

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan and Members of the Fayetteville City Council

Thru: Don Marr, Chief of Staff

From: Paul A. Becker

Date: March 30 2012

Subject: To amend Resolution 183-11 the Unsecured Loan Agreement To the Correct Amount

PROPOSAL:

On October 18 2011 the City Council approved an unsecured loan agreement with the Botanical Garden of the Ozarks in the amount of \$34,911.38 for work to be preformed through the City of Fayetteville Community Revolving Loan Fund for Energy Efficiency. At that time the project had not been completed and the amount of \$34,911.38 was based on the estimated cost of the project. The project has been completed and the final actual cost of the project was \$30,519.90. It is, therefore, requested that Resolution 183-11 be amended to reflect the actual amount due based on the attached amortization schedule.

RECOMMENDATION:

Staff recommends approval of the new Unsecured Loan Agreement in the amount of \$30,519.90 to be repaid over a 10 year period.

BUDGET IMPACT:

This has no impact on the budget as it is to reimburse the City the cost of the project, which must be placed in the Revolving Loan Fund to fund future energy saving projects.

RESOLUTION NO. _____

A RESOLUTION AMENDING RESOLUTION NO. 183-11 APPROVING A PARTICIPATION AND UNSECURED LOAN AGREEMENT WITH THE BOTANICAL GARDEN OF THE OZARKS TO INSTALL TEN (10) LED LIGHTS AND POLES IN THE AMOUNT OF \$30,519.90 AS PART OF THE CITY OF FAYETTEVILLE COMMUNITY REVOLVING LOAN FUND FOR ENERGY EFFICIENCY

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 hereby amends Resolution No. 183-11 and approves a participation and unsecured loan agreement with the Botanical Garden of the Ozarks in the amount of \$30,519.90 as part of the City of Fayetteville Community Revolving Loan Fund for Energy Efficiency.

PASSED and APPROVED this 17th day of April, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

**COMMUNITY REVOLVING LOAN FUND FOR ENERGY EFFICIENCY
UNSECURED NOTE**

\$ 30,519.80

17 day of APRIL, 20 12

FAYETTEVILLE, ARKANSAS

FOR VALUE RECEIVED, the undersigned (the "Borrower") promises to pay to the order of THE CITY OF FAYETTEVILLE, ARKANSAS ("Payee"), the principal sum of \$30,519.80 (\$ 30,519.80). Provided that no event of default exists hereunder, this Promissory Note shall bear interest from the date of this Promissory Note at the rate of ONE percent (1 %) per annum. In the event of a default hereunder, this Promissory Note shall bear interest at the maximum rate of interest allowable under the laws of the state of Arkansas. This Promissory Note shall become due and payable, as follows:

Principal and interest shall be due and payable in Fourty (40) consecutive ~~monthly~~/quarterly (select one) installments of \$ 802.74 each. The first such installment shall be due and payable on 8-1-2012 and each successive monthly installment shall be due and payable on the first day of each calendar month thereafter until this Promissory Note is paid in full. All payments shall be applied first to interest and the balance to principal.

The Borrower and any maker, endorsers, sureties, guarantors, and all other persons now or hereafter liable hereon waive presentment, demand for payment, protest and notice of dishonor, and the endorsers, sureties, and guarantors consent that the Payee or holder hereof shall have the right, without notice, to deal in any way at any time with any party hereto or to grant to any such party any extensions of time for payment of any of said indebtedness or any other indulgences or forbearances whatever without in any way affecting the personal liability of any party hereunder.

If at any time any payment under this Promissory Note becomes more than sixty (60) days past due, the Payee or holder of this Promissory Note shall have the right and option to declare the entire unpaid balance of principal and interest due and owing hereunder to be immediately due and payable.

If this obligation, after default, is placed in the hands of an attorney for collection, the Borrower will be obligated to pay the Payee or the holder hereof an additional sum as an attorney's fee, not to exceed ten percent (10%) of the unpaid principal plus all accrued interest together with all costs and expenses of collection.

Any notices required to be given hereunder shall be deemed effective if made to the following addresses:

If to Payee:

CITY OF FAYETTEVILLE, ARKANSAS
OFFICE OF MAYOR
113 W. MOUNTAIN
FAYETTEVILLE, ARKANSAS 72701

If to Borrower:

RON COX EXECUTIVE DIRECTOR
PO BOX 10407
FAYETTEVILLE, AR 72703

Any party to this Promissory Note may change their respective address for notice by the giving of written notice to each party.

The loan evidenced by this Promissory Note was negotiated and consummated in the state of Arkansas and it is understood and agreed that the legality, enforceability, and construction hereof shall be governed by Arkansas law, and to the extent applicable, by the laws of the United States of America.

This Promissory Note can be pre-paid in whole or in part at any time without penalty.

BORROWER:

By: _____
AUTHORIZED AGENT

Loan Calculator

Enter Values	
Loan Amount	\$ 30,519.90
Annual Interest Rate	1.00 %
Loan Period in Years	10
Number of Payments Per Year	4
Start Date of Loan	5/1/2012
Optional Extra Payments	

Loan Summary	
Scheduled Payment	\$ 802.74
Scheduled Number of Payments	40
Actual Number of Payments	40
Total Early Payments	\$ -
Total Interest	\$ 1,589.53

Lender Name:

Pmt No.	Payment Date	Beginning Balance	Scheduled Payment	Extra Payment	Total Payment	Principal	Interest	Ending Balance
1	8/1/2012	\$ 30,519.90	\$ 802.74	\$ -	\$ 802.74	\$ 726.44	\$ 76.30	\$ 29,793.46
2	11/1/2012	29,793.46	802.74	-	802.74	728.25	74.48	29,065.21
3	2/1/2013	29,065.21	802.74	-	802.74	730.07	72.66	28,335.14
4	5/1/2013	28,335.14	802.74	-	802.74	731.90	70.84	27,603.24
5	8/1/2013	27,603.24	802.74	-	802.74	733.73	69.01	26,869.51
6	11/1/2013	26,869.51	802.74	-	802.74	735.56	67.17	26,133.95
7	2/1/2014	26,133.95	802.74	-	802.74	737.40	65.33	25,396.55
8	5/1/2014	25,396.55	802.74	-	802.74	739.24	63.49	24,657.31
9	8/1/2014	24,657.31	802.74	-	802.74	741.09	61.64	23,916.21
10	11/1/2014	23,916.21	802.74	-	802.74	742.95	59.79	23,173.27
11	2/1/2015	23,173.27	802.74	-	802.74	744.80	57.93	22,428.47
12	5/1/2015	22,428.47	802.74	-	802.74	746.66	56.07	21,681.80
13	8/1/2015	21,681.80	802.74	-	802.74	748.53	54.20	20,933.27
14	11/1/2015	20,933.27	802.74	-	802.74	750.40	52.33	20,182.87
15	2/1/2016	20,182.87	802.74	-	802.74	752.28	50.46	19,430.59
16	5/1/2016	19,430.59	802.74	-	802.74	754.16	48.58	18,676.43
17	8/1/2016	18,676.43	802.74	-	802.74	756.04	46.69	17,920.39
18	11/1/2016	17,920.39	802.74	-	802.74	757.93	44.80	17,162.45
19	2/1/2017	17,162.45	802.74	-	802.74	759.83	42.91	16,402.62
20	5/1/2017	16,402.62	802.74	-	802.74	761.73	41.01	15,640.89
21	8/1/2017	15,640.89	802.74	-	802.74	763.63	39.10	14,877.26
22	11/1/2017	14,877.26	802.74	-	802.74	765.54	37.19	14,111.72
23	2/1/2018	14,111.72	802.74	-	802.74	767.46	35.28	13,344.26
24	5/1/2018	13,344.26	802.74	-	802.74	769.38	33.36	12,574.89
25	8/1/2018	12,574.89	802.74	-	802.74	771.30	31.44	11,803.59
26	11/1/2018	11,803.59	802.74	-	802.74	773.23	29.51	11,030.36
27	2/1/2019	11,030.36	802.74	-	802.74	775.16	27.58	10,255.20
28	5/1/2019	10,255.20	802.74	-	802.74	777.10	25.64	9,478.10
29	8/1/2019	9,478.10	802.74	-	802.74	779.04	23.70	8,699.06
30	11/1/2019	8,699.06	802.74	-	802.74	780.99	21.75	7,918.08
31	2/1/2020	7,918.08	802.74	-	802.74	782.94	19.80	7,135.13
32	5/1/2020	7,135.13	802.74	-	802.74	784.90	17.84	6,350.24
33	8/1/2020	6,350.24	802.74	-	802.74	786.86	15.88	5,563.38
34	11/1/2020	5,563.38	802.74	-	802.74	788.83	13.91	4,774.55
35	2/1/2021	4,774.55	802.74	-	802.74	790.80	11.94	3,983.75
36	5/1/2021	3,983.75	802.74	-	802.74	792.78	9.96	3,190.97
37	8/1/2021	3,190.97	802.74	-	802.74	794.76	7.98	2,396.22
38	11/1/2021	2,396.22	802.74	-	802.74	796.75	5.99	1,599.47
39	2/1/2022	1,599.47	802.74	-	802.74	798.74	4.00	800.73
40	5/1/2022	800.73	802.74	-	800.73	798.73	2.00	0.00

RESOLUTION NO. 183-11

A RESOLUTION APPROVING A PARTICIPATION AND UNSECURED LOAN AGREEMENT WITH THE BOTANICAL GARDEN OF THE OZARKS TO INSTALL TEN (10) LED LIGHTS AND POLES IN THE AMOUNT OF \$34,911.38 AS PART OF THE CITY OF FAYETTEVILLE COMMUNITY REVOLVING LOAN FUND FOR ENERGY EFFICIENCY

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

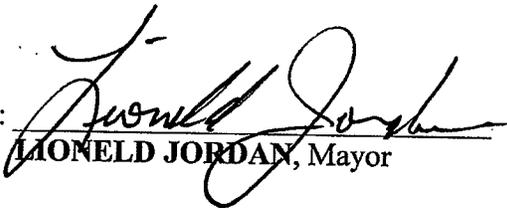
Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves a participation and unsecured loan agreement with the Botanical Garden of the Ozarks in the amount of \$34,911.38 as part of the City of Fayetteville Community Revolving Loan Fund for Energy Efficiency.

PASSED and APPROVED this 18th day of October, 2011.

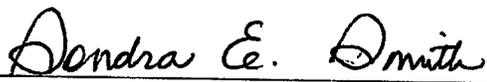
APPROVED:

ATTEST:

By:


LIONELD JORDAN, Mayor

By:


SONDRA E. SMITH, City Clerk/Treasurer



City of Fayetteville Staff Review Form

City Council Agenda Items
 and
 Contracts, Leases or Agreements

10/18/2011

City Council Meeting Date
 Agenda Items Only

John Coleman
 Submitted By

Division

Sustainability & Strategic Planning
 Department

Action Required:

A resolution to approve an agreement with the Botanical Garden of the Ozarks to install ten (10) LED lights and poles in the amount of \$34,911.38 through the Community Revolving Loan Fund. The project will light the garden area and allow for expanded hours at BGO. The project is funded by the Energy Efficiency and Conservation Block Grant.

\$ 34,911.38
 Cost of this request

2240.9240.5342.97
 Account Number

09011.0020
 Project Number

\$ 220,000.00
 Category / Project Budget

\$ 16,866.36
 Funds Used to Date

\$ 203,133.64
 Remaining Balance

Energy Block Grant
 Program Category / Project Name

Energy Block Grant
 Program / Project Category Name

Energy Block Grant
 Fund Name

Budgeted Item

Budget Adjustment Attached


 Department Director 9/30/11
 Date

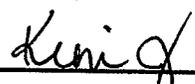
Previous Ordinance or Resolution # _____


 City Attorney 9/30/11
 Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Buhner 9-30-2011
 Finance and Internal Services Director Date

Received in City Clerk's Office 09-30-11 P02:22 RCVD



 Chief of Staff 10-3-11
 Date

Received in Mayor's Office



 Mayor 10/4/11
 Date

Comments:



THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8272

CORRESPONDENCE

TO: Lioneld Jordan, Mayor
FROM: John Coleman, Director of Sustainability & Strategic Planning *JC*
Thru: Don Marr, Chief of Staff
DATE: September 30, 2011
SUBJECT: Community Revolving Loan Fund – Botanical Garden of the Ozarks

Description

Using funds from the Energy Efficiency and Conservation Block Grant as part of the American Recovery and Reinvestment Act (ARRA), the City has allocated \$220,000 to create the Community Revolving Loan Fund. This Fund provides low interest loans to non-profits to perform energy efficiency and renewable energy improvements for which they payback using the energy savings.

The purpose of this resolution is to approve an agreement in the amount of \$34,911.38 with the Botanical Garden of the Ozarks. Through this agreement the City will pay for energy efficient lighting and set a schedule for repayment. The scope of work includes ten (10) LED light fixtures and poles to light the garden area utilizing Resolution 102-10 with Premier Lighting Group. The scope also includes electrical wiring and installation of lights through an annual service contract with King Electrical Contractors.

Budget Impact

The \$34,911.38 cost of the project will be paid for by Energy Efficiency and Conservation Block Grant funding as obtained by the City of Fayetteville in September 2009.

RESOLUTION NO. _____

**A RESOLUTION APPROVING A PARTICIPATION AND UNSECURED
LOAN AGREEMENT WITH THE BOTANICAL GARDEN OF THE OZARKS
TO INSTALL TEN (10) LED LIGHTS AND POLES IN THE AMOUNT OF
\$34,911.38 AS PART OF THE CITY OF FAYETTEVILLE COMMUNITY
REVOLVING LOAN FUND FOR ENERGY EFFICIENCY**

**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 hereby approves a participation and unsecured loan agreement with the Botanical Garden of the Ozarks in the amount of \$34,911.38 as part of the City of Fayetteville Community Revolving Loan Fund for Energy Efficiency.

PASSED and APPROVED this 18th day of October, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

COMMUNITY REVOLVING LOAN FUND FOR ENERGY EFFICIENCY
PARTICIPATION AND UNSECURED LOAN AGREEMENT

THIS AGREEMENT, made and entered this 29th day of September, 2011, by and between the City of Fayetteville, Arkansas, an Arkansas municipal corporation with its principal offices at 113 W. Mountain Street, Fayetteville, Arkansas 72701 ("City"), and Botanical Garden Society of the Ozarks an Arkansas (corporation/limited liability company) with its principal offices at 4703 North Crossover Rd Fayetteville AR 72764 ("Borrower"), herein collectively referred to as the "parties".

IN CONSIDERATION OF THE MUTUAL OBLIGATIONS AND COVENANTS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Borrower agrees to participate in the City's Community Revolving Loan Fund for Energy Efficiency ("fund") for the provision of energy efficiency upgrades to real estate located at the Botanical Garden of the Ozarks ("property") pursuant to its approved application and description of work which are incorporated into this Agreement as Exhibit 1.
2. Borrower covenants that it is financially sound, and has not, within the past ten (10) years, filed for bankruptcy protection under Title 11 of the United States Code, and has no plans to do so.
3. Borrower agrees that the provision of energy efficiency upgrades to the property by the City is made pursuant a fund program established by the City and funded by a federal grant. Usage of said fund is governed by local, state and federal law and regulations, as well as conditions in the City's grant agreement with the federal government. Borrower agrees that it will, in all ways, comply with any and all requirements imposed as a condition of the grant, or as otherwise required by law.
4. Borrower agrees to pay to the City the costs incurred by the City for energy efficiency upgrades to the property, and further agrees to execute a promissory note, payable to the City of Fayetteville, upon completion of the work, in the full amount of the costs of the upgrades performed on the property.
5. City agrees to procure and effectuate energy efficiency upgrades for the property pursuant to the approved application and description of work incorporated as Exhibit 1,

and agrees to accept a promissory note from Borrower in an amount equal to the cost of all energy efficiency improvements performed by the City and/or its contractors or agents on the property.

6. Default. The occurrence of any of the following shall constitute default under this Agreement:

- (a) Borrower's failure to pay the City the costs incurred by the City for energy efficiency upgrades to the property;
- (b) Borrower's failure to execute a promissory note payable to the City in the total amount of the cost of the energy efficiency upgrades to the property;
- (c) Borrower's failure to observe, perform, or comply with any non-monetary conditions or covenants of this Agreement, including failure to abide by applicable local, state or federal law, or applicable federal grant requirements of the City, or any other condition of the fund;
- (d) Any change in the status of the Borrower as an Arkansas corporation or limited liability company authorized to do business in the State of Arkansas;
- (e) Borrower's failure to pay any debt when due or Borrower's filing for bankruptcy protection under Title 11, United States Code.
- (f) Any sale, pledge, assignment, transfer or hypothecation of the property in any manner without the City's prior written consent;
- (g) Borrower's failure to comply with any requirement relating to its corporate status or qualification; and
- (h) Borrower's failure to comply with any condition, requirement or purpose of the City's fund, as created and authorized pursuant to federal grant funding provided pursuant to the American Recovery and Reinvestment Act of 2009 and applicable federal regulations.

7. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements.

8. This Agreement and all other documents, including the promissory note to be executed by Borrower, shall be governed by the laws of the State of Arkansas. No change, modification or waiver of any provision thereof shall be valid unless in writing, and signed by the party to be charged. The parties hereby agree that the forum for any and all legal disputes arising regarding this Agreement shall be in the Circuit Court of Washington County, Arkansas, with Arkansas law to apply.

9. Indemnification. Borrower shall indemnify City and its officers, employees, and agents and defend and hold each harmless from and against all claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs, and expenses) of any and every kind to any persons or property by reason of (i) the work procured by this Agreement or the operation or maintenance of the property, (ii) any construction on or about the property, (iii) any environmental matters or hazardous materials located on or about the property, (iv) any Default, as defined herein, or (v) any other matter arising in connection with the loan, Borrower, the property or the work procured by this Agreement as a whole.

10. Insurance. Borrower shall at all times maintain liability insurance on the property.

11. All notices, requests, demands, consents, waivers and other communications given under any of the provisions of this Agreement shall be in writing and shall be delivered by first-class U.S. Mail, addressed as stated below or to such other address as the addressee may have specified in a notice duly given to the other addresses.

To City: City of Fayetteville
Office of Mayor
113 W. Mountain
Fayetteville, AR 72701

To Borrower: Ron Cox, Executive Director
Botanical Garden of the Ozarks
PO Box 16407
Fayetteville AR 72703

12. Severability. If any provision of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability

shall not affect any other provision of the Agreement, the Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

13. No delay or failure on the part of the City in exercising any rights under this Agreement, or the promissory note to be executed pursuant hereto, and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights under the Agreement or promissory note.

14. Freedom of Information Act. City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City, Borrower will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101, et seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by its duly-authorized representative as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS,
An Arkansas Municipal Corporation

By: _____
Mayor

Attest: Dandra E. Smith
City Clerk/Treasurer



Botanical Garden Society of the Ozarks, Inc
An Arkansas corporation/limited liability company

By: Ronald Cox
Name

Authorized Agent

COMMUNITY REVOLVING LOAN FUND FOR ENERGY EFFICIENCY
UNSECURED NOTE

\$ 34,911.38

29th day of September, 20 11

FAYETTEVILLE, ARKANSAS

FOR VALUE RECEIVED, the undersigned (the "Borrower") promises to pay to the order of THE CITY OF FAYETTEVILLE, ARKANSAS ("Payee"), the principal sum of \$34,911.38 (\$34,911.38). Provided that no event of default exists hereunder, this Promissory Note shall bear interest from the date of this Promissory Note at the rate of ONE percent (1 %) per annum. In the event of a default hereunder, this Promissory Note shall bear interest at the maximum rate of interest allowable under the laws of the state of Arkansas. This Promissory Note shall become due and payable, as follows:

Principal and interest shall be due and payable in Four (4) consecutive monthly/quarterly (select one) installments of \$88.51 each. The first such installment shall be due and payable on January 6, 2012 and each successive monthly installment shall be due and payable on the first day of each calendar month thereafter until this Promissory Note is paid in full. All payments shall be applied first to interest and the balance to principal.

The Borrower and any maker, endorsers, sureties, guarantors, and all other persons now or hereafter liable hereon waive presentment, demand for payment, protest and notice of dishonor, and the endorsers, sureties, and guarantors consent that the Payee or holder hereof shall have the right, without notice, to deal in any way at any time with any party hereto or to grant to any such party any extensions of time for payment of any of said indebtedness or any other indulgences or forbearances whatever without in any way affecting the personal liability of any party hereunder.

If at any time any payment under this Promissory Note becomes more than sixty (60) days past due, the Payee or holder of this Promissory Note shall have the right and option to declare the entire unpaid balance of principal and interest due and owing hereunder to be immediately due and payable.

If this obligation, after default, is placed in the hands of an attorney for collection, the Borrower will be obligated to pay the Payee or the holder hereof an additional sum as an attorney's fee, not to exceed ten percent (10%) of the unpaid principal plus all accrued interest together with all costs and expenses of collection.

Any notices required to be given hereunder shall be deemed effective if made to the following addresses:

If to Payee:

CITY OF FAYETTEVILLE, ARKANSAS
OFFICE OF MAYOR
113 W. MOUNTAIN
FAYETTEVILLE, ARKANSAS 72701

If to Borrower:

Ron Cox, Executive Director
P.O. Box 10407
Fayetteville, AR 72703

Any party to this Promissory Note may change their respective address for notice by the giving of written notice to each party.

The loan evidenced by this Promissory Note was negotiated and consummated in the state of Arkansas and it is understood and agreed that the legality, enforceability, and construction hereof shall be governed by Arkansas law, and to the extent applicable, by the laws of the United States of America.

This Promissory Note can be pre-paid in whole or in part at any time without penalty.

BORROWER:

Botanical Garden Society of the Ozarks

By:

Walt Eiler
AUTHORIZED AGENT

BGSO, Chair



BGO LEDs

1 message

John Coleman <jcoleman@ci.fayetteville.ar.us>
To: Mikel Lolley <mikel.lolley@gmail.com>

Fri, Sep 23, 2011 at 11:12 AM

Cost for poles & LEDs = \$19,042.28

**KING ELECTRICAL CONTRACTORS
 2145 W MOORE LANE
 FAYETTEVILLE AR 72701
 479-443-0006 FAX 479-443-1719
 Email Chris@ckingelectric.net**

PROPOSAL

TO: City of Fayetteville	PHONE	DATE 9-19-11
	JOB NAME Botanical Garden Pole Lights and Bollards	
JOB DESCRIPTION Furnish and install wiring for 10 pole lights and 0 bollard lights. Includes ditch by walk behind trencher, 5-bores under obstacles, conduit, wire, pole bases, breakers. Lights to be fed from existing breaker boxes, lights to be turned on and off by breakers. Does not include light poles, fixtures or lamps. Does not include removing plants for ditch digging, replace plants, sod, seeding or maintaining trench backfill. Botanical garden will be responsible for clearing area for trencher, pole bases, equipment paths, and restoring areas of construction back to original. Contractors License #0063870412		
PROPOSAL GOOD FOR 30 DAYS		DOLLARS: Base Bid \$15,869.10
TERMS: PAYMENT DUE UPON RECEIPT OF INVOICE A FINANCE CHARGE WILL BE CHARGED ON ALL PAST DUE ACCOUNTS OF .0833% PER MONTH. ALL ATTORNEY FEES WILL BE COLLECTED ON PAST DUE ACCOUNTS.		AUTHORIZED SIGNATURE
THE ABOVE PRICES SPECIFICATIONS AND CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED. YOU ARE AUTHORIZED TO DO WORK AS SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.		ACCEPTANCE SIGNATURE

Proposal
King Electrical Contractors
2145 W Moore Lane
Fayetteville AR 72704
479-443-0006 Fax 479-443-1719
email Chris@ckingelectric.net

City of Fayetteville

Attn:

Date 9/21/2011

Job Name: Fayetteville Botanical Gardens LED lighting

Descriptor

Botanical Gardens 10 Poles and 0 Bollards

Material		\$7,713.00
Tax		\$713.45
Total		\$8,426.45
MU 10%		\$842.65

Grand Total Material \$9,269.10

Labor	\$30.00	
Hours	120.00	\$3,600.00
Labor	\$25.00	
Hours	120.00	\$3,000.00

Grand Total Material and Labor \$15,869.10

RESOLUTION NO. 102-10

A RESOLUTION AWARDDING BID #10-36 AND APPROVING THE PURCHASE OF THIRTY-TWO (32) LED LIGHT FIXTURES AND POLES IN THE AMOUNT OF \$60,935.28 FROM DYNAMIC LIGHTING SOLUTIONS FOR INSTALLATION AS PART OF THE BLOCK STREET IMPROVEMENT PROJECT

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 hereby awards Bid #10-36 and approves the purchase of thirty-two (32) LED light fixtures and poles in the amount of \$60,935.28 from Dynamic Lighting Solutions for installation as part of the Block Street Improvement Project.

PASSED and APPROVED this 15th day of June, 2010.

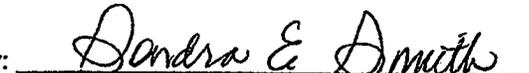
APPROVED:

ATTEST:

By:


LIONELD JORDAN, Mayor

By:


SONDRA E. SMITH, City Clerk/Treasurer



COMMUNITY REVOLVING LOAN FUND FOR ENERGY EFFICIENCY
PARTICIPATION AND UNSECURED LOAN AGREEMENT

THIS AGREEMENT, made and entered this ____ day of _____, 20____, by and between the City of Fayetteville, Arkansas, an Arkansas municipal corporation with its principal offices at 113 W. Mountain Street, Fayetteville, Arkansas 72701 ("City"), and _____, an Arkansas (corporation/limited liability company) with its principal offices at _____ ("Borrower"), herein collectively referred to as the "parties".

IN CONSIDERATION OF THE MUTUAL OBLIGATIONS AND COVENANTS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Borrower agrees to participate in the City's Community Revolving Loan Fund for Energy Efficiency ("fund") for the provision of energy efficiency upgrades to real estate located at _____ ("property") pursuant to its approved application and description of work which are incorporated into this Agreement as Exhibit 1.

2. Borrower covenants that it is financially sound, has not, within the past ten (10) years, filed for bankruptcy protection under Title 11 of the United States Code, and has no plans to do so.

3. Borrower agrees that the provision of energy efficiency upgrades to the property by the City is made pursuant a fund program established by the City and funded by a federal grant. Usage of said fund is governed by local, state and federal law and regulations, as well as conditions in the City's grant agreement with the federal government. Borrower agrees that it will, in all ways, comply with any and all requirements imposed as a condition of the grant, or as otherwise required by law.

4. Borrower agrees to pay to the City the costs incurred by the City for energy efficiency upgrades to the property, and further agrees to execute a promissory note, payable to the City of Fayetteville, upon completion of the work, in the full amount of the costs of the upgrades performed on the property.

5. City agrees to procure and effectuate energy efficiency upgrades for the property pursuant to the approved application and description of work incorporated as Exhibit 1,

and agrees to accept a promissory note from Borrower in an amount equal to the cost of all energy efficiency improvements performed by the City and/or its contractors or agents on the property.

6. Default. The occurrence of any of the following shall constitute default under this Agreement:

- (a) Borrower's failure to pay the City the costs incurred by the City for energy efficiency upgrades to the property;
- (b) Borrower's failure to execute a promissory note payable to the City in the total amount of the cost of the energy efficiency upgrades to the property;
- (c) Borrower's failure to observe, perform, or comply with any non-monetary conditions or covenants of this Agreement, including failure to abide by applicable local, state or federal law, or applicable federal grant requirements of the City, or any other condition of the fund;
- (d) Any change in the status of the Borrower as an Arkansas corporation or limited liability company authorized to do business in the State of Arkansas;
- (e) Borrower's failure to pay any debt when due or Borrower's filing for bankruptcy protection under Title 11, United States Code.
- (f) Any sale, pledge, assignment, transfer or hypothecation of the property in any manner without the City's prior written consent;
- (g) Borrower's failure to comply with any requirement relating to its corporate status or qualification; and
- (h) Borrower's failure to comply with any condition, requirement or purpose of the City's fund, as created and authorized pursuant to federal grant funding provided pursuant to the American Recovery and Reinvestment Act of 2009 and applicable federal regulations.

7. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written agreements.

8. This Agreement and all other documents, including the promissory note to be executed by Borrower, shall be governed by the laws of the State of Arkansas. No change, modification or waiver of any provision thereof shall be valid unless in writing, and signed by the party to be charged. The parties hereby agree that the forum for any and all legal disputes arising regarding this Agreement shall be in the Circuit Court of Washington County, Arkansas, with Arkansas law to apply.

9. Indemnification. Borrower shall indemnify City and its officers, employees, and agents and defend and hold each harmless from and against all claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs, and expenses) of any and every kind to any persons or property by reason of (i) the work procured by this Agreement or the operation or maintenance of the property, (ii) any construction on or about the property, (iii) any environmental matters or hazardous materials located on or about the property, (iv) any Default, as defined herein, or (v) any other matter arising in connection with the loan, Borrower, the property or the work procured by this Agreement as a whole.

10. Insurance. Borrower shall at all times maintain liability insurance on the property.

11. All notices, requests, demands, consents, waivers and other communications given under any of the provisions of this Agreement shall be in writing and shall be delivered by first-class U.S. Mail, addressed as stated below or to such other address as the addressee may have specified in a notice duly given to the other addresses.

To City: City of Fayetteville
Office of Mayor
113 W. Mountain
Fayetteville, AR 72701

To Borrower:

12. Severability. If any provision of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability

shall not affect any other provision of the Agreement, the Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

13. No delay or failure on the part of the City in exercising any rights under this Agreement, or the promissory note to be executed pursuant hereto, and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights under the Agreement or promissory note.

14. Freedom of Information Act. City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City, Borrower will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (Ark. Code Ann. § 25-19-101, et seq.). Only legally authorized photo copying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by its duly-authorized representative as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS,
An Arkansas Municipal Corporation

By: _____
Mayor

Attest: _____
City Clerk/Treasurer

An Arkansas corporation/limited liability company

By: _____
Name
Authorized Agent