

ORDINANCE NO. 2024- 10

**AN ORDINANCE OF THE CITY OF FAIRFIELD BAY,  
ARKANSAS, APPROVING AGREEMENT WITH  
CONTRACTORS  
TO ATTEND TO, AND FACILITATE OPERATIONS OF,  
THE CAMPGROUND TO BE LEASED FROM  
THE U.S. ARMY CORP OF ENGINEERS  
FOR 2024;  
DECLARING AN EMERGENCY;  
AND FOR OTHER PURPOSES**

WHEREAS, The City has a preliminary arrangement with two individuals (Contractors), operating as a unit, to manage the Campground from on or about February 1, 2024, until on or about December 31, 2024; and

WHEREAS, The City has not formally solicited bids or requests for proposals for these services, and time is of the essence if the City is to agree to a one-year lease of the Campground; and;

WHEREAS, the City Council has considered these matters, and after careful consideration, approves the proposed use of Contractors to fulfill the Corps-approved "Annual Plan of Operation and Maintenance"; and

WHEREAS, the City Council consequently approves this Ordinance, accordingly, as authorized by Arkansas statutes;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF FAIRFIELD BAY, ARKANSAS, that:**

1. This Ordinance is NOT TO BE CODIFIED as it will not be part of the Municipal Code.
2. The City Council has had opportunity to review the issues, since the Mayor first disclosed the details on or about January 8, 2024, and has inquired about the proposed operations.

3. The City Council hereby RATIFIES and APPROVES the arrangement with Contractors in accordance with the proposed terms of a Memorandum of Understanding, as set forth below.
4. The City hereby approves a Memorandum of Understanding with Contractors (Tomi Anderson and Dale Eberwein), which has substantially the following requirements:
  - a. Contractors volunteer to help manage the Campground, under the direction of the Mayor, from February 1, 2024, to August 31, 2024; City agrees that it will provide a "full hook-up" at the Campground, for one of two sites at the entrance to the Campground (assuming, and on the condition that, the City is able to enter into a valid one-year lease of the Campground). City reserves the right to terminate this arrangement on two-weeks written notice, as the Mayor may decide in her sole discretion, including financial conditions of the City that may not be related to the Campground.
  - b. City agrees to retain the contracted services of Contractors to provide certain contracted services to attend the Campground as managers, starting on or about September 1, 2024, assuming satisfactory conditions at the Campground, as the Mayor shall decide in her sole discretion; Contractors agree that the rate of pay for these services shall be no more than \$1,000.00 per month, plus the provision of a "full hook-up" site at the Campground, until December 31, 2024; or until terminated, in writing, by the Mayor, at her sole discretion, for reasons that may have nothing to do with the Campground (such as financial conditions in the City).
  - c. Contractors shall be responsible for all wage and hour compliance requirements in the City's lease with the Corps of Engineer. City shall assume that Contractors are a business, and provide a form 1099 to Contractors (jointly), since the City will not require specific hours of work, at specific dates, times, and places, but will rely on Contractors to meet the City's service level requirements for the Campground, as the Mayor may require in her sole discretion. Contractors will make someone available to receive telephone calls and responses; to the extent that Contractors cannot be "available 24 hours per day, 7 days a week," Contractors will forward phone calls to the Mayor, or her designee, to ensure that a voice message service or other option is available for persons calling into the Campground.
  - d. Contractors agree that they shall be solely responsible for remittance of appropriate taxes, and all other costs and expenses for themselves as a business, and as individuals, such as health insurance, "benefits," other insurance, and the like.
  - e. Contractors know and understand that neither they together, nor either of them separately, is an employee of the City of Fairfield Bay; and further

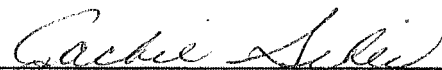
Contractors understand that this arrangement is not a vested property right; rather this contract is subject to termination for any cause, or for no cause at all, on two-weeks written notice. Contractors further know and understand that they, or either of them, may terminate this agreement for any cause, or for no cause at all, and will provide two weeks written notice before leaving the Campground. Contractors agree that, upon termination of the agreement herein, Contractors will be required to vacate their site at the Campground, and leave it in good condition for the next campers.

- f. All parties will agree to a venue specification (litigation in Van Buren County), jurisdictional agreement (personal and subject matter jurisdiction in Van Buren County), a pre-litigation mediation requirement (substantially similar to that used by the City in its Memoranda of Understanding concerning the "Moonshine Festival in 2023), and a provision that attorney's fees, costs, and expenses shall not be awarded against the City, or against Contractors, in the event of litigation.
  - g. Execution of the Memorandum of Understanding to take place before opening of the Campground (on or around February 1, 2024), if the Council passes a supplemental Budget Ordinance.
  - h. Notwithstanding any other provision, this Memorandum of Understanding, and Contractors use of a "full hook-up" campsite at the Campground, shall terminate no later than December 31, 2024, at 11:59 pm, unless the City Council approves a new lease at the Campground, and further unless the City Council provides by Ordinance for the Mayor's financial authority to enter into a renewed (or new) written agreement with Contractors, for any period of time after 11:59 pm on December 31, 2024. Contractors agree to vacate the premises at the Campground at the request of the U.S. Army Corps of Engineers, or the City, accordingly.
5. SPECIAL CONDITION: City Council asks the Mayor and Contractors, no later than July 1, 2024, to evaluate and propose a time frame, and cost estimate, for moving of the current "Guard Shack" from its current location to the Entrance to the Campground, keeping in mind that such services might be provided by the Fairfield Bay Community Club, Inc., at no cost, as a means of providing services to customers of the Fairfield Bay Marina.
6. All parties agree that the provisions set forth herein, above, shall be controlling upon the City's passage of this Ordinance, as a Memorandum, until a formal document can be signed, as the City's passage of this Ordinance – and waiver of solicitation of bids, proposals, and the like, is conditioned upon these terms. Contractors shall have five (5) calendar days after passage to make a written objection to any term set forth

herein, and likewise may initial and deposit a copy of this Ordinance with the City Recorder-Treasurer to consent to the terms pending entry of a formal MOU.

7. Based upon the foregoing, the City Council hereby waives any further requirement for solicitation of bids, proposals, and the like, because of the unique nature of the services provided, and the limitations on contractual compensation available in the City's budget, as amended from time to time.
8. **TERMINATION OF AUTHORITY.** The authorization set forth herein expires no later than 11:59 p.m. on December 31, 2024, unless otherwise revoked by the City Council, by Ordinance.
9. **NOT TO BE CODIFIED: EMERGENCY CLAUSE:** Because of the potential danger to public peace, health, and safety and financial health of the City, AN EMERGENCY IS HEREBY DECLARED TO EXIST, and this Ordinance being necessary for the peace, health, safety, and general welfare of the City and its Citizens, IT SHALL BE IN FULL FORCE AND EFFECT IMMEDIATELY UPON AND AFTER ITS PASSAGE.
10. **NOT TO BE CODIFIED: SEVERABILITY CLAUSE:** If any provision of this Ordinance, or the application thereof, to any person or circumstance is held invalid for any reason, such invalidity shall not affect other provisions or applications of this Ordinance, which shall be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

Dated this 12<sup>th</sup> Day of January, 2024.

  
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**Honorable Jackie Sikes**  
Mayor, City of Fairfield Bay, Arkansas

**Attest:**

  
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**Rose O. Owen, Recorder-Treasurer**

**Prepared: AJ Kelly,**  
**City Attorney**  
**Rev: 1/12/24**