

**City Council Agenda Items
and
Contracts, Leases or Agreements**

20-Aug-13

**City Council Meeting Date
Agenda Items Only**

David Jurgens
Submitted By

Water/Sewer Operations
Division

Utilities
Department

Action Required:

Approving a claim settlement for water damage with John Bess, 830 East Trust Street, for \$11,000, and approving a budget adjustment.

\$ 11,000
Cost of this request
5400-4310-5311.04
Account Number
N/A
Project Number

\$ 9,500
Category / Project Budget
\$ -
Funds Used to Date
\$ 9,500
Remaining Balance

Self Insurance- Non Vehicle
Program Category / Project Name
Water Mains Maintenance
Program / Project Category Name
Water/Sewer
Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature]
Department Director

1 Aug 13
Date

Previous Ordinance or Resolution # 5504

[Signature]
City Attorney

8-2-13
Date

Original Contract Date: 6/5/2012

Original Contract Number: _____

Paul a. Becher
Finance and Internal Services Director

8-2-2013
Date

Received in City Clerk's Office
08-01-13 11:51 RCVD
[Signature]

[Signature]
Chief of Staff

8-2-13
Date

Received in Mayor's Office
ENTERED
8/2/13

[Signature]
Mayor


8/5/13
Date

Comments:

www.accessfayetteville.org

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
Fayetteville Water and Sewer Committee 

Date: July 26, 2013

Subject: Claim Settlement- Mr. John Bess, 830 East Trust Street

RECOMMENDATION

City Administration recommends approving a claim settlement for water damage with John Bess, 830 East Trust Street, for \$11,000, and approving a budget adjustment.

BACKGROUND

At approximately 3:00 a.m. on Sunday, October 21, 2012, the City's 8" iron water main on Vinson Avenue ruptured, causing significant volume of water to flow downhill around the residences on Trust Street. Because it occurred in the middle of the night, it took several hours for crews to find the leak and turn off the mains to stop the flow. We were notified about the leak because the Mt. Sequoyah water tank level was dropping faster than normal at that time of day. While we had multiple crews searching, it was three hours after we started searching for the leak that we first received a call from the location that was actually leaking.

Ordinance 5504 identifies the water and wastewater claims process. Fully complying with that process, Mr. Bess obtained quotes and submitted his claim to the City. The water flow caused issues with a total of four residences downhill from the leak. All other issues have been resolved by staff.

DISCUSSION

Mr. Bess' original claim was for \$18,506, and this damage was not covered by his insurance. Through work performed by City crews and evaluation of the damage, Mayor Jordan and City staff have worked with Mr. Bess to develop the settlement of \$11,000 for full resolution and closure of this claim. Per the attached acceptance document, Mr. Bess agrees to this settlement, provided it is approved by the City Council.

BUDGET IMPACT

The budget adjustment moves funds into the water mains maintenance self insurance account. This single claim is higher than our normal annual funding provided for these type events.

RESOLUTION NO. _____

A RESOLUTION PURSUANT TO FAYETTEVILLE CODE OF ORDINANCES SUBSECTION 39.10(C)(4) AUTHORIZING THE MAYOR TO PAY \$11,000.00 TO JOHN BESS IN SETTLEMENT OF A DAMAGE CLAIM ARISING AT 830 E. TRUST STREET, AND APPROVING A BUDGET ADJUSTMENT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas, pursuant to Fayetteville Code of Ordinances subsection 39.10(C)(4), authorizes the Mayor to pay \$11,000.00 to John Bess in settlement of a water damage claim arising at 830 E. Trust Street.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached to this Resolution as Exhibit "A".

PASSED and APPROVED this 20th day of August, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer




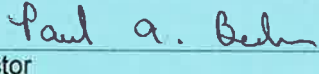

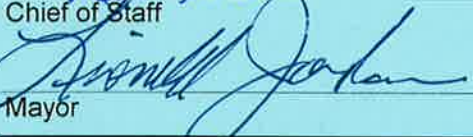
**City of Fayetteville, Arkansas
Budget Adjustment Form**

C. 1
Y12-0724
John Bess Claim Settlement
Page 4 of 16

Budget Year 2013	Division: Utilities Director Department: Utilities Director	Request Date 8/1/2013	Adjustment Number
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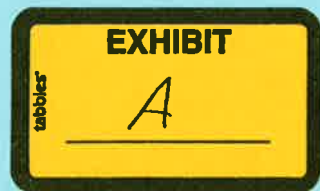
BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

A BA is needed to move monies into the Insurance Self-Non Vehicular Damage water distribution account to cover the cost of the water damage claim from John Bess.

 Division Head	1 Aug 13 Date	Prepared By: Cheryl Partain		
 Budget Director	8-2-2013 Date	Reference:		
 Department Director	1 Aug 13 Date	Budget & Research Use Only		
 Finance Director	8-2-2013 Date	Type: A B C D E P		
 Chief of Staff	8-2-13 Date	General Ledger Date		
 Mayor	8/5/13 Date	Posted to General Ledger	Initial	Date
		Checked / Verified	Initial	Date

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number		Increase / (Decrease)		Project.Sub Number
			Expense	Revenue	
InsSelf-NonVehicularDamag	5400.4310.5311.04	⇒	11,000	-	.
InsSelf-NonVehicularDamag	5400.4410.5311.04	⇒	(11,000)		.
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July 26, 2013

John Bess
830 E. Trust Street
Fayetteville, Arkansas 72701

RE: Residential Claim, Water Incident

Dear Mr. Bess:

The City of Fayetteville offers to settle your claim for the amount of the adjusted rate of \$11,000.00 in accordance with City of Fayetteville Ordinance Number 5504. This offer is contingent upon approval by the Mayor and City Council. In order to take this to the City Council, the attached acceptance of offer needs to be signed and returned to me.

This offer is to reimburse you for damage to your dry-stack rock walls that may have been caused by a water leak above your residence on North Vinson Avenue. The leak occurred on an 8" ductile iron water line at approximately 3:00 a.m. 21 October, 2012. The wall is dry stack rocks against an existing natural rock bank. There is no mortar, no drainage behind the wall (water drains between the unmortared rocks), no anchoring, and no visible foundation.

This offer is based on an effected area is approximately 44 feet long by 5 feet high on the east wall and 35 feet long by 5 feet high on the west wall, for a total of roughly 395 square feet to be replaced.

The City sincerely regrets the incident. To help prevent a possible recurrence of the leak, City staff removed and replaced the damage section of pipe.

Sincerely,

City of Fayetteville



David Jurgens, PE
Utilities Department Director

cc: City Attorney
Water/Sewer Operations

Acceptance of Offer

The undersigned does hereby accept the offer of eleven thousand dollars (\$11,000.00) in full compromise settlement and satisfaction of, and as sole consideration for, the final release and discharge of all actions, rights, causes of action, claims and demands whatsoever that now exist or may hereafter accrue against the City of Fayetteville, a municipal corporation, and the elected officials and employees thereof, charged or who or which may be charged with responsibility for injuries to the person and property of the undersigned, the treatment thereof, and all consequences flowing therefrom, as a result of the event which occurred on or about the 21st day of October, 2012, at or near 830 E. Trust Street, Fayetteville, Arkansas, and for which the undersigned claims the above-named parties are legally liable in damages (which legal liability and damages are disputed and denied), and acknowledging that nothing herein shall be construed to alter, limit or otherwise compromise that immunity afforded the City of Fayetteville under the Constitution and Statutes of the State of Arkansas, and;

The undersigned agrees, as further consideration and inducement for this compromise settlement, that it shall apply to all known, unknown and unanticipated injuries and damages resulting from said accident, casualty or event, as well as to those now asserted and disclosed.

Signed this 29 day of July, 2013.

By: John L. Bess
John Bess
830 E. Trust Street
Fayetteville, AR 72701



Aerial Photo Showing Relative Locations of Wall and Leak



Damaged and Undamaged Wall Sections



Close-up of Damaged Wall Section



Damaged Wall Section the Morning of the Leak



Damaged Wall Section the Morning of the Leak



Representative Wall Section with Dry Stacked Rocks and Existing Rock Embankment



CITY OF FAYETTEVILLE CLAIM FORM

INSTRUCTIONS: Complete this form clearly stating the reason for the claim, amount you are claiming, all contact information, and attach appropriate documentation including receipts, estimates, photos, etc. Substantive documentation (written estimates and/or receipts, proof of incident, etc.) **MUST** be provided to establish all monetary values. Additional sheets may be added. Failure to provide all information and fully substantiate your claim will result in the claim being rejected. **Filing a claim does not imply approval;** claims will be investigated before a decision is rendered; claims received more than **30 days** after the incident will be rejected. Claims containing inaccurate or fraudulent information will be rejected. Please mail to or hand-deliver documents to:

**City Administration Building, Attention: Mayor's Office
113 W. Mountain, Fayetteville, AR 72701
(479-575-8330) Fax-479-575-8257**

RECEIVED

NOV 19 2012

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

CLAIMANT INFORMATION

(please print neatly)

Full Name: BESS, JOHN L. Email Address: _____
Last Name, First Name, Middle Initial

Street Address: 830 E. TRUST ST.

City, State & Zip: FAYETTEVILLE, AR 72701

Daytime Phone Number: 521-6407 Alternate Phone Number: _____

INCIDENT INFORMATION

Address/Location of Occurrence: 830 E. TRUST ST. FAYETTEVILLE

Date and Time of Occurrence: 10-21-12 / 3 AM AROUND Amount Being Claimed: \$ Rock walls + YARD RESTORATION 18,306 BBQ GRILL 200 \$18,506.

Nature of Occurrence: Sewer Backup Water Street Related Other _____

Do you have insurance which covers your damage in this incident? NO Deductible Amount \$ _____
The City will not pay a claim in an amount exceeding a Claimant's insurance deductible, if covered.

The undersigned hereby files a claim against the City of Fayetteville, Arkansas for the following reason(s):
(Attach additional sheets if necessary)

SEE ATTACHED LETTERS AND ESTIMATES FOR
YARD AND ROCK WALLS RESTORATION.
ALSO BBQ GRILL

By signing below, I acknowledge that the above-provided information is true and correct to the best of my knowledge and belief.

Claimant's Signature: John L. Bess Date: 11-19-12

Received by: Pam Henson Date Received: 11/19/12
Shaded area for City staff use only

Referred to: David J, Will W, Carrie W, Allison A. Date: 11/19/12


Department Director Signature _____ Date _____ Accepted _____ Amount _____ Account # _____ Denied _____

RE: Claim for John Bess
 830 E. Trust Street
 Fayetteville, AR 72701

To Whom It May Concern:

Around 3 a.m. on October 21, 2012, there was a city water main break causing an eruption of water flowing from Vinson Street down to the property of 830 E, Trust Street. The water brought mud and sludge with enough force to bring down a portion of dry stacked stone retaining wall and compromise several feet of the wall. The stones fell onto a gas grill up against the wall breaking the cast aluminum lid and side tables. The water traveled across the back yard and up against the back porch with enough force to undermine the foundation of the back porch area causing it to move away from the house. The water traveling across the back yard to the west side also eroded several feet of the yard creating a void along the west side dry stacked retaining wall, also compromising that retaining wall. Pictures of the damage and estimates for restoration are attached.

Signed,



John Bess



FARMERS

Send all correspondence to:
Farmers National Document Center
P.O. Box 268994
Oklahoma City, OK 73126-8994
Fax (877) 217-1389
Email:

October 23, 2012

John Bess
830 E Trust St
Fayetteville, AR 72701

RE: Insured: John Bess
Policy Number: 944586625

Dear Mr. Bess:

After speaking with Carol at John Ogden's agency about a claim for water damages and earth movement this letter is to advise you of our findings regarding your claim. Unfortunately, ground water from a water main and earth movement are uninsured or excluded from coverage under your policy. For that reason, we are unable to compensate you for any damages or repairs incurred.

Please refer to your **Protector Plus Homeowners Package Policy, 4th edition**, as amended by policy endorsement **H4170, 2nd edition, Endorsement Amending Definitions, Section I – Losses Insured and Section I – Losses Not Insured**, which states:

DEFINITIONS

8. **Earth Movement** - means movement of earth, including, but not limited to the following:
 - a. **earthquake**, landslide or mudflow, all whether combined with **water** or not.
 - b. collapse, settling, cracking, shrinking, bulging, subsidence, erosion, sinking, rising, shifting, expanding, or contracting of earth, all whether combined with **water** or not.
18. **Water** - means water (H₂O) alone, whether frozen or not or any liquid or sludge which contains **water**, whether or not combined with other chemicals or impurities. It includes, but is not limited to, snow, sleet, slush, ice, dampness, vapor, condensation, moisture, steam and humidity.
19. **Water damage** – means loss caused by, resulting from, contributed to or aggravated by any of the following, whether occurring on or away from the **residence premises**:
 - a. **Water** from rain or snow, surface **water**, flood, waves, tidal **water**, overflow or escape of a body of **water**, or spray from any of these, whether or not driven by wind;
 - d. **water** below ground level whether occurring naturally or not, including **water** which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, wall, foundation, swimming pool or any portion of the **residence premises**.

SECTION I - LOSSES NOT INSURED

Applying to Coverage A and B - Dwelling and Separate Structures and Coverage C – Personal Property

We do not insure for loss either consisting of, or caused directly or indirectly by:

1. **Earth Movement.**

Acts or omissions of **persons** can cause, contribute to or aggravate **earth movement**. Also, **earth movement** can occur naturally to cause loss, or combine with acts or omissions of **persons** to cause loss. Whenever **earth movement** occurs, the resulting loss is always excluded under this policy, however caused; ...

2. **Water damage.**

Acts or omissions of **persons** can cause, contribute to or aggravate **water damage**. Also **water damage** can occur naturally to cause loss or combine with acts or omissions of **persons** to cause loss. Whenever **water damage** occurs, the resulting loss is always excluded under this policy, however caused; ...

Rust, mold, fungus, or wet or dry rot are never covered under this policy, however caused, unless the rust, mold, fungus, or wet or dry rot is located upon the portion of the **residence premises** which must be repaired or replaced because of direct physical damage as the result of a covered loss.

Acts or omissions of **persons** can cause, contribute to or aggravate the losses set forth in items 4-13 below. Also, these losses could occur naturally or combine with acts or omissions of **persons**. Whenever the losses listed in items 4-13 occur, the resulting loss is always excluded, however caused, unless specifically indicated otherwise.

13. a. wear and tear, marring, deterioration;
f. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;

* * * * *

The policy provides that after a loss it is your duty to protect the insured property from further damage. You should take all appropriate steps to make repairs and prevent further damage.

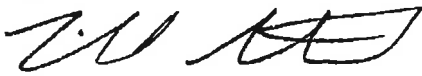
Please be aware Section I- Conditions of your policy contains the following provision:

12. *Suit Against Us.* We may not be sued unless there has been full compliance with all the terms and conditions of this policy. Suit on or arising out of this policy must be brought within the time provided by the Statue of Limitation as set forth by Arkansas Law.

By the writing of this letter, we do not waive any of our rights or any of the terms, conditions, or provisions of the insurance policy, all of which are expressly retained and reserved. Further, any activity on our part by way of investigation, determination of damage, or emergency advance payments to you, does not constitute a waiver of our rights. We understand you are retaining your rights as well.

We are closing your file at this time. If after reviewing this letter and reading the policy language, you believe there is additional information that would apply to your claim, please provide us with those facts for consideration.

Sincerely,
HelpPoint Claims Services

A handwritten signature in black ink, appearing to read 'R. Stanaland', written over a horizontal line.

Richard Stanaland
Field Claims Representative

cc: John Ogden, agent

Caldwell Stone, Inc.
 12192 Ed Edwards Rd.
 Fayetteville AR 72701

Estimate

DATE	ESTIMATE #
11/16/2012	640

NAME / ADDRESS
John Bess 830 E. Trust Fayetteville, AR 72701

		TERMS	JOB	
		10%retainer, progress billing	Water Main Break Repairs	
ITEM	DESCRIPTION	QTY	COST	TOTAL
Demolition	deconstruct stone	24	75.00	1,800.00
Tractor Servi	Excavate backfill , store on site, replace behind wall. re-grade yard	30	100.00	3,000.00
Labor	prepare for reconstructing walls, including drilling and pinning boulders, preparing footings, hand dig near utilities as needed	24	45.00	1,080.00
Sq. Ft. Stone	installation	657	18.00	11,826.00
misc.	seed, straw, gravel backfill	1	600.00	600.00
			TOTAL	\$18,306.00

SIGNATURE

PROPOSAL



J.W. ENTERPRISES, INC.
11296 BLACK OAK ADDITION
FAYETTEVILLE, AR 72701
PHONE 479- 582-2251

John Bess
830 trust st
Fayetteville Ar. 72702

Re: rock retaining wall damage

J.W. Enterprises, Inc. does hereby propose to furnish materials and labor necessary to perform the following Scope of Work:

- (1) Take down and replace approximately 756 square feet of damaged native stone dry stack retaining walls.
- (2) Cleanup overburden of soil that has washed into the owners yard, below the farthermost east wall .
- (3) Remove ample soil behind the damaged areas, and restack the existing stone.
- (4) The removed stone shall be stacked on pallets and left in the yard until used .
- (5) Relay removed stone
- (5) Install drainage gravel behind newly laid stone
- (6) Regrade the yard to its original state.
- (7) Seed and straw the disturbed areas with lawn fescue

All materials guaranteed to be as specified, and the above work to be performed in accordance with specifications and completed in a timely and Thirty one thousand three hundred twenty nine dollars (31,329.00)

Terms: 33% upon contract agreement

33% upon complete ion of the lower wall

balance due upon completion

J.W. Enterprises, Inc. will not be responsible for underground structures or utilities.

_____ Date _____

J.W. Enterprises, Inc

_____ Date _____

Authorized Signature