

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION
FORT SMITH DISTRICT

FILED
FT. SMITH DISTRICT
2026 FEB - 20 11:30
Martha Hernandez
CIR. CLERK
PLAINTIFF

JOEY MCCUTCHEN,

VII

v.

CASE NO. 2026FCV-26-172

CITY OF FORT SMITH, ARKANSAS,
a municipal corporation

DEFENDANT

COMPLAINT

COMES NOW, the Plaintiff, Joey McCutchen, in his capacity as a resident and taxpayer of the City of Fort Smith, Arkansas, and for his Complaint against the Defendant, City of Fort Smith, Arkansas, states as follows:

1. Plaintiff is a resident and taxpayer of the City of Fort Smith, Arkansas, and brings this action on behalf of himself and all similarly situated taxpayers.
2. Defendant, City of Fort Smith, Arkansas, is a municipal corporation organized and existing under the laws of the State of Arkansas. The City is governed by a board of directors and operates under the city-administrator form of government, with the Board exercising legislative authority and the City Administrator possessing only those powers expressly delegated by ordinance.

JURISDICTION AND VENUE

3. This action seeks declaratory and injunctive relief concerning the validity of a municipal ordinance addressing competitive bidding and the City's authority to act under that ordinance.

4. The acts and omissions complained of occurred in Sebastian County, Arkansas.

5. This Court has subject matter jurisdiction pursuant to Ark. Code Ann. § 16-13-201 and the Court's equitable powers.

6. Jurisdiction and venue are proper in this Court under Ark. Code Ann. § 16-13-201, the Defendant being situated in Sebastian County and the actions giving rise to the claims having occurred here.

GOVERNING LAW

7. Arkansas law limits the waiver of competitive bidding to narrowly defined circumstances. Ark. Code Ann. § 14-48-129(b) provides:

“The board, by ordinance, may waive the requirement of competitive bidding in exceptional situations where this procedure is *not feasible*. However, such exceptional situations being lacking, the board *may not* except any particular contract, purchase, or sale from the requirement of competitive bidding.” [emphasis added]

8. The Fort Smith Municipal Code contains the same limitation. Fort Smith Municipal Code § 2-185 likewise provides that, absent an exceptional situation, the Board of Directors may not except a particular contract or contractor from the requirement of competitive bidding.

9. Under the statute and the corresponding municipal ordinance, waiver of competitive bidding is authorized only in exceptional circumstances in which competitive bidding is not feasible.

STATEMENT OF FACTS

10. Parrot Island Waterpark is a municipally owned recreational facility jointly owned by the City of Fort Smith and Sebastian County. During the period relevant to this action, the Fort Smith Board of Directors was actively considering matters related to the ownership, management, and operation of the waterpark, including proposals that would place full operational responsibility on the City.

11. The City undertook a project to purchase and install additional waterslides at Parrot Island Waterpark.

12. The City's publicly discussed project budget was approximately \$4.2 million.

13. The amount budgeted and available for installation work for the waterslides was approximately \$655,000.

14. On or about October 17, 2025, the City solicited sealed competitive bids for construction and installation work for the waterslides.

15. The City received two bids, including a bid of approximately \$2,828,810 containing material exclusions and a bid of approximately \$3,134,000 without such exclusions. (Exhibit B; City Memorandum Regarding Bid Results).

16. Both bids exceeded the amount budgeted for installation. (Exhibit B; City Memorandum Regarding Bid Results).

17. The City did not award a contract under the bid solicitation.

18. After receiving bids exceeding the available budget, the City did not re-advertise the project, did not issue a revised bid package, and did not conduct a rebid process for any revised scope. (Exhibit B; City Memorandum Regarding Post-Bid Actions).

19. Instead, City staff engaged in direct discussions with Royal Ridge Construction, LLC regarding a revised approach to the project. (Exhibit B; City Memorandum Regarding Post-Bid Actions).

20. City staff and Royal Ridge Construction worked toward a modified plan that reduced or altered scope and resulted in a negotiated proposal totaling approximately \$1,739,934.12. (Exhibit B; City Memorandum).

21. The revised scope was materially different from the work originally advertised for competitive bidding.

22. The City did not open the revised scope to competitive bidding and did not provide other contractors the opportunity to submit bids on the revised project.

23. In January 2026, the City presented an ordinance declaring an “exceptional situation” and purporting to waive the competitive bidding requirement. (Exhibit A; Competitive Bidding Waiver Ordinance).

24. The stated basis for waiver was that competitive bidding did not result in a contract and that rebidding would cause delay. (Exhibit A; Competitive Bidding Waiver Ordinance).

25. The ordinance did not identify an emergency, threat to public health or safety, or any facts establishing that competitive bidding was not feasible. (Exhibit A; Competitive Bidding Waiver Ordinance).

26. On or about January 20, 2026, the Board of Directors approved additional funding to proceed with the project, including allocation of more than \$2 million in additional public funds. (Exhibit B; City Memorandum Regarding Funding Approval).

27. The City's waiver ordinance and resulting actions operated to except a particular contractor from competitive bidding despite the absence of an exceptional situation where bidding was not feasible.

PRIOR HISTORY INVOLVING ROYAL RIDGE CONSTRUCTION, LLC
AND THE CITY OF FORT SMITH

28. The City's decision to waive competitive bidding in this matter did not occur in a vacuum. Prior to the events giving rise to this action, the City of Fort Smith had recent and direct experience with Royal Ridge Construction, LLC ("Royal Ridge") in connection with a separate public works project subject to competitive bidding requirements.

29. In or about September 2024, the City solicited sealed competitive bids for the 2016 SSA Remedial Measures – Sub-Basin S007 Project, a federally mandated sewer remediation project subject to strict procurement controls. (Exhibit D; Bid Tabulation).

30. On or about October 11, 2024, bids for the SSA project were opened, and Royal Ridge submitted the lowest bid in the amount of approximately \$4,530,534.00, substantially lower than competing bids. (Exhibit D; Bid Tabulation).

31. Following bid opening, Royal Ridge notified the City that its bid contained a substantial pricing error and advised that it could not perform the work at the bid amount submitted. (Exhibit E; Daily and Woods Error Documentation).

32. Royal Ridge requested permission to revise or withdraw its bid due to the error. (Exhibit E; Daily and Woods Error Documentation).

33. The City declined to proceed with Royal Ridge and, instead, awarded the SSA project to another contractor at a significantly higher cost. (Exhibit F; Accepting Bid with Forsgren).

34. The City thereafter approved change orders increasing the total contract price for the SSA project beyond the original award amount. (Exhibit C; SSA Change Order Documentation).

35. This prior procurement history demonstrates that the City had recent, documented experience with Royal Ridge submitting a bid that was materially inaccurate and incapable of performance as submitted.

36. Despite this history, and notwithstanding the safeguards ordinarily provided by competitive bidding, the City later engaged in direct negotiations with Royal Ridge for the Parrot Island Waterslide Project without reopening the revised scope to competitive bidding.

37. The City's decision to waive competitive bidding and negotiate directly with Royal Ridge occurred with full knowledge of Royal Ridge's prior bid withdrawal and pricing error on a major City project.

38. This history heightened the necessity for strict adherence to competitive bidding requirements and underscores the absence of any legitimate "exceptional situation" justifying a waiver of those requirements in this case.

VIOLATION OF COMPETITIVE BIDDING REQUIREMENTS

39. Arkansas law and the Fort Smith Municipal Code permit waiver of competitive bidding only in exceptional circumstances in which competitive bidding is not feasible. Ark. Code Ann. § 14-48-129(b); Fort Smith Municipal Code § 2-185.

40. After receiving bids that exceeded the amount budgeted for installation work, the City abandoned the competitive-bidding process. The City did not re-advertise the project, did not issue a revised bid package, and did not solicit competitive bids for the materially revised scope of work. Instead, City staff engaged in direct negotiations with a single contractor and developed a negotiated proposal outside the competitive-bidding process.

41. Only after those negotiations were underway did the City present and adopt an ordinance declaring an “exceptional situation” and purporting to waive competitive bidding. The ordinance cited failed bids and anticipated delay as the basis for waiver.

42. Those circumstances do not render competitive bidding infeasible. Neither Arkansas law nor the Fort Smith Municipal Code authorizes a municipality to dispense with competitive bidding because bids initially exceed available funding or because rebidding would require additional time.

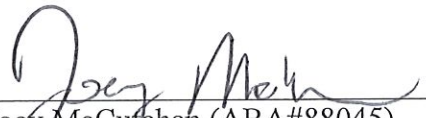
43. The City negotiated directly with a single contractor before adopting a waiver ordinance. That course sidestepped the competitive-bidding requirements imposed by Ark. Code Ann. § 14-48-129(b) and municipal code. The statutory conditions required to waive competitive bidding were not present.

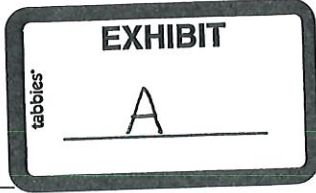
44. Because the City lacked authority to waive competitive bidding under these circumstances, the waiver ordinance and the procurement actions taken under it exceeded the City’s lawful authority. The ordinance and any resulting negotiated procurement are void and unenforceable.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and declare that the ordinance adopted by the City of Fort Smith purporting to waive competitive bidding for the Parrot Island Waterpark waterslide installation project is invalid and void because

the statutory and municipal-code conditions required for waiver were not present; declare that the City lacked lawful authority under Ark. Code Ann. § 14-48-129(b) and Fort Smith Municipal Code § 2-185 to negotiate and procure the project outside the competitive-bidding process; declare that any contract, agreement, or procurement action arising from or predicated upon the challenged ordinance is void and unenforceable as a matter of law; enjoin the City of Fort Smith from performing, paying under, or otherwise acting pursuant to any negotiated procurement resulting from the invalid waiver; award Plaintiff costs and attorney's fees to the extent permitted by law; and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,


Joey McCutchen (ABA#88045)
Stephen Napurano (ABA#2017071)
McCutchen Napurano – The Law
Firm
P.O. Box 1971
Fort Smith, AR 72902
Phone (479) 783-0036
Facsimile (479) 783-5168



ORDINANCE NO. 5-26

(as revised)

AN ORDINANCE DECLARING AN EXCEPTIONAL SITUATION, WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING, AND AUTHORIZING THE MAYOR TO EXECUTE CONTRACTS WITH ROYAL RIDGE CONSTRUCTION, LLC FOR INSTALLATION OF WATERSLIDES AND PUMP HOUSE COMPONENTS AT PARROT ISLAND WATER PARK

WHEREAS, the traditional competitive bidding process did not result in a contract and additional competitive bidding would not be feasible without delaying the Parrot Island Slides installations and Pump House Construction Project.

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

SECTION 1: An exceptional situation exists requiring the waiving of the conditions of competitive bidding, so that competitive bidding requirements are hereby waived for the Parrot Island Water Park Slides Installation and Pump House Construction Project.

SECTION 2: The proposal of Royal Ridge Construction, LLC for the Parrot Island Water Park Slides Installation and Pump House Construction Project is hereby accepted.

SECTION 3: The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute the attached contract with Royal Ridge Construction, LLC for an amount not to exceed \$1,059,934.12 for performing the Waterslides Installation at Parrot Island Water Park and the attached contract with Royal Ridge Construction, LLC for an amount not to exceed \$680,000.00 for construction of the Pump House components at Parrot Island Water Park.

PASSED AND APPROVED THIS 20th DAY OF January, 2026.

ATTEST:

Shuni Dard
City Clerk

APPROVED:

[Signature]
Mayor

Approved as to form:

[Signature]



MEMORANDUM

TO: Honorable Mayor and Members of the Board of Directors
CC: Andy Richards, Chief Financial Officer
FROM: Jeff Dingman, Acting City Administrator
DATE: January 7, 2026
SUBJECT: Discussion of construction costs related to water slides at Parrot Island Waterpark

SUMMARY

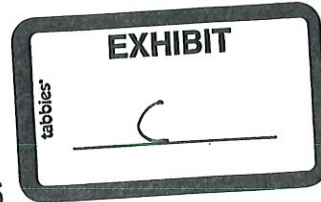
You will recall that the city took sealed bids for the construction elements to install the waterslides at Parrot Island Waterpark on October 17, 2025. We received two bids, the lowest being \$2,828,810, which was well above the \$655,000 available and budgeted for the installation of this amenity out of the overall \$4.2 million that was expected to cover the complete purchase and installation of the waterslides. This low bid included significant exclusions related to the pool pumphouse, so it would not have delivered a complete project. The higher bid of \$3,134,000 had no such exclusions.

Since that time of course much discussion has been had about what to do with the waterslides, and staff has focused on how we can reduce the cost or allocate additional funds (or both) to install the slides. Director Kemp and staff have worked with local contractor Royal Ridge Construction to evaluate the specifications and identify potential ways to reduce the cost of the slides and the infrastructure needed to get them installed and operational.

Through this effort, Royal Ridge has produced a proposal (attached) of \$1,059,934.12 that would install plumbing, fittings, and concrete foundations to allow the slides to be erected and put in place (by CSM Waterworks who is already under contract for this work). An alternate number includes installation of the pump house facility and complete electrical package for an additional \$680,000. Together the proposal totals \$1,739,934.12 that does have some exclusions, but gets the slides in place absent the pool equipment/pumps and piping required for completion (to be installed by others), work estimated at about \$600,000. In all, this proposal anticipates the total cost to install the slides at \$2,339,935. This number includes waterslides only, it does not include required site amenities such as fencing, sidewalks, landscaping, bollards, etc., those numbers are still to be determined but a working estimate is \$350,000.

As stated earlier, the city has \$655,000 of the \$4.2 million that is still unobligated to any other portion of this project. Chief Financial Officer Andy Richards has identified interest earnings in the Parks Sales Tax account that has accumulated since the inception of the tax that has not been allocated to specific projects, that number is \$760,000 which leaves a gap of \$924,935. The 2026 Parks CIP (attached for reference) could be adjusted at the Board's direction to

CONSENT DECREE



4

RESOLUTION NO. R-7-26

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER NO.2 WITH FORSGREN, INCORPORATED FOR THE 2016 SSA REMEDIAL MEASURES, SUB-BASIN S007, PROJECT NO. 17-12-C1

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

SECTION 1: Change Order Number 2 with Forsgren, Incorporated for the 2016 SSA Remedial Measures, Sub-Basin S007, Project No. 17-12-Construction (C1) is hereby approved.

SECTION 2: The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute Change Order No. 2 with Forsgren, Incorporated increasing the contract by \$95,407.00 and adding 50 days for substantial completion, adjusting the total contract amount to \$8,561,752.75 and the contract time to 510 days for substantial completion.

THIS RESOLUTION ADOPTED THIS 20th DAY OF Jan., 2026.


APPROVED:


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


npr

Bid Tabulation Sheet



Project Name

2016 SSA Remedial Measures – Sub-Basin S007
17-12-C1

Bid Opening

October 11, 2024
9:00 AM

Bids Received

Royal Ridge Construction, LLC Fort Smith, AR	<u>\$ 4,530,534.00</u>
Forsgren, Inc Fort Smith, AR	<u>\$ 8,231,278.00</u>
Crawford Construction Company Van Buren, AR	<u>\$ 8,531,698.00</u>
Krapff-Reynolds Construction Company Oklahoma City, OK	<u>\$ 9,282,305.00</u>

JERRY L. CANFIELD, P.A.
THOMAS A. DAILY, P.A.
WYMAN R. WADE, JR., P.A.
DOUGLAS M. CARSON, P.A.
C. MICHAEL DAILY, P.A. †
COLBY T. ROE, P.A. ●
ETHAN M. BRIDGFORTH

† Also Licensed in Oklahoma, Wyoming &
North Dakota
● Also Licensed in Texas

DAILY & WOODS
A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

KMW BUILDING
58 SOUTH SIXTH STREET
P.O. BOX 1446
FORT SMITH, AR 72902
TELEPHONE (479) 782-0361
FAX (479) 782-6160

www.dailywoods.com



6-1965)
86-1976)
JOHN S. DAILY (1912-1987)
BEN CORE (1924-2007)

WRITER'S E-MAIL ADDRESS
CRoe@DailyWoods.com

October 30, 2024

Carl E. Geffken
City Administrator
City of Fort Smith, Arkansas
cgeffken@fortsmithar.gov

Via Email Only

Lance McAvoy
Director of Water Utilities
City of Fort Smith
lmcavoy@fortsmithar.gov

Via Email Only

Re: 2016 SSA Remedial Measures, Sub-Basin S007, Project No. 17-12-C1;
Bid of Royal Ridge Construction, LLC

Dear Mr. Geffken and Mr. McAvoy:

We understand that Royal Ridge Construction, LLC submitted the low bid on the above-referenced project in the amount of \$4,530,534.00. After the bids were opened, Royal Ridge advised that it had made a scrivener's error in one of the work line items in its bid, such that its bid was \$520,000.00 lower than it would have been but for the error. Royal Ridge advises that if it is permitted to revise its bid by increasing the same \$520,000.00 (with the revised bid being in the amount of \$5,050,534.00), it will agree to complete the project for such revised bid amount (subject to any additional claim for compensation under the typical change order process). We understand that proposed revised bid of Royal Ridge remains the low bid on the project.

We believe the request of Royal Ridge is within the City's discretion. We enclose a resolution by which the Board may approve Royal Ridge's request to revise its bid, accept the revised bid, and authorize the execution of a contract in the amount of the revised bid.

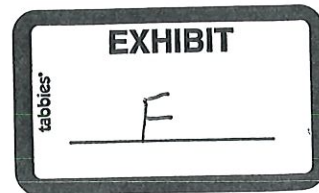
Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "CTR".

Colby T. Roe
CTR/cmm

CONSENT DECREE



9

RESOLUTION NO. R-210-24

RESOLUTION ACCEPTING THE BID OF AND AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH FORSGREN, INCORPORATED FOR THE 2016 SSA REMEDIAL MEASURES, SUB-BASIN S007 PROJECT NO.17-12-C1

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

SECTION 1: The bid of Forsgren Incorporated for the construction of the 2016 SSA Remedial Measures, Sub-Basin S007, Project No.17-12-Construction (C1), is hereby approved.

SECTION 2: The Mayor, his signature being attested by the City Clerk, is hereby authorized to execute a contract with Forsgren Incorporated in the amount of \$8,231,278.00 and for performing the construction approved by Section 1 during a contract period reaching substantial completion by December 31, 2025.

This Resolution adopted this 19th day of November 2024.

APPROVED:



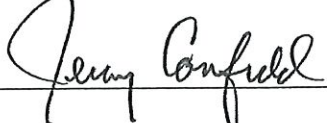
Mayor

Attest:



City Clerk

APPROVED AS TO FORM:



npr