Agreement is "narrow" in scope. The clause lacks the distinguishing broad language in *Fleet* covering disputes "arising out of or *relating to*" the contract. *See Lebanon Chem. Corp.* 179 F.3d at 1101 ("The *Fleet Tire* court expressly relied on the additional and more general phrase '*relating to*' to find that the arbitration clause was broad." (emphasis in original)). Instead the scope of the arbitration clause is limited to disputes "arising out of *this Agreement*." (Doc. 1-1, § 16) (emphasis added). Use of the specific qualifier "this" and the capital "A" in "Agreement" both serve to narrow the scope of the arbitration clause. *See Duluth*

Clinic, 413 F.3d at 789 (finding as significant the fact that “Agreement” was capitalized in the arbitration provision). Furthermore, by the terms of the arbitration provision, only disputes “arising out of” the 1985 Agreement, and not those merely related to it, are covered.

Since the Court has construed the arbitration clause at issue as narrow, the next step is for the Court to determine whether any of the matters in dispute “involve[] an agreement collateral to the agreement containing the arbitration clause.” *Fleet Tire*, 118 F.3d at 621 (applying *Prudential Lines, Inc. v. Exxon Corp.*, 704 F.2d 59 (2d Cir. 1983)). “A ‘collateral’ agreement is a separate, side agreement, connected with the principal contract which contains the arbitration clause. The burden is on the party resisting arbitration to demonstrate that the disputed issue is collateral.” *Duluth Clinic*, 413 F.3d at 790 (quoting *Prudential Lines*, 704 F.2d at 64). An agreement may be construed as collateral if it is a contract set apart and distinct from the main agreement. *Id.* (citing *Cornell Univ. v. UAW Local 2300*, 942 F.2d 138, 140 (2d Cir. 1991)). “Arbitration of collateral matters may not be ‘compelled merely based upon the existence of an arbitration clause in the main agreement.’” *Id.* (quoting *Prudential Lines*, 704 F.2d at 64).

Disputes arising under a collateral agreement must be differentiated, however, from disputes that arise under the main agreement but require determination of a sub-issue. *Prudential Lines* 704 F.2d at 64. The latter is a dispute which “is inextricably tied up with the merits of the underlying dispute” and “wholly derivative of issues that fall within the scope of the arbitration clause.” *Id.* (quoting *McAllister Bros. v. A & S Transp. Co.*, 621 F.2d 519, 523 (2d Cir. 1980)).

The Court will address each of the parties’ identified disputes in turn.

C. ARBITRABILITY OF DISPUTES

1. AR1: UNILATERAL ACTIONS BY TEXAS CITY MANAGER

The first dispute raised by Arkansas City arises out the “joint operating arrangements” referred to in section 10 of the 1985 Agreement (set forth in full, *supra*, section I(D)), which states that the parties acknowledge that their separate water and sewer systems are “operated and managed by Texarkana Water Utilities, under joint operating arrangements previously approved by both cities.” (Doc. 1-1, § 10). In section 10, the parties “confirm and approve the continued joint operation of their respective water and sewer systems by Texarkana Water Utilities.” *Id.*

Texarkana Water Utilities (“TWU”) is an unincorporated entity that manages and operates the two Cities’ separate but integrated water and sewer systems. William D. King has been the director of TWU for over 20 years – from 1991 to the present. Larry Sullivan became City Manager for Texas City in 2007. At some point thereafter, Texas City found some discrepancies in the amounts that Texas City was being charged for its share of TWU costs. The costs of operating the integrated system are allocated to the two Cities in proportion to the amount of water consumed by each City and are adjusted periodically. According to the testimony at trial, Texas City officials began to feel that they could not fully trust King to handle the portion of TWU funds comprised of funds from Texas City. Ultimately Sullivan sent a memo to King that contained certain directives which King was to follow (see AR1, section I, *supra*).

King did not believe it was possible for him to follow Sullivan’s directives, because the directives pertaining to purchasing and employment activities necessarily involved not only Texas funds, but Arkansas funds as well. In fact, because Texas City uses a proportionately larger amount of water, Texas City is responsible for more than 50% of most day-to-day costs.⁷ Therefore,

⁷ At trial, Texas City made much of the fact that it pays more into TWU than does Arkansas City. Both Cities, however, pay a share of the TWU costs proportionate to their citizens’ use of the water and sewer systems. Therefore, assuming the cost allocation is correctly calculated, Texas City

Sullivan's directives essentially revoked King's authority regarding all day-to-day purchases (not including larger purchases, which had to be approved by both Cities). King felt that he could not allow Sullivan to have control over his management of those activities without approval from the Arkansas City Manager, Harold Boldt. King was also concerned that, because he no longer had authority to speak on behalf of Texas City and, therefore, could no longer sign off on certain reports required to be filed with federal and state agencies, that delegation of that responsibility to a Texas City representative could result in fines being imposed against either or both Cities. Boldt opposed Sullivan's directives, because he believed it effectively ceded control of all operations and management of both systems to Texas City and effectively terminated King's employment as director of TWU.

Texas City contends that TWU is not a separate entity, but has in fact always been a department of Texas City, subject to its control, authority and supervision. Texas City further contends its City Manager had authority to issue the directives to the director of TWU without the approval of the City Manager of Arkansas City because the directives only involved Texas funds.

The 1985 Agreement, itself, does not define the "joint operating arrangements" referred to, and does not refer to any specific written agreement setting out those arrangements. As stated above, the Court admitted extrinsic evidence in order to determine, and to clarify, the nature of any "previously approved" "joint operating arrangements." The Court looked first to the previous written contracts entered into by the two parties.

Based on the testimony of the witnesses at trial, TWU evolved over the years as the entity

and Arkansas City pay the same proportionate amount – the amount due for their own citizens' use of the integrated water and sewer system.

that operates and manages the two water systems. While the name “Texarkana Water Utilities” did not surface until the mid-1970's, a joint entity that operates and manages the two systems has been in place since at least 1948. In the 1948 Contract, a general manger was to be selected by both Cities to “look after” the general management and operation of both systems. (Doc. 4-1, § 3). Under the 1965 Amendment to the 1948 Contract, the water and sewer systems of both Cities was still to be placed “under the general supervision of an individual to be selected with the approval of both cities.” (Pl. Trial Exh. 3). Section 3 of the 1948 Contract was, however, amended to provide that the Texas City system was to be operated “as an administrative department” of Texas City instead of by a “Texarkana, Texas Utilities Board” to be created and appointed by the City Council of Texas City. *Id.*

In contending that TWU is wholly an administrative department of the City of Texarkana, Texas – and not a separate joint entity of the two Cities – Texas City relies largely on a 1975 Texas City ordinance that created a “Department of Water Utilities” with a “Director of the Department of Water Utilities” to be appointed by, and subject to the direction of, the City Manager of Texas City. (Doc. 4-4). Pursuant to the ordinance, “All activities of the Texarkana Water and Sewer System are hereby transferred and assigned to the Department of Water Utilities.” *Id.*

Regardless of the language set forth in the ordinance, the Court does not find Texas City’s argument to be credible, as the entity that operated and managed the two systems existed long before the adoption of the 1975 ordinance. From 1948 to the present, this entity has continued to exist in an unincorporated status, adopting the name of “Texarkana Water Utilities” in the mid-1970's. TWU has a federal tax identification, files tax reports, and has bank accounts to deposit payments from customers - all in the name of TWU, not a “Department of Water Utilities.” TWU processes water

from both Millwood Reservoir on the Arkansas side and Lake Wright Patman on the Texas side, and serves customers of both Arkansas City and Texas City. Furthermore, both King and TWU's previous director were selected by the City Councils of both Cities – not simply appointed by the City Manager of Texas City. The testimony at trial also showed that the employees who perform the duties of operating and managing the two Cities' systems work under the supervision of the director of TWU who reports to both City Managers. The evidence also showed that both Cities are involved in decisions that require authority above the director's level, such as decisions regarding the purchase of equipment that requires competitive bids. Based on the contractual history and the course of performance of the parties, TWU is a separate unincorporated entity subject to the control of both Texas City and Arkansas City.

The question as to whether the "joint operating arrangements" of TWU are collateral to the 1985 Agreement may initially appear to be a close question, because of the parties' explicit reaffirmation and confirmation of those arrangements through the 1985 Agreement. The resolution of this issue, however, comes down to the fact that there is no written agreement that sets out the terms regarding any joint operation of the two systems. The "joint operating arrangements" referred to in the 1985 Agreement simply evolved on an *ad hoc* basis over the years, and the parties implicitly acknowledged those arrangements through oversight by their respective City Managers and City Councils. As such, there is no set of fixed, non-evolving, specific terms regarding the management of TWU (or any joint operation) that the Court could analyze to determine whether such agreed-upon terms are collateral to the 1985 Agreement.

Even if the Court were to consider the "arrangements" as an agreement (or agreements) between the parties, the continuing oral agreements as to the joint operating arrangements would be

collateral to the 1985 Agreement. The joint operating arrangements are not central to the main purpose of the 1985 Agreement which was, essentially, to build and finance the waterworks for the Millwood Reservoir. Although the “continued joint operation” of the two Cities’ systems was contemplated by the parties in the 1985 Agreement, the operation and management of the Cities’ water and sewer systems is a distinct and different obligation from any imposed by the 1985 Agreement. Any “joint operating arrangements” previously contemplated by the parties are, therefore, collateral, and as such, fall outside the scope of the narrow arbitration provision in the 1985 Agreement. *See Duluth Clinic*, 413 F.3d at 790 (holding that, because a letter of understanding and interim coverage memo created an obligation separate and distinct from the collective bargaining agreement, the dispute presented was collateral and not subject to arbitration); *Cornell Univ.* 942 F.2d at 140 (holding that side agreement of distinct and different obligation is collateral to the agreement).

Furthermore, without a written agreement, there can be no evidence of an intent of the parties to incorporate specific terms of the joint operating arrangements into the 1985 Agreement. Arkansas law allows for agreements to be construed together as a single agreement “[w]hen a contract refers to another *writing* and makes the terms of that writing a part of the contract.” *Ingersoll-Rand Co. V. El Dorado Chemical Co.*, 373 Ark. 226, 233 (Ark. 2008) (emphasis added). “In order to incorporate a separate document by reference into a contract, the reference must be clear and unequivocal, and the terms of the incorporated document must be known or easily available to the contracting parties.” *Id.* (internal quotation omitted). Because there is no *written* agreement between the parties to this case, specifically setting forth the terms of the “joint operating arrangements” referred to in the 1985 Agreement, there is no agreement to incorporate by reference. Not only is

there no document to reference in this case, the terms of the oral agreement are not completely known and, in fact, are disputed. Incorporation by reference, therefore, is not an available mechanism to bring any “joint operating arrangements” into the purview of the arbitration clause of the 1985 Agreement.⁸

The Court heard extensive testimony and admitted numerous exhibits which were extrinsic to the 1985 Agreement, as the Court found that they could be admitted in order to clarify the above-mentioned ambiguities in the 1985 Agreement. The only conclusion that the Court was able to reach from hearing this evidence is that any agreement to jointly operate the two Cities’ water and sewer systems is unwritten and unspecific; has evolved and changed over the years; and is not susceptible to clear definition. The parol evidence which was admitted related almost exclusively to Arkansas City’s first enumerated dispute, which the Court has now found not to be subject to arbitration. Therefore, while the admission of extrinsic evidence aided the Court in making its ultimate determination regarding Arkansas City’s first dispute, the admission of parol evidence was essentially of no legal effect since the evidence could not sufficiently clarify the ambiguities which existed in the 1985 Contract, because ultimately nobody, not even the parties to this case, can produce specific, arbitrable terms, where no comprehensive agreement actually exists.

The Court has belabored this dispute due to the fact that it appears to be the most weighty

⁸ The previous contracts between the parties, while addressing joint operation of the two Cities’ systems in a general way, do not contain any terms which provide for how such operation is to be managed. The “joint operating arrangements” referred to in the 1985 Agreement appear to refer to the *ad hoc* arrangements made over the years, and not specifically to the general provisions of the parties’ previous contracts. Moreover, the dispute that Arkansas City is requesting be compelled to arbitration is a dispute regarding management issues that have not been specifically addressed in any written agreement between the parties – and not, generally, the joint operation of the systems. TWU is, in fact, still being jointly operated by the two Cities – just not managed in a way that is agreeable to the officials of both Cities.

of all the disputes enumerated by the parties. Both parties have undoubtedly spent countless hours, and countless taxpayer dollars, litigating this issue – in an action to compel arbitration, which will not and cannot finally resolve the real disputes over which the parties are squabbling. The only possible result of this litigation, other than the ruling that the Court has made, would have been to compel the dispute to arbitration – where the parties would have simply presented their same dispute, based on a non-existent agreement – to an arbitrator. While the Court finds that this dispute is not subject to arbitration, the Court nevertheless strongly encourages the parties to work together to amicably and expediently resolve their differences, so that taxpayer money and city revenues might be better spent on actually improving the operation and management of the Cities' water and sewer systems (perhaps through the negotiation of an actual written agreement) instead of on litigation that basically boils down to time-consuming and expensive political posturing.

2. AR2: TEXAS CITY'S SALE OF MILLWOOD WATER TO OTHER TEXAS CITIES

Arkansas City's second enumerated dispute concerns Texas City's sale of water originating from the Millwood Reservoir to other Texas cities. Arkansas City contends that Texas City is in violation of Section 1 of the 1985 Agreement due to its selling of water from the Millwood Reservoir to other Texas cities, because Texas City has not obtained the approval of Arkansas City's Board of Directors to do so. (*See* Doc. 1-1, § 1). Texas City contends that it has sold water from the Millwood Reservoir to other Texas cities since 1986, when water from the Millwood Reservoir was first commingled with water from the Lake Wright Patman Reservoir, and that it has obtained the "express approval of Arkansas City's Board of Directors," which is not required by the 1985 Agreement to be in writing. Texas City further argues that it owns title to water from the Millwood

Reservoir once it passes to Texas.

Arkansas City was aware when it signed the 1985 Agreement that Texas City had contracts with other Texas cities to supply those cities with water from the Lake Wright Patman Reservoir. Arkansas City acknowledged those contracts to supply other Texas cities in the 1969 Contract. (Doc. 4-3, § 19). Since the water systems of the two Cities are interconnected, both Cities would have been aware that water from the Millwood Reservoir would be necessarily and inextricably commingled with water from Lake Wright Patman and sold to other Texas cities from the day Millwood Reservoir went on stream. However, whether or not Arkansas City has consented to Texas City's sale of the water is not for this Court to decide, as such a determination would go to the merits of the dispute. The 1985 Agreement specifically requires that Texas City obtain "the express approval of Arkansas City's Board of Directors" before providing other Texas cities with water from the Millwood Reservoir. These terms are unambiguous, and Texas City's duty to obtain approval is a duty clearly "arising out of" the 1985 Agreement. As such, Arkansas City's second dispute falls within the purview of the arbitration clause of the 1985 Agreement and is subject to arbitration.

3. AR3: ARKANSAS CITY'S REQUEST FOR INSPECTION OF ATTORNEYS' FEES STATEMENTS

Arkansas City's third dispute concerns Texas City's failure to allow Arkansas City to inspect attorney's fee statements sent to Texas City by its legal counsel, the amount of which TWU was allegedly directed to pay by Texas City's City Manager. Section 6 of the 1985 Agreement provides that "[a]ll records and accounts kept by [either city] pertaining to the operation of its water system . . . shall be open to inspection . . ." Texas City contends that Arkansas City does not have the right

to inspect its attorney's fee statements because the attorney's fees represented on the requested statements were paid from "enterprise funds" belonging to Texas City and not paid directly by TWU.

TWU's former finance director, Wilbur Stanley, testified at trial that the enterprise funds from which the attorney's fees at issue are paid are comprised of revenue collected by Texas City for water payments from other Texas "member cities." Stanley testified that each City's enterprise fund is essentially a vehicle to record the revenue and expenditures of the water and sewer operations for each City. Stanley also testified that, even though certain payments are made directly to Texas City, all Texas City is doing is billing and collecting money to pass on to TWU and that, had Texas City not withdrawn money from its enterprise fund, that money would have been remitted to TWU.

Based on the evidence presented, the Court finds that there is a question as to whether the attorney's fee statements requested by Arkansas City constitute records "pertaining to" the operation of the Cities' jointly operated water system. "Pertaining to" is analogous to the "relating to" language that the Eighth Circuit found to be broad in relation to arbitration clauses. The inclusion of the phrase "pertaining to" in Section 6 would, therefore, seem to result in subjecting a broad array of records to the records inspection requirement, not necessarily limited to those records concerning funds paid directly by TWU. Because "[a]n order to arbitrate [a] particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute," *Duluth Clinic, Ltd.* 413 F. 3d at 788 (internal quotation omitted), the Court finds that Arkansas City's third enumerated dispute is a dispute as to an obligation (allowing inspection of records) arising under the 1985 Agreement and is, therefore, subject to arbitration. Texas City may present any defenses it may have as to why it did not allow inspection of its records to the arbitration panel, and the arbitration panel may then consider those

defenses on their merits.

4. AR4: TEXAS CITY'S PLANNED TRANSFER OF WATER TREATMENT FUNCTION TO RIVERBEND

Arkansas City's fourth dispute concerns Texas City's alleged planned transfer of the water treatment function of its water system from Lake Wright Patman to Riverbend Water Resources ("Riverbend"). Arkansas City alleges that Texas City has a plan to transfer its water treatment to Riverbend, an entity created by Texas statute, which Arkansas City contends would violate the 1985 Agreement, because the result of such action would be that Texas City would no longer be able to meet its reciprocal obligation under the 1969 Contract and 1985 Agreement to provide treated water to Arkansas City from Lake Wright Patman. Arkansas City asserts that, in the event that this hypothetical result occurs, it would cost approximately \$9,000,000 to install cutoff valves in the TWU water distribution lines to enable Arkansas City to cut off the flow of Millwood Reservoir water to Texas City. Texas City contends that it has no plans to transfer the water treatment function of its water system to Riverbend. Further, Texas City has reiterated that it will comply with the 1969 Contract provision (Doc. 4-3, ¶ 21) requiring Texas City to obtain Arkansas City's consent before selling the Lake Wright Patman facilities.

Based on the evidence presented by the parties and the testimony at trial, the Court finds that Arkansas City's fourth dispute is too speculative to comprise an actual dispute, as Texas City appears to have no concrete or immediate plan to transfer water treatment away from Lake Wright Patman. The Court finds, therefore, that Arkansas City's fourth dispute is not subject to arbitration, as the evidence has shown that there is no current dispute to arbitrate.

5. TEXAS CITY'S ENUMERATED DISPUTES

Texas City listed three disputes for which it seeks arbitration. Two of the disputes are

directly related to monies paid under the 1985 Agreement. Texas City claims that it has overpaid its contracted share of the bonded indebtedness in excess of \$200,000 and has overpaid its funding allocation of expenses covering a period of eight years. The arbitration clause specifically requires arbitration of “any dispute . . . as to any amounts due hereunder . . .” (Doc. 1-1, § 16). The 1985 Agreement contains a schedule of payments required to amortize the cost of the waterworks project and a provision for payment of water supplied and expenses incurred. *Id.* at § 5. Texas City’s disputes concerning overpayments arise out of the 1985 Agreement and are, therefore subject to arbitration.

The third Texas City dispute relates to title to water supplied by Arkansas, and a hold-harmless clause for third party liability. Section 17 of the 1985 Agreement provides that title to the water supplied by Arkansas City will pass to Texas City at the point of delivery to Texas City. Section 17 also contains a hold-harmless provision wherein the parties agree to hold the other harmless from any claims relating to the “transportation, delivery or disposal of water delivered under this Agreement after title has passed to such party.” Texas City contends that Arkansas City is in violation of this provision due to its claim that Texas City is selling water to other Texas cities in violation of Section 1 of the 1985 Agreement, since, under Section 17 of the 1985 Agreement, title to the water would have already passed to Texas City before Texas City sells and provides the water to the other Texas cities. Little to no evidence was presented at trial to further clarify the nature of this dispute. Nevertheless, the hold-harmless obligation is an obligation arising out of a specific provision of the 1985 Agreement. To the extent there is any dispute to arbitrate, it would fall under the arbitration provision of the contract.

Additionally, as to all of Texas City’s enumerated disputes, Arkansas City has agreed and

conceded that the disputes – if considered by the Court – should be subject to arbitration.

III. CONCLUSION

For all of the reasons set forth above, IT IS ORDERED that Arkansas City's Application to Compel Arbitration is GRANTED IN PART and DENIED IN PART. The Application is denied as to Arkansas City's first and fourth disputes (as enumerated in Section I, *supra*), and granted as to the second and third disputes.

IT IS FURTHER ORDERED that Texas City's request for its enumerated disputes to be compelled to arbitration is GRANTED as to all three disputes.

The Court therefore directs the parties to proceed to arbitration of Arkansas City's second and third enumerated disputes (AR2 and AR3, Section I, *supra*) and Texas City's three enumerated disputes (TX1-TX3, Section I, *supra*) in accordance with the arbitration provision of the 1985 Agreement.

IT IS SO ORDERED this 6th day of July, 2012.

P. K. Holmes, III

P.K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Adopt an Ordinance amending and updating Sec. 2-133 of the <i>City of Texarkana, Arkansas Code of Ordinances</i> as related to the Public Facilities Board. (Admin) City Manager E. Jay Ellington
AGENDA DATE:	March 21, 2022
ITEM TYPE:	Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	Administration
PREPARED BY:	Heather Soyars, City Clerk
REQUEST:	Amend Sec.2-133 in reference to the Public Facilities Board.
EMERGENCY CLAUSE:	No
SUMMARY:	Ordinance amending and updating Sec. 2-133 of the <i>City of Texarkana, Arkansas Code of Ordinances</i> as related to the Public Facilities Board.
EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A
RECOMMENDED ACTION:	The City Manager and City Staff recommend approval.
EXHIBITS:	Ordinance

ORDINANCE NO. _____

AN ORDINANCE AMENDING AND UPDATING SECTION 2-133 OF THE CITY OF TEXARKANA, ARKANSAS CODE OF ORDINANCES, AS RELATED TO THE PUBLIC FACILITIES BOARD; AND FOR OTHER PURPOSES.

WHEREAS, it is necessary to amend and update Section 2-133 of the Code of Ordinance of the City of Texarkana to cause the same to reflect the provisions of the underlying statute concerning the same and, further, to update in order to remove language concerning initial creation and appointment of members that, now having previously occurred, that may unintentionally create confusion in the future; and

WHEREAS, the City Manager recommends approval;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Texarkana, Arkansas that:

SECTION 1. Section 2-133 of the *City of Texarkana, Arkansas Code of Ordinances* is hereby deleted and restated as follows:

Section 2-133 Members; Term of Office. The board consists of five (5) persons, with staggered terms of five (5) years each. Successors shall be selected as provided in Ark. Code Ann. Sec. 14-137-101, *et seq.*

PASSED AND APPROVED this 21st day of March, 2021.

Allen Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George M. Matteson, City Attorney



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE: Adopt an Ordinance authorizing the City Manager to purchase a three-year Microsoft Enterprise License Agreement for licenses used by all departments of Texarkana Water Utilities. (TWU) IT Manager Brandon Uselton

An emergency clause is requested. An emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the Board.

AGENDA DATE: March 21, 2022

ITEM TYPE: Ordinance Resolution Other :

DEPARTMENT: Texarkana Water Utilities – Information Technology

PREPARED BY: Brandon Uselton, IT Manager, Texarkana Water Utilities

REQUEST: Adopt an Ordinance authorizing the City Manager to purchase a three-year Microsoft Enterprise License Agreement for licenses used by all departments of the Texarkana Water Utilities in an amount not to exceed the annual fee of \$49,213.20

EMERGENCY CLAUSE: None Needed.

SUMMARY: The Texarkana Water Utilities (TWU) Information Technology (IT) Division is requesting the enterprise agreement proposal from SHI Government Solutions of Somerset, New Jersey for Microsoft licenses to be accepted, and authorizing the city manager to negotiate a final enterprise agreement at a total cost over a three-year period not to exceed one hundred forty-seven thousand six hundred thirty-nine and 60/100 dollars (\$147,639.60) with the Texarkana Water Utilities annual cost not to exceed forty-nine thousand two hundred thirteen and 20/100 dollars (\$49,213.20), with the Arkansas portion being \$19,055.35 for the current fiscal year.

The IT Division of TWU budgets and requests software licenses for the computer systems of Texarkana Water Utilities; utilizing an Enterprise Agreement managed by TWU to purchase these licenses will allow for software consistency across departments. The execution of this Enterprise Agreement will continue the maintenance on existing Microsoft licenses.

The funds for the first-year payment have been appropriated in the Texarkana Water Utilities Technology Fund, and funds for future

payments are anticipated to be appropriated in the same fund. Utility staff recommends approval.

The total purchase cost is \$147,639.60 and an exact purchase breakout of Texarkana Water Utilities costs are as follows:

2022	\$49,213.20 (AR portion \$19,055.35)
2023	\$49,213.20 (AR portion \$19,055.35)
2024	\$49,213.20 (AR portion \$19,055.35)
Totals	\$147,639.60 (AR portion \$57,166.05)

EXPENSE REQUIRED: \$49,213.20 annually for 3 years

AMOUNT BUDGETED: \$55,000 (this fiscal year)

**APPROPRIATION
REQUIRED:** None

**RECOMMENDED
ACTION:** Utility Staff recommends approval.

EXHIBITS: Ordinance and A – SHI Quote

ORDINANCE NO. _____

AN ORDINANCE WAIVING COMPETITIVE BIDDING AND AUTHORIZING THE EXECUTION OF A MICROSOFT ENTERPRISE LICENSE AGREEMENT; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

WHEREAS, it is necessary to renew certain Microsoft Licenses utilized by all departments of Texarkana Water Utilities (TWU); and

WHEREAS, the Information Technology Division of Texarkana Water Utilities is the facilitator of the agreement with Microsoft and the management agency for all Microsoft licenses used by the Utility; and

WHEREAS, SHI Government Solutions of Somerset, New Jersey, a sole provider for the product, has purposed a three (3) year license agreement with the total cost of \$147,639.60, which is anticipated to be paid out in three (3) equal annual installments of \$49,213.20, with the Arkansas portion of each being \$19,055.35; and

WHEREAS, because this purchase involves a unique product which is only available from a single source, an exceptional situation exists where it is not feasible or practical to utilize ordinary competitive bidding practices to make such purchase; and

WHEREAS, the City Manager and staff recommends, that the competitive bidding practices otherwise required by applicable statute and ordinance be waived as permitted by Ark. Code. Ann. § 14-47-138 and § 2-27 of the *City of Texarkana, Arkansas, Code of Ordinances* and the execution of the three (3) year license agreement described herein be authorized;

NOW, BE IT ORDAINED by the Board of Directors of the City of Texarkana, Arkansas, that:

Section 1. The competitive bidding practice as contemplated by applicable law and ordinance are waived and the City Manager is authorized to enter into a three (3) year license agreement with SHI Government Solutions for certain Microsoft licenses in the total amount of \$147,639.60, of which the aggregate Arkansas portion is \$57,166.05, in the aggregate, over three (3) years provided, however, that the agreement provide for termination in the event funds are not budgeted for such purpose in any given year following this year.

Section 2. This action being necessary for the preservation of the public peace, health and safety, to provide for continuity of operation without interruption, and a separate and distinct vote having been taken on this emergency clause, an emergency is therefore declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED this 21st day of March, 2022.

Allen L. Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George Matteson, City Attorney



Pricing Proposal
Quotation #: 21643758
Created On: 2/22/2022
Valid Until: 4/8/2022

Texarkana Water Utilities

Senior Inside Account Manager

Brandon Uselton

808 Olive Street
STE A
Texarkana, TX
United States
Phone: (903) 799 0287
Fax:
Email: brandonu@txkusa.org

Jeff Rosen

3828 Pecana Trail
Austin, TX 78749
Phone: 800-870-6079 ext 8686150
Fax: (512)732-0232
Email: Jeff_Rosen@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	O365GCCE3 ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-11894 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	25	\$216.12	\$5,403.00
2	O365GCCE3fromSA ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAA-11924 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	96	\$183.72	\$17,637.12
3	VisioPlan2GCC ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: P3U-00001 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	7	\$138.48	\$969.36
4	ECALBridgeO365 ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-12428 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	13	\$37.32	\$485.16
5	ECALBridgeO365FromSA ALNG SubsVL MVL Pltfrm PerUsr Microsoft - Part#: AAA-12436 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	108	\$32.40	\$3,499.20
6	WINENTperDVC ALNG SA MVL Pltfrm Microsoft - Part#: KV3-00353 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	96	\$42.57	\$4,086.72

7	SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7NQ-00292 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	8	\$576.29	\$4,610.32
8	WinSvrDCCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 9EA-00278 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	64	\$124.43	\$7,963.52
9	WinSvrSTDCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 9EM-00270 Contract Name: Microsoft Software VAR Contract #: DIR-TSO-4092 Coverage Term: 2/1/2022 – 1/31/2023	232	\$19.65	\$4,558.80
			Subtotal	\$49,213.20
			Shipping	\$0.00
			Total	\$49,213.20

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE: Adopt an Ordinance to amend the Personnel Policy. (FIN) Finance Director TyRhonda Henderson

An emergency clause is requested. An emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the Board.

AGENDA DATE: March 21, 2021

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: Finance Department

PREPARED BY: TyRhonda Henderson, Finance Director

REQUEST: Amendment of Personnel Policy

EMERGENCY CLAUSE: No

SUMMARY: The following amendments to the personnel policy were reviewed and approved by the personnel policy committee on February 15, 2022:

- 4.01 (C) Annual Leave (Vacation)
Consider the request to require employees meet the probationary period before being paid their accrued annual leave upon separation.

Payment Upon Separation From Employment:

Upon separation from employment or layoff due to reduction in force, the employee will be paid for accrued vacation up to a maximum of 30 days. Firefighters working 24-hour shifts will be paid for accrued vacation up to a maximum of 360 hours. Employees must complete their probationary period before being paid their accrued annual vacation leave upon separation from the City.

- 4.15 Education Incentive Pay
Consider the request to add college hours from a college or university that has been accredited by a national accreditation organization and recognized by the U.S Department of Education.

Program Requirements:

Participants must have been employed by the City for one year and must have received 30 credit hours toward the approved degree. No pay will be given for any hours in which a grade less than "C" is received. The City reserves the right to review each participant's class attendance in any manner it sees fit. If it is determined that the participant is not attending class adequately, pay for credits will be

docked accordingly. All college hours must be from a college or university that has been accredited by a national accreditation organization, recognized by the U.S. Department of Education.

- 4.17 Add Specialized Position Incentive Pay Section (Police)
Consider request to add Specialized Position Pay Section for Police to Personnel Policy

SPECIALIZED POSITION INCENTIVE PAY
(POLICE)

Purpose

The Specialized Position Pay Program is designed to encourage officers to take on new responsibilities, learn new skills, become crossed trained, and diversify our police department.

Guidelines

Non probationary police employees may receive \$20 additional compensation per month for service in a specialized position. In order to qualify for specialized position pay, employees must have completed their introductory period and be assigned to the specialized position. Furthermore, this pay is not to exceed five specialized positions.

Police Department Specialized Positions:

Civil Service employees in the Police Department are eligible for the specialized position incentive pay for the following positions.

Field Training Officer	\$20/month
SWAT	\$20/month
Honor Guard	\$20/month
Bilingual	\$20/month
Peer Support	\$20/month
Traffic	\$20/month
Night Shift	\$20/month
Crime Scene	\$20/month
K-9	\$20/month

EXPENSE REQUIRED: \$0

AMOUNT BUDGETED: \$0

**APPROPRIATION
REQUIRED:** \$0

**RECOMMENDED
ACTION:** City Manager and staff recommend approval

EXHIBITS: Ordinance and Personnel Policy

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE CITY OF TEXARKANA, ARKANSAS PERSONNEL POLICY, INCLUDING WITHOUT LIMITATION ORDINANCE NO. K-570, AS AMENDED; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Ordinance No. K-570, the Personnel Policy for the City of Texarkana, Arkansas was adopted and, thereafter, has been amended, updated, and restated from time to time; and

WHEREAS, the Personnel Policy Committee recommends the Personnel Policy be amended; and

WHEREAS, the City Manager recommends approval;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Texarkana, Arkansas that:

SECTION 1. The language contained in Section 4.01(C) of the Personnel Policy is deleted and hereby restated as follows:

Payment Upon Separation From Employment: Upon separation from employment or layoff due to reduction in force, the employee will be paid for accrued vacation up to a maximum of 30 days. Firefighters working 24-hour shifts will be paid for accrued vacation up to a maximum of 360 hours. Employees must complete their probationary period before being paid their accrued annual vacation leave upon separation from the City.

SECTION 2. The language contained the first paragraph under the heading “Program Requirements” in Section 4.15 of the Personnel Policy is deleted and hereby restated as follows:

Participants must have been employed by the City for one year and must have received 30 credit hours toward the approved degree. No pay will be given for any hours in which a grade less than “C” is received. The City reserves the right to review each participant’s class attendance in any manner it sees fit. If it is determined that the participant is not attending class adequately, pay for credits will be docked accordingly. All college hours must be from a college or university that has been accredited by a national accreditation organization, recognized by the U.S. Department of Education.

SECTION 3. The existing Section 4.17 is renumbered as Section 4.18 and the following inserted as Section 4.17:

7.17 SPECIALIZED POSITION INCENTIVE PAY (POLICE)

Purpose

The Specialized Position Pay Program is designed to encourage officers to take on new responsibilities, learn new skills, become crossed trained, and diversify our police department.

Guidelines

Non probationary police employees may receive \$20 additional compensation per month for service in a specialized position. In order to qualify for specialized position pay, employees must have completed their introductory period and be assigned to the specialized position. Furthermore, this pay is not to exceed five specialized positions.

Police Department Specialized Positions:

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Peer Support	\$20/month
Traffic	\$20/month
Night Shift	\$20/month

Crime Scene	\$20/month
K-9	\$20/month

SECTION 7. This ordinance being necessary for the preservation of the public peace, health and safety, and to provide for immediate implementation of the provisions above (including the necessary updates and revisions to the Personnel Policy), an emergency is therefore declared to exist; and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED this 21st day of March, 2021.

Allen Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George M. Matteson, City Attorney



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Strategic Priorities for the City of Texarkana, Arkansas

1. Be ethical in all we do in city government.
2. Commitment to an economically, stronger, safer and financially healthier community that inspires people.
3. Promote citizen involvement and assure the community that no complaints will fall on deaf ears.
4. Require city workforce to pursue excellence at all levels adding value for citizens.
5. Promote neighborhood revitalization, cleanup, code enforcement, and crime control to stimulate community pride one block at a time.
6. Be proactive and competitive in pursuing economic growth and development in the TIF district.
7. Focus on the 'seven planning goals' for achieving economic growth and development.
8. Invest in infrastructure repairs and improvements to stimulate private investment in the community.
9. Promote and foster regional partnerships with all public sector agencies to create a growing Texarkana, Arkansas, that will improve the quality of life for our citizens.
10. Promote park improvements and develop programs for the youth and elderly.



Mission of the City (Broad Philosophy)

"The Mission of the City of Texarkana, Arkansas Board of Directors and City Staff is to work together to create and implement strategies necessary to turn the City's Core Values and Vision into reality"

Core Values (Vision that is more focused)

Promote active citizen involvement and participation in the planning and decision-making process

Aggressively pursue economic development and growth initiatives with the private sector

Commitment to learn and change at all levels within the organization, in order to pursue excellence, through continuous improvement, innovation, and creativity, in delivering services to the community

Commitment by Board Directors and staff to build relationships with citizens and community partners in order to achieve goals

Promote fiscal responsibility and accountability for our citizens in all we do through a high level of public accountability

Promote the health, safety and general well being of our citizens to create a vibrant community

Promote and foster regional partnerships with all public sector agencies to create a growing Texarkana that will improve the quality of life for our citizens

Core Services

We will promote a strong and diverse economic environment

We will provide infrastructure, with the capacity to meet current and projected needs

We will provide streets and other traffic systems

We will rehabilitate and maintain infrastructure as needed

We will promote public safety and health

We will promote effective communication with one voice to the community

We will provide a workplace that fosters creative ideas for delivery of core services

We will provide high quality customer focused basic services at a reasonable cost

We will promote safe, decent, and affordable housing

TABLE OF CONTENTS

<u>CHAPTER 1 GENERAL PROVISIONS</u>	1-2
SECTION 1.01 PURPOSE OF POLICY	1
SECTION 1.02 COVERAGE	1
SECTION 1.03 ADMINISTRATION	1
SECTION 1.04 CHANGES	2
SECTION 1.05 NOT A CONTRACT	2
SECTION 1.06 NO ORAL CONTRACT PERMITTED	2
SECTION 1.07 POLITICAL ACTIVITY	2
SECTION 1.08 UNLAWFUL ACTS PROHIBITED	2
<u>CHAPTER 2 EMPLOYMENT POLICIES</u>	3-7
SECTION 2.01 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATION ACTION	3
SECTION 2.02 AT-WILL EMPLOYER	3
SECTION 2.03 PERSONNEL OFFICE RESPONSIBILITIES	3
SECTION 2.04 DEPARTMENTAL RESPONSIBILITIES	3
SECTION 2.05 PRELIMINARY SCREENING	4
SECTION 2.06 RECRUITMENT BY DEPARTMENT	4
SECTION 2.07 REFERENCE CHECK	4
SECTION 2.08 QUALIFICATION STANDARDS	4
SECTION 2.09 TYPES OF APPOINTMENTS	5
SECTION 2.10 JOB POSTING/INTERNAL MOBILITY	5
SECTION 2.11 PROMOTED EMPLOYEES	5
SECTION 2.12 TRANSFERRED EMPLOYEES	5
SECTION 2.13 DEMOTED EMPLOYEES	6
SECTION 2.14 CHANGE IMPLEMENTATION	6
SECTION 2.15 DISCIPLINARY REVIEW	6
SECTION 2.16 AGE	6
SECTION 2.17 RESIDENCY POLICY	6
SECTION 2.18 NEPOTISM	6
SECTION 2.19 AMERICANS WITH DISABILITIES ACT POLICY	7
<u>CHAPTER 3 CLASSIFICATION AND PAY</u>	8-9
SECTION 3.01 POSITION CLASSIFICATION PLAN	8
SECTION 3.02 PAY PLAN	8
SECTION 3.03 STARTING PAY	8
SECTION 3.04 PERIODIC PAY INCREASES	8
SECTION 3.05 LONGEVITY PAY	9
SECTION 3.06 MANDATORY DIRECT DEPOSIT	9
<u>CHAPTER 4 EMPLOYEE AND SPECIAL LEAVE BENEFITS</u>	10-25
SECTION 4.01 ANNUAL LEAVE (VACATION)	10
SECTION 4.02 SICK LEAVE	11
SECTION 4.03 MATERNITY LEAVE	13
SECTION 4.04 COURT DUTY LEAVE	13
SECTION 4.05 LEAVE WITHOUT PAY	14
SECTION 4.06 EDUCATIONAL LEAVE	14
SECTION 4.07 FUNERAL LEAVE	15
SECTION 4.08 MILITARY LEAVE	15
SECTION 4.09 MISCELLANEOUS LEAVE	15
SECTION 4.10 HOLIDAYS	15
SECTION 4.11 EMPLOYEE HEALTH BENEFITS	16
SECTION 4.12 OCCUPATIONAL INJURIES	17
SECTION 4.13 RETIREMENT PLANS	17

SECTION 4.14 TUITION AID.....	18
SECTION 4.15 EDUCATION INCENTIVE PAY.....	19
SECTION 4.16 CERTIFICATE/LICENSE INCENTIVE PAY PROGRAM.....	20
SECTION 4.17 SPECIALIZED POSITION PAY.....	23
SECTION 4.18 POLICY INCORPORATING THE FAMILY AND MEDICAL LEAVE ACT REQUIREMENTS.....	23
<u>CHAPTER 5 MATTERS AFFECTING THE STATUS OF EMPLOYEES</u>	26-29
SECTION 5.01 ATTENDANCE.....	26
SECTION 5.02 WORK HOURS.....	26
SECTION 5.03 OVERTIME PAY.....	26
SECTION 5.04 OVERTIME COMPENSATION ELIGIBILITY.....	27
SECTION 5.05 COMPENSATORY TIME.....	27
SECTION 5.06 VACANCIES AND PROMOTIONS.....	27
SECTION 5.07 TRAINING.....	27
SECTION 5.08 JOB SAFETY.....	27
SECTION 5.09 REFUSAL TO WORK.....	28
SECTION 5.10 RESIGNATION/TERMINATION.....	28
SECTION 5.11 REEMPLOYMENT.....	28
SECTION 5.12 PROBATIONARY PERIODS.....	29
SECTION 5.13 AT-WILL EMPLOYMENT.....	29
<u>CHAPTER 6 STANDARDS OF CONDUCT.....</u>	30-38
SECTION 6.01 CONDUCT TOWARD THE PUBLIC.....	30
SECTION 6.02 CONDUCT TOWARD FELLOW EMPLOYEES.....	31
SECTION 6.03 CHAIN OF COMMAND.....	31
SECTION 6.04 UNIFORMS AND PERSONAL APPEARANCE.....	31
SECTION 6.05 UNLAWFUL HARASSMENT.....	31
SECTION 6.06 GUIDELINES FOR APPROPRIATE CONDUCT.....	32
SECTION 6.07 DISCIPLINARY ACTION.....	33
SECTION 6.08 PROCEDURE FOR REVIEW OF DISCIPLINARY DECISIONS.....	34
SECTION 6.09 ABSENTEEISM AND TARDINESS.....	34
SECTION 6.10 INCLEMENT WEATHER.....	34
SECTION 6.11 OUTSIDE EMPLOYMENT.....	35
SECTION 6.12 POLITICAL ACTIVITY.....	35
SECTION 6.13 CITY GOVERNMENT.....	35
SECTION 6.14 CIVIL SERVICE COMMISSION.....	35
SECTION 6.15 OUTSIDE COMPENSATION.....	35
SECTION 6.16 DRUG FREE WORKPLACE.....	35
SECTION 6.17 SOCIAL MEDIA USE.....	37
<u>CHAPTER 7 COMPUTER SYSTEMS POLICY.....</u>	39-45
SECTION 7.01 GENERAL.....	39
SECTION 7.02 INFORMATION RESOURCES ACCEPTABLE USE POLICY.....	40
SECTION 7.03 EMAIL AND INSTANT MESSAGING POLICY.....	43
SECTION 7.04 INTERNET AND INTRANET POLICY.....	44
<u>CHAPTER 8 MISCELLANEOUS INFORMATION.....</u>	46
SECTION 8.01 POLICY STATEMENT.....	46
SECTION 8.02 SEVERABILITY.....	46
SECTION 8.03 DEPARTMENTAL POLICIES AND PROCEDURES.....	46
SECTION 8.04 CHANGE OF ADDRESS, MARITAL STATUS, BENEFICIARY.....	46
SECTION 8.05 NO SOLICITATION POLICY.....	46
SECTION 8.06 USE OF CITY-OWNED VEHICLES.....	46

CHAPTER I: GENERAL PROVISIONS

1.01 PURPOSE OF POLICY

The purpose of this Personnel Manual is to provide a uniform policy and a set of rules governing City employees. It is the intent of the City to use sound and systematic personnel procedures to strive for high degree of understanding, cooperation, utility, and efficiency. These policies are intended to meet the following objectives:

To promote and increase productivity, efficiency, and economy in the service of the City.

To establish and promote high morale among City employees by providing personnel policy, opportunities for advancement, good working relationship, and consideration of employees' needs.

To inform department heads and supervisors of their obligations toward the employees under their direction and their rights to assign and instruct employees.

To provide that continued employment is subject to satisfactory work, necessity for performance of work, and availability of funds.

To ensure that all federal, state, and local laws in relation to employment and working conditions are complied with fully.

To provide fair and equal opportunities to all qualified citizens to enter City employment on a basis of demonstrated ability, merit, and physical fitness, as ascertained through fair and practical methods of selections, free of personal and/or political consideration.

The policies and procedures contained in this manual will be revised as necessary to comply with City, State and Federal regulations.

All City employees shall be informed of the existence of these rules, and each department shall keep at least one copy available for reference by its employees.

1.02 COVERAGE

These policies shall apply to all employees of the City of Texarkana, Arkansas, except as specified. When regulations or procedures do not apply to all employees, exceptions will be noted with a separate section written for each category of employee.

1.03 ADMINISTRATION

It shall be the responsibility of the City Manager or his designee to administer these personnel policies and to issue such rules and procedures as necessary to execute these policies.

1.04 CHANGES

These policies may be amended from time to time as justifiable needs arise. Suggestions for amendments are welcome at any time from any employee. Any and all suggestions should be submitted in writing to the City Manager through the Personnel Administrator. Any proposed amendments to these personnel policies shall be reviewed by the Personnel Policy Committee. Amendments are not valid unless adopted by the Board of Directors.

1.05 NOT A CONTRACT

This personnel policy does not constitute a contract for employment or for employee benefits between the City and any employee.

1.06 NO ORAL CONTRACT PERMITTED

No oral representations or statements by the City Manager or by any elected or other official of the City shall create any contractual rights between the City and any employee.

1.07 POLITICAL ACTIVITY

(a) No employee or person seeking employment, shall be appointed, promoted, demoted, removed, advanced, or retained on any basis or for any reason other than qualification, merit, fitness for the service, or lack thereof. Any such action shall be taken wholly without favoritism or discrimination.

(b) No person shall use one's City position to secure favorable treatment or privileges for either the employee or any other person.

(c) No employee of the City shall engage in any political activity, nor shall monetary contributions be solicited for campaign funds of any political organization, while that employee is on duty.

(d) A City employee may become a candidate for public office in a non-partisan election. In cases where the employee is a candidate for the position of mayor or city director, and becomes elected, that employee shall at once resign from employment with the City.

(e) Nothing in this section shall be construed to prevent the exercise of the rights of City employees as citizens, to express their opinions and to cast their votes.

1.08 UNLAWFUL ACTS PROHIBITED

(a) No person shall make any false statement or report in regard to any test, certification, or appointment. No person shall, in any manner, commit, or attempt to commit any fraud regarding execution of these provisions or the rules included in this manual.

(b) No person seeking appointment to or promotion in the City service shall either directly or indirectly give or promise any money, service, or other valuable thing to any person in connection with the candidate's test, appointment or promotion, whether actual or proposed.

CHAPTER II: EMPLOYMENT POLICIES

2.01 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATION ACTION

- (a) The City of Texarkana, Arkansas is committed to providing equal employment opportunity (EEO) to all employees and applicants for employment, without regard to race, color, religion, sex, national origin, age, handicap or disability, or status as a Vietnam era or special disabled veteran, in accordance with applicable federal and state laws. Furthermore, the City of Texarkana, Arkansas, does not discriminate on the basis of disability. This policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.
- (b) The City of Texarkana, Arkansas, is an affirmative action employer. The City of Texarkana, Arkansas will strive to recruit and train employees, promote members of minority groups, and women, so that they are approximately equal in proportion to their percentage of population, within the City of Texarkana, Arkansas. Nothing in this statement requires the City to hire any specific number of employees of any sex or race, or to hire or promote any person who is not the best qualified for the position. The Affirmative Action Plan does require the City to conscientiously recruit and promote in a manner so that employment with the City will reflect community population levels.

2.02 AT-WILL EMPLOYER

The City of Texarkana is an at-will employer. The City of Texarkana, or any City employee, may terminate the employment relationship at any time for any reason, with the understanding that neither has an obligation to base that decision on anything but his or her intent not to continue the employment relationship. No policies, comments, or writings made herein or during the employment process shall be construed in any way to waive this provision.

2.03 PERSONNEL OFFICE RESPONSIBILITIES

The City of Texarkana, Arkansas is a City Manager form of City government under the supervision of a City Manager. The City Manager, or his/her designee, is to operate the Personnel Office. The Personnel Office is responsible for all personnel management responsibilities for non-civil service employment positions in all departments covered by these policies. The Personnel Office is responsible for recruiting candidates, listing vacancies with employment agencies, advertising for candidates, notifying trade and professional groups, circulating lists of vacant positions, posting lists of available positions in City buildings, and all other forms of recruiting activities. Further, all personnel records, changes in status, and personnel administration are the responsibility of the Personnel Office.

The Civil Service Commission is responsible for advertising, recruiting, and testing for Police and Fire Department positions in accordance with ACA 114-51-301.

2.04 DEPARTMENTAL RESPONSIBILITIES

Department Heads and Supervisors are responsible for:

- (a) Notifying the Personnel Office promptly of any impending vacancy as soon as they have any knowledge that one is expected to occur;

- (b) Using the correct title of the position to be filled;
- (c) Using the correct pay grade and funding source;
- (d) Indicating any special qualifications for the position;
- (e) In case of unusual or one-of-a-kind positions, suggesting to the Personnel Office any known sources of recruitment; and,
- (f) Notifying the Personnel Office promptly when a candidate has been rejected or accepted, especially before the new employee begins work.

2.05 PRELIMINARY SCREENING

The Personnel Office will assist in screening all candidates for non-civil service employment positions (this can include criminal, but is not limited to, background and credit checks). The Personnel Office may disqualify for employment any candidate clearly not qualified for a particular position.

The making of deliberate false statements on an application for employment is cause for refusal of employment and, if discovered after appointment, is cause for dismissal.

2.06 RECRUITMENT BY DEPARTMENT

Nothing in these policies shall prevent any department head or other supervisor from undertaking recruitment efforts to fill a vacancy in his or her department. The department head or supervisor shall, however, notify the Personnel Office of such efforts and, if an acceptable candidate is found, shall refer that candidate to the Personnel Office for processing in accord with established procedures.

2.07 REFERENCE CHECK

The Personnel Office will be responsible for checking the references given by the applicants. An unfavorable reference may be cause for rejection of the application by the Personnel Office. The Personnel Office shall report the results of reference checks to the department head or other appointing authority.

Employees will also be subject to periodic review of driving records. Employees will be required to sign and authorize Personnel representatives to obtain and review any information pertaining to previous records of said employee.

2.08 QUALIFICATION STANDARDS

The Personnel Office will work with the department heads to formulate methods for determining the relative qualifications of persons seeking employment in City service. Each applicant shall answer all questions and furnish all information as required in the form or forms of application prescribed. In addition, each applicant shall submit to such examinations, interviews, tests, and other such selection devices (including written and performance tests, oral exams, experience and training rating systems, medical examinations, etc.) as are found to be reliable and valid and are deemed appropriate to determine the fitness of applicants for appointment. Unless waived by the Personnel Office, a satisfactory passage of a pre-employment physical in accordance with ADA regulations, at the City's expense, administered by a physician designated by the City, is a final requirement before being hired.

2.09 TYPES OF APPOINTMENTS

Appointments of employees to positions under these policies shall be of the following types:

- (a) Regular Full-time appointments: Hourly employees, salaried employees, and civil personnel.
- (b) Part-time appointments: Employees who work 20 hours weekly, or more, but less than 40 (hours weekly).
- (c) Temporary appointment: Such appointment may be for full-time, temporary, or part-time temporary.

Temporary employees may include emergency and/or seasonal employees.

2.10 JOB POSTING/INTERNAL MOBILITY

Non-Civil Service:

It is the City's policy to promote from within whenever possible. Therefore, current employees seeking to advance within and are eligible to do so, will be considered for promotion upon completion of a written exam and/or interview, conducted by the City. This is designed to ensure employees of the equal potential opportunities of advancement in his/her career with the City. Employees will be considered for promotion on many factors, including job performance, competence and basic skills, and attendance records. Date of employment will be the deciding factor for promotions only when all applicants are equally qualified.

In-house job announcements are posted throughout the City offices for a minimum of five working days. An employee wishing to be considered for an available position must complete an in-house job application (available in the Personnel Office) by the closing time stated on the job announcement.

After the closing date and time, the Personnel Office, in coordination with the applicable department head, will review all of the applications and follow normal hiring procedures.

2.11 PROMOTED EMPLOYEES

Persons promoted to positions that start in Step "1" of a higher grade, are eligible for a one step increase upon satisfactory completion of the initial six month period, if the department head should agree. Normally, employees whose positions are reclassified are not eligible for an increase in six months, unless they are in Step "1" of their grade.

Employees promoted to a supervisory position will receive a minimum increase of four percent above the highest paid person they are to supervise.

While it is the City's policy to promote from within whenever possible, when specialized skills and/or experience are needed to fill a vacancy, it may be necessary to hire from outside the City employment base.

2.12 TRANSFERRED EMPLOYEES

No employee may be transferred to a position for which he or she does not possess the minimum qualifications and experience. If the transfer involves a change from one department to another, both department heads must consent thereto, unless the City Manager orders the transfer for purposes of economy or efficiency.

2.13 DEMOTED EMPLOYEES

Any employee who is either voluntarily or involuntarily demoted for any reason, shall be compensated at the new rate as is administratively determined by the affected employee’s department head, the Finance Director or designee, and also approved by the City Manager.

2.14 CHANGE IMPLEMENTATION

Promotions, demotions, transfers, and other pay status changes shall be implemented during the pay period closest to the effective date of the change.

2.15 DISCIPLINARY REVIEW

No employee under disciplinary review shall be eligible to receive any wage increase if implementation of said raise should fall during the review period.

2.16 AGE

Non-Civil Service:

Any employee hired by the City must be at least 18 years of age at the time of employment.

Fire:

No person shall be eligible for appointment to any position within the fire department that has not arrived at any age required for service under (ACA 14-51-301(b)(1)(B)(i), as hereafter amended, modified, or superseded.

Police:

No person shall be eligible for appointment within the police department that has not arrived at any age required for service under (ACA 14-51-301(b)(1)(B)(ii), as hereafter amended, modified, or superseded.

Maximum age restrictions regarding mandatory retirement, apply to police and firefighters only, to the extent provided for in the federal Age Discrimination in Employment Act.

The minimum age for seasonal/summer youth employees may be lowered to 14 in accordance with the State and Federal Child Labor Laws.

2.17 RESIDENCY POLICY

The City requires that any employee who is required to be “on-call” or who is subject to being called out for emergency duty of any type, shall live within an area in which the employee can respond to an emergency call to duty within thirty (30) minutes.

2.18 NEPOTISM

In accordance with state statutes, no person shall hold an appointive or paid position with the City, who is related by blood or marriage in the third degree, either to a member of the Board of Directors or to the City Manager. Provided, however, this prohibition shall not prevent a person who holds an appointive or employment position with the City, at the time the person’s relative becomes City Manager or a member of the Board of Directors, from continuing in that position or employment. (ACA 14-47-135)

Members of the immediate family of employees may be employed by the City as long as they do not work for the same immediate supervisor. An applicant or employee shall not be eligible for a position in which he/she will be directly supervised by a member of the immediate family. Immediate family is defined as the following:

- | | | |
|---------|----------------|---------------|
| Spouse | Children | Son-in-law |
| Parents | Brother/Sister | Sister-in-law |

Grandparents
Great Grandparents
Grandchildren

Mother-in-law
Father-in-law
Daughter-in-law

Brother-in-law

2.19 AMERICANS WITH DISABILITIES ACT POLICY

It is the policy of the City of Texarkana not to discriminate against qualified individuals with a disability in regard to job application procedures, hiring, advancement, discharge of employees, employee compensation, job training and other terms, conditions, and privileges of employment because of the disability. Furthermore, it is the policy of this City that no qualified individual with a disability shall by reason of the disability, be excluded from participation in or be denied the benefits of a service, program, or activity of the City of Texarkana, or be subjected to discrimination by the City of Texarkana.

The City of Texarkana has appointed the Personnel Administrator as its Americans with Disabilities Act Coordinator. The responsibility of the ADA Coordinator is to coordinate all ADA compliance regulations and to investigate complaints or grievances, concerning violation of the Americans with Disabilities Act.

Any employee, who wishes to file a complaint or grievance for alleged violation of provisions of the Americans with Disabilities Act, may do so by contacting the Personnel Administrator.

Forms on which to file your complaint will be provided, or if necessary, your complaint will be heard verbally. A record of your complaint and the action taken will be maintained in a special complaint file in the ADA Coordinator's office. A decision concerning any grievance will be considered by the designated ADA Coordinator within 15 days of being filed.

CHAPTER III: CLASSIFICATION AND PAY

3.01 POSITION CLASSIFICATION PLAN

The City Manager, or his designee, shall be responsible for the preparation, maintenance, and revision of a Position Classification Plan for all positions in the classified service. The Position Classification Plan shall be based upon similarity of duties performed and responsibilities assumed so that the same qualifications may reasonably be required of, and the same schedule of pay may be equitably applied to, all positions in the same grade. Each grade is, in turn, assigned multiple steps. The steps are numbered from the lowest to the highest. The body of grades and steps constitutes the City's Position Classification Plan. Department Heads and supervisors have a duty to report to the City Manager substantial changes in duties and responsibilities of positions under their control in order for classification adjustments to be made and for the plan to remain current.

3.02 PAY PLAN

The City Manager, or his designee, shall be responsible for the preparation, maintenance, and revision of a pay plan, which shall be adopted by the Board of Directors. Said plan shall set forth salary ranges to include minimum and maximum rates of pay and intermediate steps for all classes of positions included in the classification plan.

Salary ranges shall be determined by the relative difficulty, responsibility, experience, and qualifications required of a class, the prevailing rates of pay for similar employment in private establishments and other public jurisdictions in the area, cost-of-living factors, the financial condition and policy of the City, and other economic considerations.

3.03 STARTING PAY

New employees shall normally start work at step "1" of the grades to which their positions are allocated by the classification plan. Upon the successful completion of 6 months employment, employees will be granted a pay increase to the next higher step established in the pay plan for such purposes, if approved by the department head.

In the case where a candidate for employment clearly has exceptionally good qualifications for the work of the position, he or she may be employed initially at a step in the pay plan higher than the "1" step; provided, however, that the department head and the City Manager shall approve such appointments and that sufficient budgeted funds are available to permit such appointments.

3.04 PERIODIC PAY INCREASES

Pay increases are normally considered by the Board of Directors in the Annual Budget. Under exceptional circumstances, department heads and supervisors may recommend periodic pay increases to the City Manager for consideration during the fiscal year. All pay rates will conform to the approved pay plan.

3.05 LONGEVITY PAY

Employees receive Longevity Pay at the following rate:

<u>LONGEVITY</u>		
COMPLETED SERVICE YEAR	BI-WEEKLY	ANNUAL
2	5.77	150.00
3	8.65	225.00
4	11.54	300.00
5	14.42	375.00
6	17.31	450.00
7	20.19	525.00
8	23.08	600.00
9	25.96	675.00
10	28.85	750.00
11	31.73	825.00
12	34.62	900.00
13	37.50	975.00
14	40.38	1,050.00
15	43.27	1,125.00
16	46.15	1,200.00
17	49.04	1,275.00
18	51.92	1,350.00
19	54.81	1,425.00
20	57.69	1,500.00
21	60.58	1,575.00
22	63.46	1,650.00
23	66.35	1,725.00
24	69.23	1,800.00
25+	72.12	1,875.00

Longevity pay shall not be included in calculating overtime pay, and shall not be considered to be a part of base pay.

Civil Service employees receive longevity pay bi-weekly. Non-Civil Service employees receive an annual lump sum payment.

Terminated employees will not receive a longevity payment.

3.06 MANDATORY DIRECT DEPOSIT

Employees of the City of Texarkana, Arkansas will be paid bi-weekly by direct deposits made to the employee's specified personal bank account. All employees who are hired or promoted on or after January 1, 2010, shall be required to accept payment of salary or wages by electronic warrants transfer. All employees will be required to complete a Direct Deposit Authorization Agreement upon employment with the City of Texarkana, Arkansas, designating a financial institution for direct deposit of funds. *NOTE: If an employee chooses to refuse said services as requested by the employer, the employee must state a hardship in writing to the Finance Director and Personnel Office.

CHAPTER IV: EMPLOYEE AND SPECIAL LEAVE BENEFITS

4.01 ANNUAL LEAVE (VACATION)

(A) Accrual:

Regular full-time employees are entitled to paid vacation leave time according to the following schedule:

Non-Civil Service:

<u>First 5 years</u>	<u>5 years – 10 years</u>
4 hrs ppp – 13 days	5 hrs ppp – 16 1/4 days
<u>10 years – 15 years</u>	<u>15+ years</u>
5 ½ hrs ppp – 17 7/8 days	6 hrs ppp – 19 ½ days

Police:

As provided by state law, each employee shall be granted an annual vacation of no less than 15 working days with full pay. [ACA 14 – 52 – 106]

<u>1 year – 5 years</u>	<u>5 years – 10 years</u>
4.60 hrs ppp – 15 days	5 hrs ppp – 16 ¼ days
<u>10 years – 15 years</u>	<u>15+ years</u>
5 ½ hrs ppp – 17 7/8 days	6 hrs ppp – 19 ½ days

Fire:

As provided by state law, each employee shall be granted an annual vacation of no less than 15 days with full pay. [ACA 14 – 53 – 107]

<u>1 year – 5 years</u>	<u>5 years - 10 years</u>
6.9 hrs ppp	7.5 hrs ppp
<u>10 years – 15 years</u>	<u>15+ years</u>
8.2 hrs ppp	9 hrs ppp

NOTE: Fire Department Civil Service personnel assigned to eight hour shifts accrue at the same rate as Police. Accrual rates are based upon years of continuous service. Vacation will not accrue during a period of leave without pay. When a Fire Department Civil Service employee transfers between 24-hour and 8-hour shifts, accrued leave balances will be converted by a factor reflecting the proportionate difference in rates of accrual.

(B) Accumulation and Carryover:

Vacation is cumulative. During a calendar year, accrued leave may exceed 30 days; however, those days in excess of 30 will be forfeited if not used before January 1 of the following year, unless the city manager has approved the excess carryover. For firefighters working 24 hour shifts, accrued leave in excess of 360 hours will be forfeited if not used before January 1, unless the City Manager has approved the excess carryover. It shall be the employee's responsibility to schedule vacation time before the maximum accumulation is reached. Otherwise, the employee forfeits any leave in excess of the maximum accumulation.

(C) Payment Upon Separation From Employment:

Upon separation from employment or layoff due to reduction in force, the employee will be paid for accrued vacation up to a maximum of 30 days. Firefighters working 24 hour shifts will be paid for accrued vacation up to a maximum of 360 hours. **Employees must complete their probationary period before being paid their accrued annual vacation leave upon separation from the City.**

(D) Scheduling:

Vacation shall be approved by the department head, subject to the needs and demands of the department at the time vacation is requested.

(E) Charging Vacation:

Vacations may be charged in one hour increments when approved by the department head.

(G) Cancellation:

Vacations are subject to cancellation if an emergency should warrant such action.

NOTE: Temporary, part-time, and seasonal employees do not earn annual leave.

4.02 SICK LEAVE

The City of Texarkana recognizes that inability to work because of illness or injury may cause economic hardships. For this reason, the City provides paid sick leave to regular full-time employees.

(A) Amount of Sick Leave:

Eligible employees accrue sick leave as follows:

Non-Civil Service:	4.615 hours per pay period (15 days annually)
Police Officers:	6.2 hours per pay period (20 days annually)
Firefighters:	18.5 hours per pay period (20 days annually)
Fire Personnel: (On 8 hour shifts)	6.2 hours per pay period (20 days annually)

(B) Accumulation:

(i) All regular full-time employees may accumulate a maximum of ninety (90) days of sick leave. For Firefighters working 24-hour shifts, ninety (90) days is defined as 2,160 hours. For all other full-time employees, ninety days is defined as 720 hours.

(ii) Upon March 4, 2019, sick leave accrual will cease for any employee with accrued unused sick leave currently in excess of the applicable ninety (90) day maximum set forth immediately above, until such time as said employee's unused accrued sick leave falls below said maximum, whereupon sick leave accrual will resume, but shall not, thereafter, exceed the applicable maximum set forth immediately above.

(C) Eligibility:

An employee may be eligible for sick leave days for the following reasons:

- (1) Personal illness or physical incapacity.
- (2) Quarantine of an employee by a physician or health officer.
- (3) Illness in the immediate family which would require the employee to take care of the family member(s). Immediate family is defined as spouse, children, and parents. Any paid sick leave for this purpose in excess of twenty-four hours per calendar year, shall be at the discretion of the employee's department head.
- (4) Medical, dental, or optical visits.

NOTE: Temporary, part-time, and seasonal employees do not earn sick leave.

(D) Notification:

Unless otherwise provided by departmental policy, an employee who is unable to report for work due to one of the previously listed sick leave reasons, shall report the reason for his absence to the employee's supervisor, or someone acting for the employee's supervisor, within 30 minutes from the time the employee is expected to report for work. Sick leave with pay may be denied unless such report has been made as aforementioned. Departments providing emergency services may establish additional notification requirements.

Falsification of information or failure to follow call in procedures will result in disciplinary action up to and including termination.

Failure to notify the City of an absence of three or more days, or to return to work upon expiration of sick leave, will be considered abandonment of the position.

(E) Abuse of Sick Leave:

Sick leave shall be used for the purpose for which it is intended, that being to provide employee protection against loss of pay due to illness or injury. Sick leave may not be converted into any other form of compensation such as vacation or worker's compensation. Sick leave shall not be considered a privilege an employee may use at his discretion, but shall be allowed only in case of necessity and actual sickness or disability of the employee. Abuse of sick leave or excessive use of sick leave as monitored by the department head and/or City Manager may be cause of disciplinary action which may include dismissal.

(F) Documentation of Illness:

An employee shall, upon request of the supervisor or department head, furnish a statement from the attending physician to substantiate use of sick leave. An employee on sick leave may be required to obtain a second medical opinion from a physician of the City's choice at the City's expense.

(G) Charging Sick Leave:

Absences due to illness will be charged in the following sequence:

- Accrued sick leave
- Accrued annual leave
- Catastrophic Leave when applicable
- Medical leave without pay

If an official holiday occurs during a period of illness, the holiday leave will be charged rather than sick leave.

For an employee on a shift work assignment, time off may be charged against accumulated sick leave, only for such days that the employee is scheduled to work. Sick leave shall not be charged against any employee for any period of sickness, illness, or injury for any days which the employee is not scheduled to work. [ACA 14-52-107(b)(2)]

(H) Activity While on Sick Leave:

An employee who has reported off sick is expected to remain at home during the time the employee would otherwise be working, unless hospitalized, visiting a doctor, or obtaining medication or treatment as prescribed by a doctor. An employee shall not engage in any other employment during

the time the employee is allowed to use sick leave. An employee may be required to perform light duty rather than claim sick leave if authorized by a physician.

(I) Payment on Separation from Employment:

Regular full-time employees may receive a cash payment for a maximum of 480 hours accumulated sick leave, only upon retirement. Firefighters working 24 hour shifts may receive a cash payment for a maximum of 720 hours upon retirement. Except as otherwise provided by state law, sick leave over 60 days is not to be credited to service time for retirement purposes. Resigning employees will not receive a cash payment for accumulated sick leave.

In all matters concerning sick leave for fire and police employees, strict compliance with Arkansas statutes is required.

(J) Catastrophic Leave Bank:

The purpose of the Catastrophic Leave Bank as adopted by Ordinance L-287 is to allow eligible participating employees who have exhausted all available leave balances to receive additional leave benefits for extended absences upon submission of a properly documented application. For questions, please contact the Personnel Office or visit the City's website at www.txkusa.org/ar/departments/personnel.

Existing policies for other types of leave are not affected by this program.

4.03 MATERNITY LEAVE

Employees affected by pregnancy, child birth, or related medical conditions shall be treated the same for all employment-related purposes as employees disabled for non pregnancy-related reasons. Therefore, accrued sick leave and vacation leave will be granted for maternity use, after which, leave without pay must be used. Provisions of the federal Family and Medical Leave Act of 1993 will be observed in granting the leave. Additional information and applications are available in the Personnel office.

If the employee desires to return to her position of employment following maternity leave, she must submit the request in writing to the department head at least one month prior to the anticipated leave date. This information will be used for temporary replacement scheduling and processing status change records.

A pregnant employee will be allowed to work as long as her physician deems fit. However, written consent from the employee's physician may be requested after the seventh month of pregnancy. If the employee does not report for work at the expiration of the leave, she will be considered separated from employment. If complications occur, an extended leave of absence must be approved by the department head.

Employees who return to unrestricted work duties on a timely basis will be reinstated to the last position and pay rate held prior to the leave. In the event the last position is not available due to unavoidable job changes, the employee will be reinstated to a comparable position.

4.04 COURT DUTY LEAVE

This section does not apply to employees who are witnesses in court actions in which they have a personal interest.

Employees will be granted leave with pay for jury duty, or if summoned as a witness in a court action as long as they are not personally involved and their presence is not required as a result of

outside employment. Employees are also permitted to retain the allowance from the court for such service. The time off will not be counted against annual leave.

To qualify for jury or witness duty leave, employees must submit a copy of the summons or other relevant court-related paperwork to the department head as soon as possible after receiving it. In addition, proof of service must be submitted to the employee's supervisor when the period of jury or witness duty is completed. Employees working night shifts, and who are serving during the day, shall take jury/witness leave on the night shift of the day on which they serve.

Certain employees will be required to appear in court as witnesses in the course of their job duties. Non-exempt employees will be compensated through overtime payment or adjusted work schedules.

4.05 LEAVE WITHOUT PAY

Regular full-time employees may request a leave without pay for reasons of health, completion of an educational degree, or some activity which will directly benefit the City. Also, any employee who becomes a candidate for a city, county, district, state, or national office may be granted a leave of absence without pay during the time he actively campaigns. The request must be made in writing to the City Manager and after approval is made, it should be forwarded to the Personnel Office to assure the proper status changes are completed.

Leave without pay shall not be granted for an employee to try out a new, non-City position of employment.

During this leave, the employee will not accumulate sick or annual leave or be paid for holidays. The employee will be responsible for all premiums for any group insurance program.

Failure on the part of the employee to return to work promptly at the expiration of the leave of absence shall be considered as voluntary resignation.

A leave of absence without pay will not be granted when such leave will hamper the efficient operations of the City.

4.06 EDUCATIONAL LEAVE

The City recognizes there are times when required courses are not offered during night school or, as in the case of Public Safety personnel, course time may conflict with work schedules. Every effort should be made to schedule class time during non-working hours, but for those rare times when this is not possible, the City has established Educational Leave.

Educational Leave may be granted by the City Manager upon recommendation by the department head for a period not to exceed three (3) hours per week.

This period of absence shall be made up as scheduled by the appropriate department head.

The course the employee takes must be from an accredited educational institution. Courses must be directly related to the employee's duties and better equip him or her to perform them or be a part of an approved degree plan related to the job.

The Department Head may request the employee to provide verification of class attendance.

4.07 FUNERAL LEAVE

Funeral leave may be granted for up to forty (40) paid hours for employees working standard eight hour shifts, fifty-five (55) hours for employees working eleven hour shifts, and seventy-two (72) hours for employees working twenty-four hours shifts per each loss of an immediate family member, per year, to all regular full-time employees, to attend the funeral of the employee's immediate family member. Immediate family shall be defined as husband, wife, father, mother, child, brother, sister, grandparents, grandchildren, and the comparable in-law relationships.

4.08 MILITARY LEAVE

- (a) Military Leave shall be governed by applicable State and Federal Law, including the Uniformed Services Employment and Reemployment Rights Act (USERRA).

- (b) Members of the Reserve and National Guard shall be granted leave for purposes of active duty training in accordance with Federal Law. Individuals must present a copy of the orders to the Finance Director or designee. The leave shall not adversely affect vacation or sick leave benefits. The City will pay the employee's regular City salary for a period of 15 days, plus necessary travel time for annual training requirements or other duties, performed in an official duty status in any one calendar year. To the extent this leave is not used in a calendar year, it will accumulate for use in the succeeding calendar year, until it totals 15 days at the beginning of the calendar year.

4.09 MISCELLANEOUS LEAVE

The attendance of employees to seminars and training programs is considered part of continual professional development. Attendance to such meetings is to be approved prior to registration by the department head and/or City Manager. In the event exempt employees are required to attend meetings at a location requiring an overnight stay with travel time in excess of the employee's normal work day, overtime will not be paid. However, the City will pay all reasonable out-of-pocket expenses for lodging, travel costs, meals, etc., pursuant to its regular travel policy.

Non-exempt employees attending one-day training sessions related to their job shall receive compensation for time spent traveling to and from other cities. Time spent traveling to and from other cities on overnight assignment is counted as work time, only to the extent it coincides with the employee's regular work day.

4.10 HOLIDAYS

The following are official holidays for City employees:

New Year's Eve	December 31 st
New Year's Day	January 1 st
Martin Luther King, Jr. Day	Third Monday in January
Presidents' Day	Third Monday in February
Good Friday	Friday prior to Easter Sunday
Memorial Day	Last Monday in May
Juneteenth	June 19 th
Independence Day	July 4 th
Labor Day	First Monday in September
Veterans Day	November 11 th
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Day after Thanksgiving
Christmas Eve	December 24 th

Holidays falling on Saturday will be observed on the preceding Friday; holidays falling on Sunday are observed on the following Monday. When an employee reports in sick on the day before or the day after a holiday, a signed sick slip may be required before payment for the holiday is made.

In circumstances where a conflict exists between employee requests, departmental divisional seniority shall apply. Vacation shall not be approved when it interferes with normal operations of the City or will reduce staffing below levels acceptable to the department head or the City Manager.

Holiday pay is given to all regular, full-time employees, provided they worked on the last scheduled work day prior to, and next scheduled work day after the holiday, or had prior approval from the department head to take annual leave. Employees on annual or sick leave during a holiday period will receive holiday pay for authorized holidays. Employees on leave without pay status do not receive pay for holidays. Employees called in to work in emergency situations on a holiday will receive double-pay for the hours worked.

For departments which operate 24 hours a day, seven days a week, the department head will adjust the holiday leave schedule for non-Civil Service employees, according to the departmental work schedule.

The appropriation made by the City Board of Directors for salaries, will include additional pay for holidays for all eligible employees of the City including, but not limited to, Civil Service employees, as provided by the laws of the State of Arkansas.

Police:

All law enforcement officers, regardless of their titles, employed by cities of the first class, shall be compensated for all legal holidays established by the governing body of the municipality.

This compensation shall be based on the law enforcement officer's daily rate of pay and in addition to the regular pay schedule. This compensation may be included within the officer's base pay. This compensation shall be prorated and paid during the regular payroll periods, or paid in one lump sum annually, on a date in December designated by the municipality. (ACA 14-52-105)

Fire:

All firefighters employed by cities of the first class shall be compensated for all legal holidays established by the governing body of the municipality. This compensation shall be based on the firefighters' daily rate of pay and in addition to the regular pay schedule. This compensation may be included within the firefighters' base pay. This compensation shall be prorated and paid during the regular payroll periods, or paid in one lump sum annually, on a date in December designated by the municipality. (ACA 14-53-106)

All matters in question on leave will be at the City Manager's discretion and in accordance with State and Federal laws.

4.11 EMPLOYEE HEALTH BENEFITS

The City of Texarkana provides a group health plan for all its regular full-time employees. Detailed information on the policy and coverage is provided to the employee at the time of employment and as coverage changes. Additional information may be obtained from the Personnel Office.

Policy benefits and employee contributions shall be as established by the City Board of Directors and are subject to change by the Board of Directors. An employee must pay the premium if on

leave without pay as provided by federal law, unless on leave governed by the Family and Medical Leave Act of 1993. In the event an employee separates from the City, the Federal rules concerning extended health coverage under Cobra shall apply.

4.12 OCCUPATIONAL INJURIES

All employees of the City are covered under the Arkansas State Workers' Compensation Law. Rules and regulations concerning Workers' Compensation are posted on City bulletin boards. Any employee incurring an "on-the-job" injury shall immediately notify his supervisor, who will arrange for appropriate medical treatment and prepare the necessary reports required for the employee to be compensated.

The supervisor will provide the report to the Personnel Office within 24 hours of the incident. The employee will, if possible, go to the Personnel Office and provide the data to complete the Employee's Report of Injury, and will provide any other applicable information. The employee must submit documentation of any expenses he pays himself to the Personnel Office for reimbursement, if allowed, by Workers' Compensation insurance.

Workers Compensation does not pay for the first eight days following an occupational injury. The City will allow an employee to claim sick leave for salary lost due to an occupational injury for that period.

In the event the disability extends beyond the eight day period, Workers' Compensation will pay the employee in accordance with State law. The City will allow the employee to claim sick leave to pay the employee the difference between the employee's Workers' Compensation pay and the employee's salary, for a period up to, but not exceeding six months. If, at the end of six months, the employee is unable to return to work because of reasons related to the initial injury, only Worker's Compensation insurance will be paid.

The City reserves the right to have the employee examined at any time by a physician of its choice.

The City reserves the right to assign an employee to duties at the same rate of pay, other than those being performed at the time the injury occurred, providing a physician gives approval to duties that will not hinder recovery from the injury.

4.13 RETIREMENT PLANS

The City contributes to retirement and pension plans for its regular full-time employees. Upon employment, employees will receive information regarding the plan for which they are eligible.

Non-Civil Service:

Texarkana Arkansas Public Employees Retirement System (TAPERS):

The City administers a defined benefit plan for non-Civil Service regular hourly full-time employees. Employees hired before July 1, 2002, who are not covered under any other plan, are eligible for participation in this plan. The City contributes ten percent of the employees' salary to the plan; the participating employees must contribute two percent of compensation to this plan. Employees with 10 years service are fully vested. This is a closed-end plan, and no new participants will be enrolled in this plan effective July 1, 2012.

ICMA-RC Deferred Compensation Plans:

An employee transitioned from the TAPERS retirement system on July 1, 2012 will be enrolled in a 401(a) plan administered by the International City Management Association Retirement Corporation. If an employee has an accrued benefit in TAPERS, the benefit will be frozen and will

not accrue any additional amount as of July 1, 2012. The benefit will earn vesting credit with increased service with the City. The City will contribute ten percent of the employee's salary to the 401(a) plan. The participating employee must contribute two percent of compensation to this plan. All non-civil service employees hired on or after July 1, 2012 will also be enrolled in this 401(a) plan.

Non-Civil Service regular full-time exempt employees may choose to participate in a separate 401(a) plan administered by the International City Management Association Retirement Corporation as their retirement plan. The City will contribute ten percent of the employee's salary. The participating employee must contribute two percent of compensation to the plan.

All employees are eligible to participate in an ICMA-RC 457 and IRA Plan as a supplemental retirement plan. The Personnel Office should be contacted for additional information about arranging payroll deductions for this program.

Civil Service:

Policemen's Pension and Relief Fund:

Police officers hired prior to January 1, 1983, are enrolled in the Policemen's Pension and Relief Fund, which is administered by a local board of trustees. The City contributes six percent of an officer's salary to the fund which is governed by the laws of the State of Arkansas (ACA 24-11-401-433).

Firemen's Relief and Pension Fund:

Firefighters hired prior to January 1, 1983, are enrolled in the Firemen's Relief and Pension Fund, which is administered by a local board of trustees. The City contributes six percent of the firefighters' salary to this fund which is governed by the laws of the State of Arkansas (ACA 24-11-801--828).

Local Police and Fire Retirement System:

Police officers and firefighters hired on or after January 1, 1983, are enrolled in the Local Police and Fire Retirement system, which is administered by the State of Arkansas. The City's contribution to this plan is set each year by the State agency which administers the plan (ACA 24-10-101--616).

For additional information about any of these retirement plans, employees may contact the Personnel Office or their department head.

Employees who plan to retire are urged to provide the department head and Personnel Office with a minimum of two months notice. This will allow time for completing the retirement procedures and ensure that retirement benefits may commence in a timely manner.

4.14 TUITION AID

After permanent employment (6 months Non-Civil or 1 year Civil (if approved)), regular full-time employees interested in continuing their education in a job related field are eligible for financial assistance, pursuant to availability of City funding. Assistance is provided for payment of tuition only and is paid directly to the school.

Enrollment must be in an accredited college, university, or trade/vocational school in courses directly related to the employee's City position, or part of a degree plan in a field related to his or her department. The City will pay a maximum of six hours per semester. To continue receiving financial assistance, the employee must receive a grade of "B" or better for graduate courses, a "C" or better for undergraduate courses, or if applicable, a grade of "passing". The employee must

submit a copy of the grades to the Personnel Office within five working days of receiving them.

Failure to provide this information will be construed as non-completion with an acceptable grade, and the employee will be required to reimburse the City.

If an employee receives an "Incomplete", the course must be completed within a year, or the City must be reimbursed for the course and the employee will not be eligible for tuition aid in advance, for a period of one year.

If an employee drops a course, the Personnel Office must be notified or the employee will be held responsible for the cost of the dropped course. If a course is dropped too late for the tuition to be refunded, the employee will be responsible for the cost of the course not refunded to the City.

An employee who separates from employment for any reason, other than reduction in force within one year of the first class, will be liable for repayment of the City's expense for tuition aid. The amount will be deducted from the employee's final check.

Enrollment Procedures

- The employee should discuss educational plans with the department head.
- Obtain tuition aid request forms from the Personnel Office, complete them (including required signatures) and return forms to Personnel.
- The Personnel Office will issue the employee an authorization to the school to bill the City for tuition.
- The employee shall file a copy of his or her degree plan with the Personnel Office.
- Requests for tuition aid must be approved by the department head and the Personnel Director.

No tuition aid will be reimbursed to the employee without prior approval from the City Manager or his designee. Tuition assistance will not be paid concurrently with any other educational assistance programs, i.e., grants, scholarships, V.A. benefits, etc.

4.15 EDUCATION INCENTIVE PAY

Civil Service employees in the Police and Fire Departments are eligible for the Education Incentive Pay Program.

Police:

Educational incentive pay of \$1.00 per credit hour for each hour necessary to obtain a degree, not to exceed a total of 128 hours, may be awarded to any police officer on the recommendation of the Chief of Police for a college degree in Law Enforcement or related field acceptable to the Chief of Police. Where the degree is not related to Law Enforcement, the Chief of Police may conditionally award the college incentive pay for a period of not exceeding 36 months, during which time the officer shall earn a minimum of 12 credit hours of Law Enforcement courses, with 6 credit hours within the first 18 months. Failure of the officer to meet that schedule shall reduce the incentive pay to the pay equivalent to the number of hours credited toward a Bachelor's Degree in Law Enforcement. Should the officer subsequently complete the 12 hours of Law Enforcement classes, the college incentive pay equivalent to a degree shall be reinstated.

Fire:

Educational incentive pay of \$1.00 per credit hour for each hour necessary to obtain a degree, not exceeding a total of 128 hours, may be awarded to any firefighter on the recommendation of the Fire Chief, for a college degree in Fire Administration or Fire Technology, or related field acceptable

to the Fire Chief. Where the degree is not related to Fire Administration, the Fire Chief may conditionally award the college incentive pay for a period of not exceeding 36 months, during which time the firefighter shall earn a minimum of 12 credit hours of Fire Administration courses, with 6 credit hours within the first 18 months. Failure of the firefighter to meet that schedule shall reduce the incentive pay to the pay equivalent to the number of hours credited toward a Bachelor's Degree in Fire Administration. Should the fire fighter subsequently complete the 12 hours of Fire Administration classes, the college incentive pay equivalent to a degree, shall be reinstated.

Program Requirements:

Participants must have been employed by the City for one year, and must have received 30 credit hours toward the approved degree. No pay will be given for any hours in which a grade less than "C" is received. The City reserves the right to review each participant's class attendance in any manner it sees fit. If it is determined that the participant is not attending class adequately, pay for credits will be docked accordingly. **All college hours must be from a college or university that has been accredited by a national accreditation organization, recognized by the U.S. Department of Education.**

The City reserves the right to cancel the Education Incentive Pay Program, if and when the financial condition of the City becomes such, that the Board of Directors determines that the City cannot afford to continue the program.

4.16 CERTIFICATE/LICENSE/ INCENTIVE PAY PROGRAM

Purpose

The Certificate/License Incentive Pay Program has been designed to meet three major objectives. First, to promote and maintain a highly qualified, trained, and professional workforce by providing incentives for employees to participate in job related continuing education and certification/licensing programs. Second, the City hopes to enhance and improve the level of service provided to its citizens through the provision of a highly qualified and professional workforce. Finally, it is the intention of this policy to reduce and mitigate general and individual employee liability exposures by ensuring that City employees are well trained and knowledgeable of the job they perform.

Guidelines

Full-time employees may receive \$20 additional compensation per month for obtaining each qualifying certificate or license identified in this policy. In order to qualify for incentive pay, employees must have completed their proscribed introductory period and obtained certificates or licenses from appropriate State certification or licensing entities, and/or recognized professional associations performing similar certification or licensing function in the applicable profession. Furthermore, all certificates or licenses must be directly related to the employee's present position, profession, and/or occupation. The cost for such education and training will be paid pursuant to availability of City funding.

Position	Certificate/License	Incentive Pay
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All Departments

All personnel will be compensated \$20 a month for the completion of an Associate's degree, \$20 a month for the completion of a Bachelor's degree and \$20 for a Master's degree in a work related field and all degrees in Public Administration.

Animal Shelter:

Euthanasia Certificate	20/month
Basic Animal Control Officer Certificate	20/month

Advanced Animal Control Officer Certificate	20/month
Animal Cruelty Investigation Certificate	20/month

Fire Department:

The fire department's program will be based on a five step progression in a combination of training, education, and experience in the fire department. The necessary steps to obtaining the following certificates will be spelled out in department policy:

Basic Certificate	20/month
General Certificate	20/month
Intermediate Certificate	20/month
Advanced Certificate	20/month
Senior Certificate	20/month
Instructor Certificate	20/month

Police Department:

The police department and fire department plans will be similar in that they will both offer a five step certification program, which will be based on a combination of training, education, and experience, being the basis for certification. The training and education curriculums will come from certified police programs.

Basic Certification	20/month
General Certificate	20/month
Intermediate Certificate	20/month
Advanced Certificate	20/month
Senior Certificate	20/month
Instructor Certificate	20/month

Public Works:

All of the certifications must be by a state agency, SBCCI, or other recognized certifying agency and certification must be in an area directly related to the employee's job duties.

Code Enforcement:

May receive incentive pay for up to three (3) certifications or licenses in the following areas, provided at least one (1) is a building inspector's certification:

Building, Commercial Electrical, Plumbing, HVAC (mechanical), Zoning and Property Standard Housing Rehabilitation, or 1 & 2 Family Dwelling Inspector; Electrical, Plumbing, HVAC Master License; Storm Water Management Certificate.	20/month
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May receive incentive pay for up to three (3) certifications in the following areas provided at least one (1) is in a building area:

Building, Electrical, Plumbing or HVAC Plan Examiner; Storm Water Management.	20/month
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May receive incentive pay for three (3) certifications in the following areas, provided at least one (1) is in a building area:

Building, Electrical, Plumbing or HVAC Code Analyst; Storm Water Management.	20/month
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May receive incentive pay for one (1) certification in the following areas:

Code Enforcement & Administration Professional or CABO Certified Building Official (CBO)	20/month
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Planning:

Associate’s Degree in Engineering Technology or Architecture, or AICP Certified Planner. 20/month

Street Department:

40 hours of Arkansas T2 classes in Street Maintenance and Repair 20/month

40 hours of Arkansas T2 classes in Management, Public Relations and Interpersonal Relations 20/month

Parks:

Pool, Ball Field, Grounds, and Landscaping Maintenance Certificate 20/month

40 hours of Arkansas T2 classes in Management, Public Relations, and Interpersonal Relations 20/month

Housing:

Housing Construction and Rehab Management Certificate 20/month

ADFA Certified Home Program Administrator Certificate 20/month

Mechanics:

The City of Texarkana, Arkansas, employs mechanics in various departments and thus, has the following incentive program for mechanics:

Certification from a recognized program in Automatic Service Excellence 20/month

Certification by the National Association of Emergency Vehicle Technicians 20/month

Finance Department:

Associate’s Degree in Accounting, Computer Science, Finance, or Economics 20/month

Bachelor’s Degree in Accounting, Computer Science, Finance, or Economics 20/month

Master’s Degree in Accounting or Computer Science, Finance, or Economics 20/month

CPA License 20/month

Municipal Court:

Certification through Arkansas Association of Municipal Court Clerks 20/month

Certified Probation or Police Officer/Bailiff 20/month

Secretarial Staff:

Certification from Professional Secretaries International Organization 20/month

Associate’s Degree in Business or related field 20/month

Personnel:

Associate’s Degree in Personnel, Business, or Management 20/month

Bachelor’s Degree in Personnel, Business, or Management 20/month

Master’s Degree in Personnel, Business, or Management 20/month

Probation:

Probation Officer certification 20/month

Court Security Officer 20/month

City Clerk's Office:

Certification through International Institute of Municipal Clerks
or Certified Municipal Clerk

20/month

4.17 SPECIALIZED POSITION INCENTIVE PAY (POLICE)

Purpose

The Specialized Position Pay Program is designed to encourage officers to take on new responsibilities, learn new skills, become crossed trained, and diversify our police department.

Guidelines

Non probationary police employees may receive \$20 additional compensation per month for service in a specialized position. In order to qualify for specialized position pay, employees must have completed their introductory period and be assigned to the specialized position. Furthermore, this pay is not to exceed five specialized positions.

Police Department Specialized Positions:

Civil Service employees in the Police Department are eligible for the specialized position incentive pay for the following positions.

Field Training Officer	20/month
SWAT	20/month
Honor Guard	20/month
Bilingual	20/month
Peer Support	20/month
Traffic	20/month
Night Shift	20/month
Crime Scene	20/month
K-9	20/month

4.18 POLICY INCORPORATING THE FAMILY AND MEDICAL LEAVE ACT REQUIREMENTS

General

An employee may request a leave of absence covered by FMLA. Reasons for leave under the FMLA include:

- the birth of a child
- placement of a child for adoption or foster care
- caring for immediate family members with a serious health condition
- a serious health condition that makes the employee unable to perform the essential functions of his or her job
- responding to a qualified family demand created by a service member being called to active duty, and caring for service members who have become sick or injured in the line of duty.

To ensure compliance with the Family and Medical Leave Act requirements, an employee requesting a leave of absence for one of the above stated purposes will be placed on FMLA leave.

Eligibility

To be eligible for all of the benefits and conditions described herein, an employee must have been employed for 12 months and worked at least 1250 hours in that year.

An employee who has been employed for less than 12 months and worked less than 1250 hours in that year, can request a leave, but if the leave is granted (a) must prepay insurance premiums, (b) is not guaranteed an equivalent position upon return, and (c) is not eligible for an intermittent leave or reduced leave schedule.

Duration and Schedule of Leave

An employee is limited to 12 weeks of family and medical leave in an employment year. A leave for birth, adoption, or placement of a child, must be completed by 12 months after the birth or placement.

Up to 12 weeks of leave for certain qualifying exigencies arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation, and up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.

An eligible employee may request an intermittent leave or a reduced leave schedule because of the employee's serious health condition, or to care for the employee's spouse, child, or parent with a serious health condition when the need is certified by a physician or practitioner. Intermittent leave is leave taken in separate blocks of time due to a single illness or injury. Reduced leave is a schedule that reduces an employee's usual number of working hours per day or week.

Compensation

The City does not provide compensation during a leave of absence. The employee's accrued sick and/or vacation leave will be charged during Family and Medical Leave. Workers Compensation leave shall run concurrently with Family and Medical Leave; however, an employee is not required to substitute sick or vacation leave during an absence covered by payments from state workers' compensation funds.

Insurance

An employee who is receiving workers' compensation benefits, and also taking family leave, cannot be forced to return from family leave to take a "light-duty" assignment. However, a refusal to take a light-duty assignment could mean suspension of workers' compensation benefits under applicable state law. If a light-duty assignment is accepted, the employee's right to return to the original or an equivalent job continues until 12 weeks have passed. This 12 weeks period includes the employee's FMLA leave and the time spent doing light-duty work.

If the employee does not return to work at the conclusion of the leave for a reason other than (a) the continuation, recurrence, or onset of a serious health condition of the employee or immediate family member or (b) circumstances beyond the employee's control, the employee must repay the City-paid insurance premiums, or a pro rata share for an intermittent or reduced leave, within 90 days of the conclusion of the leave. Covered employees not returning to work will be offered health insurance through COBRA.

Dependent insurance premiums must be prepaid by the employee on leave on the first of each month, or insurance for the dependent(s) will be terminated.

Benefits

During a FMLA leave not covered by sick or annual leave, the employee shall retain seniority but will not earn any leave. Health insurance premiums will be maintained on the same basis as if the employee were working. In the event an employee does not return to work after the completion of FMLA, the employee will be responsible for the repayment of insurance premiums in accordance with FMLA guidelines.

Documentation

Except in emergencies, the employee must submit a completed Application for Family or Medical Leave at least 30 days in advance of the leave and a Certification of Physician or Practitioner to the Personnel Director. Additionally, for the adoption or foster placement of a child, the employee must submit a statement from the agency specifying the date of the birth or placement. Similar statements may be required at any time during the leave and prior to the employee returning to work.

The City may require second and third medical opinions at the City's expense.

Employment

When an eligible employee returns from a leave, the employee will be placed in the same or equivalent position with equivalent benefits.

When an eligible employee takes an intermittent or reduced leave, the employee may be transferred temporarily to an alternate position with equivalent pay and benefits.

(An employee who has been employed less than a year, and worked less than 1250 hours in that year is not guaranteed the same or equivalent position, pay, or benefits.)

The failure of an employee to return to work at the conclusion of the leave may subject the employee to termination of employment.

Questions

This policy is intended to comply with the Family and Medical Leave Act of 1993 (FMLA revisions effective January 16, 2009). In the event of discrepancies, the Act will control.

Additional information regarding this policy, or the definitions used herein, may be obtained from notices posted on the bulletin boards and from the Family and Medical Leave Act available in the Personnel Department.

CHAPTER V: MATTERS AFFECTING THE STATUS OF EMPLOYEES

5.01 ATTENDANCE

Employees shall be in attendance at their work stations in accordance with the rules and regulations established for each department. All departments shall keep daily attendance records of all employees, which shall be reported to the payroll office on the form and on the date specified by the City Manager.

- (A) Except for non-exempt employees, any employee who is late for work may not be paid for the time absent from work, at the discretion of the department head or designated representative.
- (B) Persistent violators shall be subject to further disciplinary action to include dismissal.

5.02 WORK HOURS

Except for firefighters, Police Officers and exempt employees, normal work hours for all employees shall be 40 hours per week. Work hours for police and fire employees shall be in accordance with state statutes and departmental regulations.

The City reserves the right to adjust and change hours of work, days of work, and schedules, in order to fulfill its responsibility to the citizens of Texarkana. In the event of an emergency, previously scheduled hours of work, days of work, and work arrangements may be altered at the discretion of the department head. Changes in work schedules will be announced as far in advance as practicable.

5.03 OVERTIME PAY

Overtime will be paid in compliance with the Federal Fair Labor Standards Act.

Eligible (non-exempt) employees will be paid overtime for hours worked in excess of 40 hours per week (except for Fire and Police Department). Eligible Fire Department personnel, working 24 hour shifts, shall be paid overtime for hours worked in excess of 212 hours per 28 day work period. Overtime compensation will be one and one-half times the regular hourly rate of pay. No leave or holiday pay will be credited toward hours worked in the computation for overtime unless it is billable overtime that will be reimbursed by an outside agency. Overtime of less than 15 minutes will not be compensated.

The Police Department may elect to adopt shift and corresponding compensation and overtime accrual models for some or all of its personnel in accordance with the Federal Fair Labor Standards Act (including, without limitation, 29 U.S.C. 207(k)).

Fire Department:

For overtime purposes, the hourly rate of pay for Fire Department employees on 24 hour shifts shall be determined by dividing total base pay by the number of hours paid for during the 28 day work period. The number of hours paid for will normally be either 216 (9 shifts) or 240 (10 shifts).

Except in case of an emergency, advance approval of all overtime shall be made by the department head.

5.04 OVERTIME COMPENSATION ELIGIBILITY

The determination of employees eligible for overtime compensation will be based on the federal Fair Labor Standards Act (FLSA) provisions for executive, administrative, and professional employee exemptions. Exempt positions include, at the City Manager's discretion, but are not limited to:

City Manager	Police Captain
Finance Director	City Planner
Police Chief	Building Maintenance Superintendent
Public Works Director	Bi-State Information Center Director
City Clerk	Public Works Superintendent
RSVP Director	Fire Chief
Personnel Director	Payroll Administrator
Controller	Building Official
Parks Superintendent	Housing and Youthbuild Administrator

5.05 COMPENSATORY TIME

Effective January 1, 2010, the City will not allow accrual of compensatory time. Overtime will be paid out as it is earned in strict accordance with Local, State and Federal laws. Employees that have prior compensatory leave accrued can use that leave as they see fit, with their Department Head's approval. All City employees that have accrued compensatory time are encouraged to request to be paid out for that accrued leave.

5.06 VACANCIES AND PROMOTIONS

It is the intent of the City of Texarkana, to hire and promote the most qualified applicant for all vacant positions. To give the employees of the City of Texarkana the opportunity to apply for job vacancies, announcements of job openings, with the job description, will be posted on employee bulletin boards for a minimum of five working days.

The final decision regarding promotions shall be made by the city manager with the department head's recommendation.

5.07 TRAINING

The City of Texarkana is committed to continuing and on-going training for all employees. However, in addition to formal training provided by the City for various positions, each employee is responsible for determining whether there has been sufficient training for proper job performance. In the event the employee feels additional training is needed, the supervisor or department head should be notified. Expenses incurred in on-the-job training will be assumed by the City.

5.08 JOB SAFETY

It is the responsibility of all department heads to formulate and ensure compliance with all job safety guidelines. Copies of all pertinent safety guidelines shall be posted in each department. Each employee has a responsibility to be aware of all safety responsibilities in all assigned duties and in the operation of all equipment. Safety is largely a practice of good judgment and the practice of good work habits. Any employee who is uncertain of a safety procedure is to ask the supervisor or department head for direction.

The following safety rules should always be observed:

- Follow all departmental safety rules.
- Use all mechanical safeguards on or for equipment.
- Immediately cease using and report any faulty or potentially faulty equipment.
- Immediately report any unsafe or potentially unsafe working condition.

- Immediately report any accident to the supervisor or department head.

The Safety Manual adopted by the Board of Directors is to be complied with by all employees as directed by the Safety Officer.

5.09 REFUSAL TO WORK

The City of Texarkana is committed to public service. Any employee work stoppage, slowdown, strike, or other intentional interruption of the operations of the City shall cause the employee to forfeit his or her employment and result in the termination of the employee from the City of Texarkana.

5.10 RESIGNATION/TERMINATION

Employees desiring to terminate their employment relationship with the City of Texarkana are urged to notify the City at least two weeks in advance of their intended termination. Such notice should be given in writing to the employee's department head or supervisor. The department head is to forward the resignation letter to the Personnel Office as soon as it is received. Proper notice generally allows the City sufficient time to calculate all final accrued moneys due the employee for the final paycheck. All final checks will be distributed from the Personnel Office. To receive a final check, the employee must have completed the following steps:

- Have a letter of resignation on file in the Personnel Office.
- Return all City-owned property to the appropriate department head.
- Complete an exit interview in the Personnel Office.

The employee's final check will include moneys due the employee for accumulated leave, insurance reimbursements, etc. Any reimbursement due the City for tuition aid, insurance payments, etc., will be deducted from the employee's final check. Unless requested in writing by the employee, all final pay will be issued on the next regular pay day.

An employee resigning to relocate to another area who has complied with the above termination procedures may submit a written request that the Personnel Office forward the final check by mail.

Special Note: Any request for references on former City employees shall be referred to the Personnel Office for response.

5.11 REEMPLOYMENT

Seniority may be reinstated subject to the following guidelines:

- The employee must have three years service with the City at time of resignation.
- The resignation must be the first from City employment.
- A vacant position must be available at the same or lower level, as the position from which the employee resigned.
- The reinstatement must occur within six months of the resignation.

Employees who have resigned in good standing may be reemployed and reinstated to the same or lower position in the same department at the discretion of the City Manager with the recommendation of the department head.

5.12 PROBATIONARY PERIODS

Civil Service:

Arkansas state law provides for a period of probation, not to exceed 12 months for potential fire department appointees and at least one (1) year but no longer than two (2) years for potential law enforcement appointees before any appointment is complete and six months before any promotion is complete. (ACA 14-51-301)(7)(A).

Non-Civil Service:

Non-civil service employees have a standard six month probationary period.

5.13 AT-WILL EMPLOYMENT

As mentioned elsewhere in this handbook, all employee relationships with the City of Texarkana are on an at-will basis. Thus, although the City of Texarkana hopes that the relationship with an employee is long term and mutually rewarded, the City reserves the right to terminate the employment relationship of any employee at any time, with or without cause.

CHAPTER VI: STANDARDS OF CONDUCT

6.01 CONDUCT TOWARD THE PUBLIC

Employees of the City of Texarkana shall at all times be civil, orderly, and courteous in their conduct and demeanor. In each contact with the public, an employee must be aware that personal appearance, actions, and statements are, in essence, those of the City.

In dealing with the public, each employee must make every effort to inspire respect for the City and to generate the cooperation and approval of the public.

Not everyone an employee may meet in the course of his or her duties will be courteous. However, an employee should treat the public with courtesy, patience, respect, and understanding. This attitude or approach to public service cannot be overemphasized.

When an employee is not certain of the correct response to an inquiry from the public, the inquiry should be referred to the individual or the department which can provide the most satisfactory response to the inquiry. It is better to admit lack of knowledge than to provide erroneous information. The following represent management's and employee commitment to our citizens and customer:

- All City employees must work together as a team to insure that residents and visitors are pleased with our public contacts and services provided.
- All employees shall take part in any training required for their positions and particularly, training provided for the best possible service to the citizens. Each employee should think of himself as an ambassador of the City, both in and outside of the workplace.
- An employee receiving a complaint or a request for service should handle that complaint or request until it's resolved or satisfied. At no time should a City employee be rude or unresponsive to any citizen or to another employee.
- Remember that you are always in the public eye. Consider every action, rest period, or public contact as if it were appearing on the front page of the newspaper.
- When dealing with the public, whether on duty or off, try to keep a positive attitude. We only hurt ourselves when we run down certain aspects of our City.
- Try to escort citizens who ask you about getting to a particular location or destination. Don't just point them in a general direction.
- Try to be generally knowledgeable about the functions of City departments, particularly about those areas which you are frequently asked.
- Use proper telephone etiquette. Try to answer every phone call within three rings. In the event that you are away from your phone and receive voicemail, answer all messages within 24 hours of when the call was made (or the following business day).
- Take pride in and care of your personal professional appearance as well as the appearance of your workplace. Ensure that you know your role in all situations. Promoting the City of Texarkana, Arkansas and serving its citizens is the responsibility of every employee.

6.02 CONDUCT TOWARD FELLOW EMPLOYEES

Just as employees are expected to be courteous in their contact with the public, they are also expected to treat co-workers with the same respect and courtesy.

6.03 CHAIN OF COMMAND

Each department shall establish a departmental chain of command and regulations. Employees are to discuss employment problems or issues with their immediate supervisor. If the supervisor cannot resolve the matter, the supervisor is to go with the employee to the next higher staff person. If necessary, the matter will continue through the chain of command to the City Manager, where, for personnel matters, the process ends. The City Board of Directors is a legislative body which sets policy and functions as authorized by Arkansas state law. However, it does not involve itself with individual personnel matters and day to day operations of the City.

The chain of command also operates in reverse, and higher level staff members should not bypass the proper chain of command procedures except in an emergency.

6.04 UNIFORMS AND PERSONAL APPEARANCE

Uniforms will be provided to personnel of certain departments, as authorized by the Board of Directors. Personnel who are provided uniforms shall wear uniforms at all times while on duty. Uniforms shall be kept as neat and presentable as working conditions permit.

Employees not required to wear uniforms should dress in appropriate, professional departmental attire.

Even in a business casual work environment, clothing should be pressed and never wrinkled. Torn, dirty, or frayed clothing is unacceptable. All seams must be finished. Any clothing that has words, terms, or pictures that may be offensive to other employees is unacceptable. Clothing that has the company logo is encouraged.

All City employees are required to wear City issued identification cards.

Certain days can be declared dress down days, generally Fridays. On these days, jeans and other more casual clothing, although never clothing potentially offensive to others, are allowed.

If an employee is not sure what appropriate attire is, his/her supervisor or department head should be consulted.

6.05 UNLAWFUL HARASSMENT

The City Board and City Manager expressly prohibit any form of unlawful employee harassment based on race, color, religion, sex, national origin, age, handicap, or status as a veteran. Improper interference with the ability of the City's employees to perform their expected job duties is not tolerated.

Harassment is any annoying, persistent act or actions that single out an employee, to that employee's objections or detriment, because of race, sex, religion, national origin, age, or disability. Harassment may include any of the following:

- Verbal abuse or ridicule
- Interference with an employee's work
- Displaying or distributing sexually offensive, racist, or other derogatory materials
- Discriminating against any employee in work assignments or job-related training because of one of the above-referenced bases
- Intimate physical contact
- Making offensive, sexual, racial, or other derogatory innuendoes, comments, or jokes

- Demanding favors (sexual or otherwise), explicitly or implicitly, as a condition of employment, promotion, transfer, or any other term or condition of employment.

It is every employee's responsibility to ensure that his or her conduct does not include or imply harassment in any form. If, however, harassment or suspected harassment has been or is taking place, the following will apply:

Complaint Procedure:

If an employee experiences any job-related harassment based on sex, race, or another factor, or believes there has been unlawful, discriminatory treatment, the incident is to be promptly reported to the department head or the Personnel Office. The complaint will be kept confidential to the maximum extent possible.

Each complaint will be fully investigated and determination of the facts with an appropriate response will be made on a case-by-case basis.

If it is determined that an employee is guilty of harassing another employee, appropriate disciplinary action will be taken against the offending employee.

The City of Texarkana will not tolerate harassment or any form of retaliation against any employee for filing a bona fide complaint under this policy or for assisting in a complaint investigation. However, if after investigating any complaint of harassment or unlawful discrimination, the City determines that the complaint is not bona fide or that an employee has provided false information regarding the complaint, disciplinary action may be taken against the individual who filed the complaint or whomever provided the false information.

6.06 GUIDELINES FOR APPROPRIATE CONDUCT

An employee of the City of Texarkana is expected to accept certain responsibilities, adhere to acceptable principles in matters of personal conduct, and exhibit a high degree of personal integrity at all times. This requires respect for the rights and feelings of others and that an employee refrains from behavior that might be harmful to the employee, any co-workers, the citizens, and/or the City.

While an employee is on duty, his or her conduct reflects on the City. An employee is encouraged to observe the highest standards of professionalism at all times.

Types of behavior and conduct that the City considers inappropriate while on duty include, but are not limited to, the following:

- 1) Falsifying employment or other City records
- 2) Violating any City non-discrimination and/or harassment policy
- 3) Soliciting or accepting gratuities from citizens
- 4) Excessive absenteeism or tardiness
- 5) Unnecessary or unauthorized use of City property
- 6) Reporting to work intoxicated or under the influence of non-prescribed drugs, and/or illegal manufacture, possession, use, sale, distribution, or transportation of drugs.
- 7) Using alcoholic beverages
- 8) Fighting or using obscene, abusive, or threatening language or gestures
- 9) Theft of property from co-workers, citizens, or the City
- 10) Disregarding safety or security regulations
- 11) Insubordination
- 12) Neglect or carelessness resulting in damage to City property or equipment
- 13) Unsatisfactory performance of the quantity or quality of work considered standard for the position
- 14) Discourtesy to the public
- 15) Gambling

16) Failure to follow the chain of command procedure

6.07 DISCIPLINARY ACTION

Non-Civil Service:

Should an employee's performance, work habits, overall attitude, conduct, or demeanor become unsatisfactory and in violation of any of the above referenced items, or any other City policies, rules, or regulations, an employee will be subject to disciplinary action up to and including dismissal.

Disciplinary Action May Be:

-Warning or Reprimand: A reprimand is action used to alert the employee that his or her performance is not satisfactory, or to call attention to the employee's violation of employment, rules, and/or regulations. City employees may be officially reprimanded orally or in writing and such reprimand will be entered in the employee's personnel file.

-Suspension: Suspension involves the removal of an employee from his or her job. An employee may be suspended with or without pay. A suspension must be in writing. The reason for such action, the period of time for the suspension, and the date the suspension is to begin and end must be noted also. Following suspension, the employee's conduct will be closely reviewed by the supervisor, and if there is a further instance of unsatisfactory performance or conduct, further disciplinary action shall be taken. This section does not apply to employees in FLSA exempt status, except when imposed in good faith for major safety violations.

-Demotion/Transfer: An employee who has committed an offense or whose work establishes grounds for demotion or transfer will be given written notice of such action. A demotion or transfer is an action that places the employee in a position of less responsibility and less pay.

-Termination: This type of disciplinary action is a removal of an employee from City employment. An employee who has committed a serious offense or whose work establishes grounds for termination will be given written reasons that can be supported at a pre-termination hearing.

In any case where a written disciplinary action is given to an employee, the employee shall acknowledge receipt of the notice with his/her signature. This is not an admission of guilt or agreement with the action. However, refusal to sign the acknowledgment of receipt of disciplinary action shall be grounds for termination.

NOTE: This section is not intended as an abridgment of the employment at-will doctrine. The City is not limited to dismissing employees for disciplinary reasons but may also dismiss employees at the will and discretion of the City at anytime with or without cause, and with or without any of the first three disciplinary actions listed above.

Civil Service:

Types of disciplinary actions for Civil Service employees are detailed in the Fire Department Manual of General Orders and/or Police Department Manual of General Orders.

6.08 PROCEDURE FOR REVIEW OF DISCIPLINARY DECISIONS

Non-Civil Service:

Review of all disciplinary matters shall be conducted as follows:

- 1) A written grievance shall be filed with the department head within five working days after the disputed disciplinary action.
- 2) The department head will investigate the situation and respond in writing to the employee, within five working days. To the extent possible, the grievance should be resolved at this level.
- 3) In the event Step 2 does not satisfy the employee, a written appeal may be made to the Personnel Office within three working days.
- 4) The Personnel Office or designee, will review the case, gather data, interview all concerned parties, and submit a written report to the City Manager within five working days.
- 5) The City Manager will review all information and respond to the complaint in writing within 10 working days. The City Manager's decision is final. A copy of the City Manager's decision shall be forwarded to the Personnel Office.

Civil Service:

The grievance and appeal procedures for City service employees are detailed in the Commissioned Officers Handbook of Rules and Regulations, as approved by the City Service Commission pursuant to the laws of the State of Arkansas.

6.09 ABSENTEEISM AND TARDINESS

The City of Texarkana expects all of its employees to be at work on time and on a regular basis. When employees are unnecessarily absent or late, it is expensive, disruptive, and places an unnecessary burden on fellow employees, supervisors, City government as a whole, and the taxpayers who receive City services. Should an employee be unable to report to work on time because of illness or personal emergency, the employee should give his supervisor proper notice as detailed in 4.02 Sick Leave. Unexcused absences and tardiness could result in disciplinary action.

6.10 INCLEMENT WEATHER

In exceptional circumstances beyond the employee's control, such as weather causing hazardous conditions, the employee is required to contact his or her supervisor for instructions regarding job assignments for that particular work day. If an employee's department is open for business, the employee is expected to report to work. However, if in the employee's opinion, the conditions are too hazardous to get to work safely, he or she will have the option of taking the time off as a vacation day. Regardless of the situation, an employee is expected to give the supervisor "proper notice", if unable to report for work. "Proper notice" is defined to be notice in advance of the time an employee should report for work or no later than 30 minutes thereof.

An absence of an employee from duty, including any absence of one day or part thereof that is not authorized in advance by the department head or the employee's supervisor, shall be deemed absence without leave. Such absence shall be without pay.

6.11 OUTSIDE EMPLOYMENT

An employee considering additional employment should discuss such plans with his or her department head and receive approval for additional employment.

If, as an employee of the City, an employee accepts an additional job, it must not interfere with the proper and effective performance of his or her job with the City. An employee's outside employment must not be of a nature that adversely affects the image of the City, resulting in embarrassment, legitimate and reasonable criticism, or of a type that may be construed by the public to be an official act of the City. It must not in any way violate City policies. City uniforms shall not be worn during outside employment unless approved in advance by the City Manager.

6.12 POLITICAL ACTIVITY

City employees are encouraged to exercise their legal right to vote and, if necessary, reasonable time will be granted for the purpose.

Generally, political activities while on duty are prohibited by Arkansas law (ACA 7-1-103). Political campaigners shall not solicit support from City employees during work hours on City premises.

6.13 CITY GOVERNMENT

Texarkana, Arkansas operates under a City Manager form of government. The City Manager is the chief executive officer and is appointed by the Board of Directors. He is responsible for overall management and operation of City Government. The Board of Directors is the supreme legislative and executive body of municipal government. Board members are elected from wards; the mayor is elected at large, votes as a Board member, has no veto power and presides at Board meetings. (14-47-100 to 14-47-140)

6.14 CIVIL SERVICE COMMISSION

All uniformed police and fire employees, once they have completed their probationary period (1 year), are governed by the City of Texarkana Arkansas Civil Service Commission. The composition and duties of the commission are established by state law.

6.15 OUTSIDE COMPENSATION

No reward, gift, or other form of remuneration, in addition to regular compensation, shall be received from any source by employees of the City for the performance of their duties. If a reward, gift, or other form of remuneration is made available to any employee, it shall be credited to the City's General Fund.

6.16 DRUG FREE WORKPLACE

Random drug testing program shall be extended to all City employees as provided in the Drug Free Workplace Ordinance adopted by the Board of Directors.

Use of Narcotics, Alcohol, and Tobacco:

It is the policy of the City of Texarkana, to maintain a work environment free from the unlawful manufacture, distribution, dispensation, possession, use, or effect of a controlled substance (as defined by the Federal Controlled Substance Act or similar state statutes) and free from the use, possession, and effect of alcoholic beverages. The City of Texarkana recognizes that drugs and alcohol impair employee judgment, which may result in increased safety risks, hazards to the public, employee injuries, faulty decision-making, and reduced productivity. Therefore, the City of Texarkana expects all employees to be in a state of mind and physical condition, fit to complete their assigned duties safely and competently during work hours.

The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or the possession or use of an alcoholic beverage by an employee while on duty, during lunch, and/or other breaks, or at any time while the employee is on a City work site, on City working time, or at any time while using a City vehicle or other motorized equipment is absolutely prohibited and constitutes cause for termination of employment.

Any employee convicted (a finding of guilt, including a plea of nolo contendere, or imposition of sentence, or both, by any judicial body charge with the responsibility to determine violations of federal or state criminal statutes) of violating criminal statutes pertaining to controlled substances and/or alcohol, occurring at any time on or off City property, on a City work site, or on City working time while conducting City business, must immediately (no later than 5 days from the date of the conviction) report the conviction to their supervisor or be subject to disciplinary action up to and including termination of employment. Such conviction may itself also constitute grounds for disciplinary action up to and including termination of employment.

All employees using a prescription or non-prescription drug which may in any way affect their job performance, must promptly notify their supervisor in writing as to the possible effects of such medication on the performance of their assigned duties and related physical/mental capability. A City department head or supervisor may require a physician's statement if the employee indicates that there is a need to use a prescription or non-prescription drug for three days or longer.

Each department head or supervisor may establish smoking policies for his or her departmental employees.

Drug/Alcohol Testing Upon Reasonable Suspicion:

If a City department head or supervisor has reasonable suspicion that an employee, at work or when reporting to work, appears to be under the influence of a controlled substance and/or of an alcoholic beverage and therefore appears to be impaired and unfit for duty, the employee will be required to consent to a drug/alcohol test. If an employee refuses to consent to a drug/alcohol test, disciplinary action, up to and including termination of employment will be initiated.

Reasonable suspicion is a belief based on objective facts, sufficient to lead a reasonably prudent person to suspect that an employee is under the influence of a controlled substance and/or of an alcoholic beverage, so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform the job safely is reduced.

Observations which constitute a factual basis for determining reasonable suspicion may include, but are not limited, to the odor of an alcoholic beverage or drug; erratic behavior; violent mood swings; excessive absenteeism, including tardiness; a medical emergency which could be attributed to substance or alcohol abuse; physical on-the-job performance, or an accident which is caused by the apparent action or inaction of the employee.

The department head or supervisor will describe the incident in writing, documenting the circumstances leading to the conclusion that a drug/alcohol test is necessary. Such documentation will include the date, time, place, description of incident, and statements of witnesses. Any other evidence such as drugs, drug paraphernalia, containers, etc. will be collected.

After documenting the incident, the department head will contact the Personnel Administrator to determine if drug/alcohol testing is appropriate and, if appropriate, to arrange for testing. If drug/alcohol testing is appropriate, the supervisor or department head will transport the employee to a drug/alcohol test collection facility. The drug/alcohol test may be a type based on urine, or

other type of sample, as appropriate. After testing, the employee will be transported home by his supervisor or relative, and told not to report to work until the results of the test are known. If the employee's supervisor reasonably determines that the employee is incapable of being managed, the Police Department may be contacted for assistance.

Workplace Accident:

In the event of a workplace accident, whether resulting in an on-the-job injury or not, a City department head or supervisor may require those employees in the work group experiencing the accident to submit to a drug/alcohol test under the guidelines set forth above for reasonable suspicion testing.

Searches on City Property:

A City department head or supervisor may conduct a reasonable search of any City property at any time and especially when employees in a work group experience an accident. City property includes, but is not limited to, City owned or leased buildings, parking facilities, City vehicles and/or motorized equipment, containers located in or on City vehicles and/or motorized equipment, as well as lockers and desks.

The personal property of City employees may also be searched if the employee's personal property is on City property and the employee signs a consent form. Whether or not a consent form is signed, any information obtained which may relate to violations of federal or state criminal statutes will be transmitted to the appropriate law enforcement agency.

Drug-Free Awareness Program:

To educate employees on the danger of drug abuse, the City has established a drug-free awareness program. Periodically, employees will be required to attend training sessions at which the dangers of drug abuse, the City's policy regarding drugs, the availability of counseling, and other types of information will be presented.

Employees who violate any aspect of this policy will be subject to disciplinary action, up to and including termination. At its discretion, the City may require employees who violate this policy to successfully complete a drug abuse assistance or rehabilitation program as a condition of continued employment.

6.17 SOCIAL MEDIA USE

This policy provides guidance on the use of social media for all City employees. To fully understand the purpose of this policy, social media includes blogs, wikis, microblogs, message boards, chat rooms, electronic newsletters, online forums, social networking sites, and other sites and services that allow users to share information with others in a contemporary manner.

Employees need to understand and comply with the City's Social Media Use policies. Failure to do so, could result in disciplinary action or termination of employment.

Job-Related Use

The City will allow job-related use of social media to further the goals of the City and the missions of its departments, where deemed appropriate. All city employees that are authorized to post information to social media sites will be subject to approval by the department head or designee. The City's website (<https://arkansas.txkusa.org/>) will remain the City's principal and predominant internet presence.

Employees shall maintain City related social media accounts separate from personal accounts, if practical.

Employees must receive a prior written approval from the department head or designee and agree to adhere to the City's social media and/or computer systems policies prior to posting any content on social media.

Personal Use

Employees should be aware of the effect their actions may have on their images, as well as the City's image. The information that employees post or publish may be public information for a long time. The following principles apply to professional and personal use of social media when referencing the City.

Employees should be aware that the City may observe content and information made available by employees through social media. Employees should use their best judgment to not post content that is inappropriate or harmful to the City or its employees.

The following list, although not inclusive, provides specific examples of prohibited social media conduct that includes examples of posting commentary, content, or images that are defamatory, pornographic, proprietary, harassing, libelous, or that can create a hostile work environment.

Employees are not to publish, post or release any information that is considered confidential or not public. If there are questions about what is considered confidential, employees should check with the Human Resources Department and/or supervisor or department head.

Social media networks, blogs and other types of online content sometimes generate press and media attention or legal questions. Employees should refer these inquiries to authorized City's spokespersons.

If employees encounter a situation while using social media that threatens to become antagonistic, employees should disengage from the dialogue in a polite manner and seek the advice of a supervisor or contact the Human Resources Department.

Employees should get appropriate permission before referring to or posting images of current or former employees, members, vendors or suppliers. Additionally, employees should get appropriate permission to use a third party's copyrights, copyrighted material, trademarks, service marks or other intellectual property.

Social media use should not interfere with employee's responsibilities at the City. The City's computer systems are to be used for business purposes only. The use of the City's computer system and social media for business purposes is only allowed as described under Job-Related Use (ex: Facebook, Twitter, Instagram, Google, Flickr, etc. and the City's website), but personal use of social media networks or personal blogging of online content is prohibited and could result in disciplinary action, including termination of employment.

Subject to applicable law, after-hours online activity that violates the City's Standard of Conduct, Computer System Policy, and Social Media Use policies or any other company policy may subject an employee to disciplinary action or termination of employment.

CHAPTER VII: TEXARKANA COMPUTER SYSTEMS POLICY

7.01 **GENERAL**

(A.) Introduction

Information Resources are strategic assets of the City of Texarkana that must be managed as valuable City resources. Thus this policy is established to achieve the following:

- To ensure compliance with applicable statutes, regulations, and mandates regarding the management of information resources.
- To establish prudent and acceptable practices regarding the use of information resources, email, instant messaging, and the Internet.
- To educate individuals who may use information resources, emails, the Internet, the Intranet or both, with respect to their responsibilities associated with such use.
- To ensure the security integrity and proper use of the City computer network and all of the City's information resources.
- To ensure that all Information Resources are a secure and productive management tool.

(B.) Ownership

Electronic files created, sent, received, or stored on Information Resources owned, leased, administered, or otherwise under the custody and control of the City of Texarkana, are the property of the City of Texarkana.

(C.) Privacy

Electronic files created, sent, received, or stored on Information Resources owned, leased, administered, or otherwise under the custody and control of the City of Texarkana, are not private and may be accessed with the City Manager's authorization by Information Technology employees at any time, without knowledge of the employee. Department heads may access and view electronic files within their respective departments. All access shall be through Information Technology.

(D.) Responsibility

The responsibility for assuring complete compliance with the provisions of this policy rests with the department heads, supervisors, and the individual employee involved. It is the responsibility of email and Internet users to stay informed regarding City information that is disseminated electronically. This includes understanding and keeping up-to-date on system operations.

(E.) Definitions

Information Technology: The Information Technology Department of Texarkana Water Utilities is currently charged with the duty of operation and maintenance of Texarkana's computer network. In addition, Information Technology is responsible for administering the information security functions within the City network. The Information Technology Department is the City's internal and external point of contact for all information security matters.

Information Technology Manager: Responsible to the City of Texarkana through the Executive Director of Texarkana Water Utilities, for management of the City's information resources. The designation of an agency information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the City's information activities, and ensure greater visibility of such activities within and between City agencies.

Electronic Mail System: Any computer software application that allows electronic mail to be communicated from one computing system to another.

Electronic Mail (Email): Any message, image, form, attachment, data, or other communication sent, received, or stored within an electronic mail system.

Information Resources (IR): Any and all computer printouts, online display devices, magnetic storage media, and all computer-related activities involving any device capable of receiving email, browsing Web sites, or otherwise capable of receiving, storing, managing, or transmitting electronic data including, but not limited to, mainframes, servers, personal computers, notebook computers, handheld computers, personal digital assistants (PDA), pagers, distributed processing systems, network attached and computer controlled medical and laboratory equipment (i.e., embedded technology), telecommunication resources, network environments, telephones, fax machines, printers, and service bureaus. Additionally, it is the procedures, equipment, facilities, software, and data, that are designed, built, operated, and maintained to create, collect, record, process, store, retrieve, display, and transmit information.

Internet: A global system interconnecting computers and computer networks. The computers and networks are owned separately by a host of organizations, government agencies, companies, and colleges. The Internet is the present “information super highway.”

Intranet: A private network for communications and sharing of information that, like the Internet, is based on TCP/IP, but is accessible only to authorized users within an organization. An organization’s Intranet is usually protected from external access by a firewall. It is a closed network of computers across a local area network that work together to share information in a secured environment.

User: An individual or automated application or process that is authorized to access the resource by the owner, in accordance with the owner’s procedures and rules.

Vendor: Someone who exchanges goods or services for money.

World Wide Web: A system of Internet hosts that supports documents formatted in HTML (Hyper Text Markup Language) which contains links to other documents (hyperlinks) and to audio, video, and graphic images. Users can access the Web with special applications called browsers, such as Google Chrome, Firefox, and Microsoft Edge.

(F.) Disciplinary Actions

Violation of this policy may result in disciplinary action, up to and including termination. Additionally, employees are subject to loss of the City of Texarkana Information Resources access privileges, civil, and criminal prosecution, where appropriate.

All agencies using the Texarkana computer network outside the Cities of Texarkana shall adopt and enforce these policies, as a condition of continued use.

7.02 INFORMATION RESOURCES ACCEPTABLE USE POLICY

(A.) General

- All employees shall abide by the security instructions, rules, directives, or other security communications as contained in this document, and that may from time to time be issued by the Information Technology Manager (with approval of the City Manager).

- No user, employee, or department head shall take any action that may affect the security, efficiency, or use of the entire network, or the portion of the network, within their own department.
- Users shall report any weaknesses in the City of Texarkana's computer security, and/or any incidents of possible misuse or violation of this agreement to their department head, who shall forward such information to the Information Technology Manager and other appropriate authorities.
- Users shall not attempt to access any data or programs contained on the City of Texarkana system for which they do not have authorization or explicit consent.
- Users shall not divulge remote access connection information.
- Users shall not share their City of Texarkana account(s), passwords, Personal Identification Numbers (PIN), Security Tokens (i.e., Smartcard), or similar information or devices used for identification and authorization purposes.
- Users shall not make unauthorized copies of copyrighted software.
- Users shall not use non-standard shareware or freeware without the approval of the Information Technology Manager.
- The Information Technology Manager retains the option, with approval of the City Manager, to disable, remove, or stop the usage of any software that is in his opinion, inappropriate or detrimental to the City, including any software that uses excessive system resources.
- Users shall not purposely engage in activity that may: harass, threaten, or abuse others; degrade the performance of Information Resources; deprive an authorized City of Texarkana user access to a City of Texarkana resource; obtain extra resources beyond those allocated; circumvent the City of Texarkana computer security measures.
- Users shall not download, install, or run security programs or utilities that reveal or exploit weaknesses in the security of a system. For example, the City of Texarkana users shall not run password cracking programs, packet sniffers, or port scanners or any other non-approved programs on the City of Texarkana Information Resources. Information Technology staff may do so in the course of their duties, in an attempt to identify weaknesses and vulnerabilities in City-owned devices and for troubleshooting purposes.
- The City of Texarkana Information Resources shall not be used for personal benefits.
- Users shall not intentionally access, create, store, or transmit material, which the City of Texarkana may deem to be offensive, indecent, illegal or obscene (except when in the course of academic research, where this aspect of the research has the explicit approval of the City of Texarkana official processes, for dealing with academic ethical issues, or is part of a law enforcement investigation. Subjects include but not limited to, those dealing with sex, drugs, pornographic material, explosive devices, or any illegal activity. Users with

proper approval for these types of files, shall not copy or disseminate such files, except as approved by their department head.

- Access to the Internet from a City of Texarkana owned, home based computer, shall adhere to all the same policies that apply to use from within the City of Texarkana facilities. Employees shall not allow family members or other non-employees to access the City of Texarkana computer systems.
- Users shall not access the City of Texarkana's network, via VPN or otherwise, from a non-City owned computer. Employees will use City-owned equipment to remotely access the City's network.
- Users shall not otherwise engage in acts against the aims and purposes of the City of Texarkana, as specified in its governing documents or in rules, regulations, and procedures adopted from time to time.
- Frequency and method of all password changes should be at the discretion of the Information and Technology Manager and shall follow industry best practices.
- All City of Texarkana employees shall participate in the Cyber Security Training program administered by Information Technology to follow industry best practices.

(B.) Incidental Use

As a convenience to the City of Texarkana user community, incidental use of Information Resources is permissible with reasonable limits and if consistent with restrictions defined in this policy. The following restrictions apply:

- Incidental personal use of electronic mail, Internet access, fax machines, printers, copiers, and so on is restricted to the City of Texarkana approved users; it does not extend to family members or other acquaintances.
- Incidental use shall not result in direct costs to the City of Texarkana.
- Incidental use shall not interfere with the normal performance of an employee's work duties.
- No files or documents may be sent or received that may cause legal action against, or embarrassment to the City of Texarkana.
- Storage of personal email messages, voice messages, files, and documents within the City of Texarkana's Information Resources must be nominal.
- All files and documents – including personal files, messages, and documents – are owned by City of Texarkana, may be subject to open records requests, and may be accessed in accordance with this policy.
- All messages, files, and documents – including personal messages, files, and documents – located on the City of Texarkana Information Resources, are owned by the City of Texarkana, may be subject to open records requests, and may be accessed in accordance with this policy.

- Incidental use is not appropriate during regular working hours. After hours, lunch, and breaks are acceptable times, subject to the approval of the department head. Incidental use policies may be more stringent in individual departments at the discretion of the department head.

7.03 EMAIL AND INSTANT MESSAGING POLICY

The following activities will be enforced by policy:

- Authorized email system will be Microsoft 365 for Government.
- Instant Messaging is designated as Microsoft Teams for Government.
- Users will access email through Microsoft Office 365 or by web mail access.
- Users will be limited to a size of 100GB for their mailbox.
- Users will delete unnecessary emails.
- Users will empty the Delete Folder upon logging off at the end of the day.
- Users shall not allow other persons to use their email service.
- Requests for user accounts shall be sent to Information Technology. Once the request for the new user has been received by Information Technology, Information Technology shall have 10 business days to complete the request.
- Email usage shall not be used as a method of document retention.

The following activities are prohibited by policy:

- Sending emails/instant messages that are intimidating, harassing, threatening, or obscene (as defined by U.S. and local law). Anything which could be construed as sexually explicit, scandalous, defamatory, libelous, immoral, or discriminatory, based on race, national origin, sex, sexual orientation, disability, religion, or political beliefs is banned from the system.
- Sending a global email except with express documented permission of the City Manager. Global emails shall be limited to a single City, unless specially approved in writing.
- Using email/instant messaging for conducting personal business, whether for profit or not.
- Using email/instant messaging for purposes of political lobbying or campaigning.
- Violating copyright laws by inappropriately distributing protected works.
- Posing as anyone other than oneself when sending email, except when authorized to send messages for another when serving in an administrative support role.
- The use of unauthorized email and/or instant messaging software.
- Sending or forwarding chain letters.
- Accessing a website or location on the Internet where a fee is charged is prohibited. Employees acquiring such charges bear sole responsibility for them unless accessing a fee based site has been approved by the respective Department Director.

The following activities are prohibited because they impede the functioning of network communications and the efficient operations of electronic mail systems:

- Using unauthorized email add on features. Such programs will impede the network by

- using a large amount of network's band width.
- Sending unsolicited messages to large groups except as required to conduct agency business.
- Sending excessively large messages and/or attachments.
- Sending or forwarding emails that is likely to contain computer viruses.
- ❖ All sensitive City of Texarkana material transmitted over external network must be encrypted.
- ❖ All user activity on the City of Texarkana Information Resources assets is subject to logging and review.
- ❖ Electronic mail users must not give the impression that they are representing, giving opinions, or otherwise making statements on behalf of the City of Texarkana and/or any unit of the City of Texarkana, unless appropriately authorized (explicitly or implicitly) to do so. Where appropriate, an explicit disclaimer will be included, unless it is clear from the context that the author is not representing the City of Texarkana. An example of a simple disclaimer is: "the opinions expressed are my own and not necessarily those of my employer."
- ❖ Individuals shall not send, forward, or receive confidential or sensitive City of Texarkana information through non-City of Texarkana email accounts. Examples of non-City of Texarkana email accounts include, but are not limited to, Hotmail, Yahoo mail, AOL mail, and email provided by other Internet Service Providers (ISP).
- ❖ Individuals shall not send, forward, receive, or store confidential or sensitive City of Texarkana information, utilizing non-City of Texarkana accredited mobile devices. Examples of mobile devices include, but are not limited to, Personal Data Assistants, two-way pagers, and cellular telephones.

NOTE:

- All emails sent/received through network will be logged.
- Email logs are subject to reporting audits with proper authorization.

7.04 INTERNET AND INTRANET POLICY

- Software for browsing the Internet is provided to authorized users for business and research use only.
- Known web sites that are not related to City business may be blocked with the City Manager's authorization; Information Technology shall block all web content that is malicious in nature.
- All software used to access the Internet must be part of the City of Texarkana standard software suite or approved by the Information Technology Department. This software must have all vendors provided security patches applied.
- All files downloaded from the Internet shall be scanned for viruses using the approved Information Technology distributed software suite and current virus detection software.
- All sites accessed must comply with the City of Texarkana's Computer Systems Policy.
- All user Internet/Intranet activity on City of Texarkana Information Resource assets is subject to logging and review by the appropriate department head and or the City Manager.
- Content on all City of Texarkana Web sites must comply with the City of Texarkana Acceptable Use Policies.
- No offensive or harassing material may be made available via City of Texarkana Web

sites.

- Occasional non-business related purchases made over the Internet during incidental personal use, are allowed, subject to approval by the department head. The City assumes no liability for such purchases or any problems that might arise from such purchases. Business related purchases are subject to City of Texarkana procurement rules.
- No personal commercial advertising may be made available via City of Texarkana Web sites.
- City of Texarkana Internet access may not be used for personal gain or non-City of Texarkana personal solicitations.
- No City of Texarkana data will be made available via City of Texarkana Web sites, without the appropriate department head and/or the City Manager, ensuring that the material is available to only authorized individuals or groups.
- All sensitive City of Texarkana material transmitted over external networks must be encrypted.
- Electronic files are subject to the same records retention rules that apply to other documents, and must be retained in accordance with departmental records retention schedules.
- The end user shall be held responsible for all Internet accesses logged with their username. If in the event that another person or employee knew, and/or used a user password, shall not be a defense for inappropriate access; a user is responsible for the security of their PC, laptop, or other similar device.

CHAPTER VIII: MISCELLANEOUS INFORMATION

8.01 POLICY STATEMENT

This Personnel Manual outlines the rights and benefits afforded all employees by the City. The City of Texarkana, Arkansas, possesses the sole right to operate and manage the affairs of the City.

8.02 SEVERABILITY

Should any of the provisions of this Personnel Manual be determined to be contrary to federal, state, or local law, the remaining provisions of these Employee Policies and Procedures shall remain in full force and effect.

To the extent that any state law provides additional or different benefits or rights to employees, the provisions of these Employee Policies and Procedures shall be deemed to include those statements of law.

8.03 DEPARTMENTAL POLICIES AND PROCEDURES

Each department head is authorized to adopt lawful, oral, or written policies governing the day-to-day operations of that department. Departmental policies, if in conflict with these Employee Policies and Procedures, shall be governed by these Employee Policies and Procedures.

8.04 CHANGE OF ADDRESS, MARITAL STATUS, BENEFICIARY

It is important that if an employee changes his or her home address, telephone number, marital status, or beneficiary, to notify the Personnel Office of this change so that personnel files may be kept up to date. This is important in case the City must mail the employee any information that it feels the employee will need.

Employees shall not use the City as an address for personal mail.

8.05 NO SOLICITATION POLICY

Solicitation for any purpose shall not be permitted of or by City employees on the job. An employee may not be required to make any contribution or be penalized in any way in connection with City employment, according to the employee's response to authorized solicitation.

Persons who are not employees of the City may not solicit or distribute literature on City premises at any time.

8.06 USE OF CITY-OWNED VEHICLES

City-owned vehicles are to be used for official business only and unauthorized passengers are not permitted. Authorized passengers are considered to be those individuals who have reason to be in the vehicle for the purpose of conducting business, for the City or with the City, or as authorized by the Board of Directors. Anyone using City-owned vehicles must have a valid driver's license and will be subject to periodic checks of driving records.



CITY OF TEXARKANA, AR BOARD OF DIRECTORS

AGENDA TITLE:	Adopt a Resolution making an appointment to the Planning Commission. (CCD) City Clerk Heather Soyars
AGENDA DATE:	March 21, 2022
ITEM TYPE:	Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Other <input type="checkbox"/> : _____
DEPARTMENT:	City Clerk
PREPARED BY:	Heather Soyars, City Clerk
REQUEST:	Make appointment to the Planning Commission.
EMERGENCY CLAUSE:	N/A
SUMMARY:	The Planning Commission has a vacancy with the death of Planning Commissioner George Coker. The appointment will be for the George Coker's unexpired term May 6, 2021----2024.
EXPENSE REQUIRED:	N/A
AMOUNT BUDGETED:	N/A
APPROPRIATION REQUIRED:	N/A
RECOMMENDED ACTION:	The City Manager and staff recommend approval.
EXHIBITS:	James Mike Jones application and Resolution

RESOLUTION NO. _____

WHEREAS, it is necessary to appoint a member of the Planning Commission to fill the unexpired term of George Coker;

NOW THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Texarkana, Arkansas, that James Mike Jones, of Texarkana, Arkansas, is hereby appointed to the Planning Commission for the remainder of the unexpired term of George Coker, ending in May 5, 2024.

PASSED AND APPROVED this 21st day of March, 2022.

Allen Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George M. Matteson, City Attorney

Planning Commission

Authorized by A.C.A. 14-56-404----408, and Texarkana, Arkansas Code 19-16----19
3 – Year Terms

	<u>Appointment</u>	<u>Term Date</u>	<u>Terms</u>	<u>Ward</u>
Anderson Neal, Jr. Vice Chairman 7106 Tall Oaks 501-655-1335 an8613@gmail.com	Resolution No. 2019-43 Reappointment	05/06/2019----2022	2	6
Randall R. Hickerson, DDS 2805 Forest Avenue 870-773-1603 home 903-748-1603 cell phickerson@valornet.com	Resolution No. 2019-43 Reappointment	05/06/2019----2022	2	1
Clyde “Boots” Thomas 5807 Deerwood Drive 870-773-6919 home 903-908-4111 cell boots@cableone.net	Resolution No. 2021-38 Reappointment	05/06/2020----2023	8	6
Bertha Dunn 2704 East 15 th Street 870-773-8287 home 903-277-8763 cell berthacallahan@windstream.net	Resolution No. 2021-38 Reappointment	05/06/2020----2023	4	3
Adger Smith Chairman 308 Meadows Road 903-824-4924 adgersperf@aol.com	Resolution No. 2021-38 Reappointment	05/06/2021----2024	6	3
George Coker 1201 Forest Acres Circle 870-779-0203 home 903-826-5240 cell geonancoker@windstream.net	Resolution No. 2021-38 Reappointment	05/06/2021----2024	6	1
Jason Dupree 416 Meadows Road 870-774-1925 home 903-838-8574 work jdupr21@aol.com	Resolution No. 2021-38 Reappointment	05/06/2021----2024	5	3

CITY OF TEXARKANA, ARKANSAS

Application for Appointment to Citizen Advisory Board or Commission

(Please type or print clearly)

BOARD OR COMMISSION DESIRED (Please apply for one (1) board or commission per application.)

<input type="checkbox"/> Advertising & Promotion Commission	<input type="checkbox"/> Historical District Commission
<input type="checkbox"/> Airport Authority	<input type="checkbox"/> Library Board
<input type="checkbox"/> City Beautiful Commission	<input type="checkbox"/> Municipal Auditorium Project Advisory Commission
<input type="checkbox"/> Board of Adjustment	<input checked="" type="checkbox"/> Planning Commission
<input type="checkbox"/> Civil Service Commission	<input type="checkbox"/> Plumbing Review Board
<input type="checkbox"/> Electrical Review Board	<input type="checkbox"/> SWAWIB-Southwest Arkansas Workforce Investment Board
<input type="checkbox"/> Heating & Air Conditioning Board of Review	<input type="checkbox"/> Other: _____

Name: James Mike Jones Home Phone: 870-773-7003

Address: 3702 Evergreen DR Texarkana Resident Yes No 43 Years

E-Mail Address: mikejones0825@aol.com Miller Co. Voter Registration No. _____

Employer: None Work Phone: _____

Position: Retired

Education: University of Houston - B&Pha
College: Texas A&M - Texarkana - MSBA High School: Maud High School

Special knowledge or past experience qualifying you for this appointment: (Please feel free to attach resume):
BOARD OF DIRECTORS TEXARKANA (6 1/2 yrs)
PLANNING & ZONING COM (6 yrs) BOARD OF ADJUSTMENTS (6 yrs)

Other relevant information (civic activities, memberships, etc.):
See Resume

References: List the name and phone number of at least one Texarkana resident as a reference, especially any City staff, City Council, or current Committee members who may be contacted on your behalf.

Name: Bobbed Minor Phone Number: (903) 277-0976

Interest: Explain why you are interested in being appointed to this board or commission.
On ~~Board~~ Planning & Zoning Board 6 yrs - 2 yrs Chairperson

Experience: Indicate what meeting(s) you have attended of the committee for which you wish to be considered.

Number of Texarkana, Arkansas Board of Directors Meetings you have attended in the past 12 months: 0


Please read the statement below and sign your name to indicate your understanding.
I UNDERSTAND MY ATTENDANCE WILL BE REQUIRED AT ALL COMMITTEE MEETINGS AND THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT.

Signature of Applicant: James Mike Jones Date Submitted: 3-4-2022

Return completed application to:
Heather Soyars, City Clerk
216 Walnut Street (or)
P O Box 2711
Texarkana TX 75504-2711
Phone 870-779-4995 or Fax 870-774-3170

City Clerk Stamp

CITY CLERK'S OFFICE
TEXARKANA, AR

 **MAR - 4 2022**

R E C E I V E D

By: JN

Please Note: This application will be on file for one (1) year.

JAMES MICHAEL JONES
3702 EVERGREEN DR
TEXARKANA, ARKANSAS 71854

Offering over 46 years of progressively responsible experience in various skills that have progressed me through the fields of pharmacy and management/ I have recently retired from Christus St. Michael Health System after 27 years with the last six years being Pharmacist-in-Charge for the hospital. These duties included experience with personnel, managing budgets, orchestrating policies, and instituting new programs.

I have experience with governmental affairs in various positions. I have recently served as the Ward 5 Director for the Texarkana Board of Directors for 6 ½ years. The last four years I served as Assistant Mayor. I also served for 6 ½ years on the Intra-governmental Affairs Committee, which oversaw the Bi-State Justice operations. In these positions, I was responsible for operations, budget, problem solving, and other duties as they came up.

My family and I are active in our church and support other charitable and community organizations.

FAMILY: Jennifer Griffin Jones (wife--married in 1978)
Julie Ann Jones (daughter--born September 1982)

EDUCATION:

May 1983 Master of Science in Business Administration
East Texas State University, Texarkana, TX (now Texas A&M University)

May 1974 Bachelor of Science in Pharmacy
University of Houston, Houston, TX.

May 1969 Graduated from Maud High School
Maud, TX. (valedictorian of class)

EMPLOYMENT HISTORY:

Oct 1990 - Oct. 2017 Christus St Michael Health Care Center, Texarkana, TX
Nov 1985 – Jan 1995 Pinewood Hospital, 801 Arkansas Blvd, Texarkana, AR.
May 1985 – Mar 1987 Emerson Laboratories (Division of Humco Labs, Texarkana, TX)
Aug 1980-Apr 1985 & Dec 1995-Oct 1990 Swanger’s Glenwood Pharmacy, Texarkana, TX.
May 1974 – Aug 1980 Lofton’s Pharmacy, Texarkana, TX.

Consideration for the position of director for Red River Credit Union is appreciated. I feel that I have a lot to offer. Please feel free to contact me for any further information.

VOLUNTEER SERVICES:

Red River Credit Union Board of Directors
Surgery Center of Northeast Texas Board of Directors
Medical Advisory Board for LifeNet
Pharmacist for Bowie County Health Unit
Board of Directors for Old Union Cemetery Association

CITY CLERK'S OFFICE
TEXARKANA, AR
MAR - 4 2022
RECEIVED
By: JN



CITY OF TEXARKANA, AR

BOARD OF DIRECTORS

AGENDA TITLE: Adopt a Resolution making appointments to the Public Facilities Board.
(CCD) City Clerk Heather Soyars

AGENDA DATE: March 21, 2022

ITEM TYPE: Ordinance Resolution Other : _____

DEPARTMENT: City Clerk

PREPARED BY: Heather Soyars, City Clerk

REQUEST: Make appointments to the Public Facilities Board.

EMERGENCY CLAUSE: N/A

SUMMARY: The Public Facilities Board term limits need to be corrected to follow state statute and the *City of Texarkana Arkansas Code of Ordinances*.
Members need to be appointed in staggered – 5-year terms.

<u>Appointee:</u>	<u>Term:</u>
Tyler Richards, Public Works Director	3/21/2022----2027
Mary Beck, City Planner	3/21/2022----2026
E. Jay Ellington, City Manager	3/21/2022----2025
Danny Gray	3/21/2022----2024
Ruth Penney Bell	3/21/2022----2023

EXPENSE REQUIRED: N/A

AMOUNT BUDGETED: N/A

**APPROPRIATION
REQUIRED:** N/A

**RECOMMENDED
ACTION:** The City Manager and staff recommend approval.

EXHIBITS: Resolution, Current member list

RESOLUTION NO. _____

WHEREAS, in connection with nomination and reappointment of members of the Public Facilities Board, it has come to the attention of the Public Facilities Board that the member terms of five (5) years each are not staggered as contemplated by the underlying statute; and

WHEREAS, The Public Facilities Board advises that it nominates the following persons and, in order to cause terms of members to be staggered, for the following respective terms:

<u>Nominee:</u>	<u>Term:</u>
Tyler Richards	3/21/2022----2027
Mary Beck	3/21/2022----2026
E. Jay Ellington	3/21/2022----2025
Danny Gray	3/21/2022----2024
Ruth Penney Bell	3/21/2022----2023

WHEREAS, the City Manager recommends approval;

NOW, THEREFORE, BE IT RESOLVED, that Nominees named above are hereby appointed to the Public Facilities Board for the terms so indicated.

PASSED AND APPROVED this the 21st day of March, 2021.

Allen Brown, Mayor

ATTEST:

Heather Soyars, City Clerk

APPROVED:

George M. Matteson, City Attorney

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<input type="checkbox"/> Board of Adjustment	<input type="checkbox"/> Plumbing Review Board
<input type="checkbox"/> Civil Service Commission	<input checked="" type="checkbox"/> Public Facilities Board
<input type="checkbox"/> Electrical Review Board	<input type="checkbox"/> SWAWIB-Southwest Arkansas Workforce Investment Board
<input type="checkbox"/> Heating & Air Conditioning Board of Review	<input type="checkbox"/> Other:

Name: DANNY GRAY Home Phone: 870-773-3741

Address: 10 CAMBRIDGE Texarkana Resident Yes No 45 Years

E-Mail Address: DGRAY@PROTONMAIL.COM Miller Co. Voter Registration No. _____

Employer: GRAY'S JEWELRY Work Phone: 903-793-5588

Position: OWNER Cell Phone: 903-748-1722

Education: College: 2 YRS High School:

Special knowledge or past experience qualifying you for this appointment: (Please feel free to attach resume):
CITY BOARD MEMBER - 1980-1992, MAYOR 1992 - 2002, BUSINESS OWNER TEXARKANA ARK - 1975 - 1994

Other relevant information (civic activities, memberships, etc.):
MEMBER SOUTHWEST AR. WATER DIST. BOARD, CHAMBER OF COMMERCE MEMBER, EVERGREEN LIFE SERVICES BOARD MEMBER.

References: List the name and phone number of at least one Texarkana resident as a reference, especially any City staff, City Council, or current Committee members who may be contacted on your behalf.

Name: ALLEN BROWN Phone Number: 903-293-1385

Interest: Explain why you are interested in being appointed to this board or commission.
BECAUSE OF MY BUSINESS AND CITY GOV. INVOLVEMENT, I HAVE ALWAYS HAD AN INTEREST IN THE FUNCTIONS OF CITY GOV.

Experience: Indicate what meeting(s) you have attended of the committee for which you wish to be considered.
I ATTENDED THE MEETINGS AS MAYOR WHEN I SERVED -

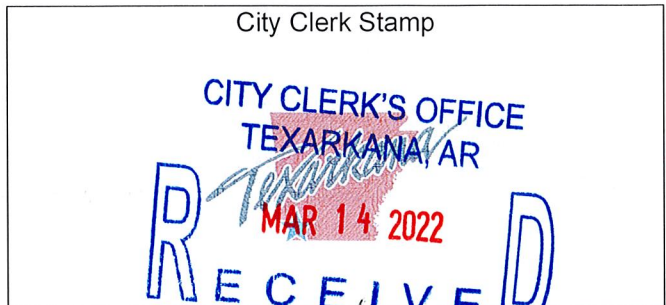
Number of Texarkana, Arkansas Board of Directors Meetings you have attended in the past 12 months: 0

Please read the statement below and sign your name to indicate your understanding.

I UNDERSTAND MY ATTENDANCE WILL BE REQUIRED AT ALL COMMITTEE MEETINGS AND THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT.

Signature of Applicant: Danny Gray Date Submitted: 3-14-22

Return completed application to:
Heather Soyars, City Clerk
216 Walnut Street (or)
P O Box 2711
Texarkana TX 75504-2711
Phone 870-779-4995 or Fax 870-774-3170



Please Note: This application will be on file for one (1) year.

PUBLIC FACILITIES BOARD

3 – YEAR TERMS

	<u>Appointment</u>	<u>Term Date</u>	<u>Term</u>	<u>Ward</u>
Mary Beck City Hall	Resolution No. 2018-43 Reappointment	11/30/2018----2021	2	
E. Jay Ellington City Hall	Resolution No. 2021-30 Appointment	11/30/2018----2021	1	
Tyler Richards City Hall	Resolution No. 2020-11 Appointment	11/30/2018----2021	1	
Jamie Finley City Hall	Resolution No. 2020-19 Appointment	11/30/2019----2022	1	
Eric Ethridge City Hall	Resolution No. 2020-11 Appointment	11/30/2019----2022	1	