

City of Fayetteville Item Review Form

2014-0101

Legistar File Number

03/18/2014

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Chris Brown

Submitted By

Development Services

Department

Action Required:

Approval of an Ordinance approving a Utility Work Agreement with SourceGas Arkansas Inc. in the amount of \$72,277.19 plus a contingency of \$14,455.00 for a total of \$86,732.19 for the relocation of gas mains and facilities necessary for the Van Asche Drive Project.

Does this item have a cost? Yes

\$86,732.19

Cost of this request

\$0.00

Category or Project Budget

Van Asche (Garland to Gregg)

Program or Project Name

4520.9555.5809.00

Account Number

\$0.00

Funds Used to Date

Transp. Bond Street Improvements

Program or Project Category

06035.2500

Project Number

-\$86,732.19

Remaining Balance

Street Sales Tax 2013

Fund Name

Budgeted Item? Yes

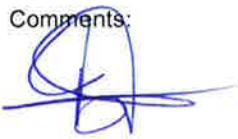
Budget Adjustment Attached?

V20130812

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:



Paul A. Bush

Tom Man 3/6/14



ENTERED
3/6/14
PK

ENTERED
3/6/14
KJ

CITY COUNCIL AGENDA MEMO

Council Meeting of March 18, 2014

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director

From: Chris Brown, City Engineer *CB*

Date: February 20, 2014

Subject: **Approval of an Ordinance approving a Utility Work Agreement with SourceGas Arkansas Inc. in the amount of \$72,277.19 plus a contingency of \$14,455.00 for a total of \$86,732.19 for the relocation of gas mains and facilities necessary for the Van Asche Drive Project.**

PROPOSAL:

After reviewing the proposed construction plans, Engineering staff and SourceGas Arkansas staff have agreed that approximately 2,800 linear feet of existing gas line and appurtenances, at a cost estimated to be \$91,144.00, will have to be relocated to allow the proposed Van Asche Drive improvements to be constructed. It was also determined that 79.3% of the relocation cost is for gas facilities located in easements possessed by SourceGas outside the City Right of Way, making 79.3% of the cost of relocations reimbursable.

In accordance with the above parameters, SourceGas has presented the attached contract whereby the City agrees to reimburse SourceGas 79.3% or \$72,277.19 of actual costs to relocate their facilities. Due to the unpredictable nature of construction projects, staff recommends a 20% contingency for unforeseen utility conflicts, an amount estimated to be \$14,455.00. Therefore the total dollar amount recommended to be approved by City Council is \$86,732.19. The final payment by the City will be based on the actual cost of the gas relocations.

RECOMMENDATION:

Staff recommends approval of an Ordinance approving a Utility Work Agreement with SourceGas Arkansas Inc. in the amount of \$72,277.19 plus a contingency of \$14,455.00 for a total of \$86,732.19 for the relocation of gas mains and facilities necessary for the Van Asche Drive Project.

BUDGET IMPACT:

Funding will be provided by the Transportation Bond Program.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A COST-SHARE UTILITY WORK AGREEMENT WITH SOURCEGAS ARKANSAS, INC. IN THE AMOUNT OF \$72,277.19 FOR THE RELOCATION OF GAS MAINS AND FACILITIES NECESSARY FOR THE VAN ASCHE DRIVE PROJECT, AND TO APPROVE A PROJECT CONTINGENCY OF \$14,455.00

WHEREAS, the Van Asche Drive Construction Project will require certain gas mains and facilities belonging to SourceGas Arkansas, Inc. ("SourceGas") to be relocated; and

WHEREAS, SourceGas has agreed to pay 20.7% of the total project cost and it is cost-effective for the City to enter into this cost-sharing agreement; and

WHEREAS, Ordinance No. 5542, which was passed and approved on November 20, 2012, waives the requirement of formal bidding on "all such projects necessitated by any road reconstruction or widening projects with SourceGas Arkansas, Inc. within Fayetteville until December 31, 2016".

NOW, THEREFORE, 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 cost-share utility work agreement with SourceGas Arkansas, Inc. in the amount of \$72,277.19 for the relocation of gas mains and facilities necessary for the Van Asche Drive Project, and further approves a project contingency of \$14,455.00.

PASSED and APPROVED this 18th day of March, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



**UTILITY WORK AGREEMENT
(MUNICIPALITY)**

Municipality: City of Fayetteville
Municipality's Address: 113 West Mountain, Fayetteville, AR 72701
Job Location: Van Asche

This Utility Work Agreement ("Agreement") is made and entered into this ____ day of _____, _____, by and between the City of Fayetteville (hereinafter referred to as "Municipality"), and SourceGas Arkansas Inc. (hereinafter referred to as "SourceGas").

WHEREAS, Municipality proposes to make certain Improvements at the location designated above, and as a result of such Improvements, SourceGas must adjust, enhance, locate, observe, and/or relocate certain of its existing facilities, or construct additional facilities; and

WHEREAS, in connection with Municipality's proposed improvements, Municipality wishes SourceGas to do the following:

Replace 2" plastic pipe for Van Asche road project: Starting at -94.18519, 36.116313 then going across Van Asche Dr. going West for app. 160' also going East app. 820' then crossing the road to the south side, then going under I-540 East app. 460', then going North app. 160', making tie ends replacing services along the new pipe. Then starting at -94.163923, 36.116649 just West of Gregg Ave. going 1000' West then turning to the North for 200', making tie ends with 2x2 HVPT also replacing service.

(hereinafter referred to as the "Work"); and

WHEREAS, such Work is shown in detail in SourceGas' plans, sketches, estimate of cost, and specifications (when applicable), which are attached to this Agreement and made a part hereof; and

WHEREAS, Municipality agrees to pay for the cost of such Work to the extent herein agreed upon.



NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND OTHER VALUABLE CONSIDERATION HEREIN ACKNOWLEDGED, MUNICIPALITY AND SOURCEGAS AGREE AS FOLLOWS:

1. Where applicable hereunder by reason of new utility occupancy or crossing of Municipality's property, Municipality hereby grants to SourceGas an easement or license to install and operate utility facilities on or across Municipality's property as shown on the approved plans or sketch maps attached hereto and made a part hereof. In addition to the easement over Municipality's property, prior to SourceGas beginning the Work, Municipality will, at no cost to SourceGas, furnish SourceGas with all other necessary easements, rights of way and permits. ~~These easements, rights-of-way and permits shall release SourceGas from any and all claims for damage done to streets, land, fences, and crops arising out of the performance of the Work.~~ After the natural gas pipeline is installed by SourceGas, SourceGas will remove all trash and litter from the right(s)-of-way herein granted and restore the right(s)-of-way, as nearly as possible, to the condition in which it/they existed prior to the construction of the natural gas pipeline.

REVISED DOCUMENT
BEING SIGNED
THIS WEEK BY
SOURCEGAS.
WILL RECEIVE
3/7/14.
MC

2. Where applicable hereunder by reason of new construction on existing utility rights of way, SourceGas hereby grants to Municipality the right to use for Municipality's purposes the lands within the limits of the Improvement project limits on or across which SourceGas holds a valid property interest antedating Municipality's rights which were subsequently acquired in the same lands, and which property rights SourceGas shall retain so long as SourceGas, its successors or assigns continues such use and occupancy and does not abandon, and thereby release, such property interest to Municipality through removal of facilities in performing the Work or by subsequent removal of facilities for SourceGas' convenience; and Municipality hereby agrees that SourceGas, by granting said right and by said continued joint use and occupancy, does not waive any future claim for reimbursement for any costs as may be eligible for reimbursement by reason of such prior property interest, nor does SourceGas waive any other legal or property right held under the laws or Constitution of the State of Arkansas or the United States.

3. In the event that future construction, reconstruction, expansion, relocation, rehabilitation, betterment, maintenance, or other work on the facilities owned and operated by either Municipality or SourceGas in the area jointly occupied or used under either or both Paragraphs 1 or 2 of this Agreement will disturb, detrimentally affect, interfere, or be inconvenient to the facilities or responsibilities of either party, the parties hereto shall reach agreement in writing as to locations, extent, and methods of such work before the work is undertaken. In a case of emergency, and where immediate action is necessary for the protection of the public and to minimize damage to or loss of



investment in the property of Municipality or of SourceGas, either party hereto may, at its own responsibility and risk, make any necessary emergency repairs, and shall notify the other party hereto of such action as soon as practicable.

4. Municipality will pay SourceGas 79.3% of the actual cost of the Work. The estimated cost of the Work is \$91,144.00. Thus, the estimated cost to Municipality for the Work is \$72,277.19. After it has completed the Work, SourceGas will bill Municipality for 79.3% of the actual cost of the Work. Municipality shall pay such invoice within 30 days of Municipality's receipt of the invoice. If Municipality fails to pay any such invoice within 30 days of receipt, the amount due under the invoice shall accrue interest at the rate of 10 per cent per annum until paid.

5. SourceGas will perform the Work, as described on the first page of this Agreement. SourceGas will endeavor to perform the Work within a reasonable time period, subject to applicable laws, rules and regulations of governmental authorities, and subject to any delay occasioned by lack of right of way, availability of materials and supplies, force majeure or events or conditions of whatsoever nature reasonably beyond SourceGas' control, and further conditioned upon the receipt of all required approvals and consents in form and substance acceptable to SourceGas. SourceGas shall not be obligated to commence the Work unless and until, at no cost to SourceGas, all necessary easements and rights of way have been executed, acknowledged and delivered to SourceGas in a form acceptable to SourceGas.

6. Title to and ownership of facilities which are the subject of the Work shall forever be and remain exclusively and unconditionally vested in SourceGas. Municipality understands, acknowledges and agrees that Municipality shall have no title to, interest in, or ownership of those facilities.

7. It is mutually agreed by the parties hereto that the provisions of this Agreement pertaining to property rights, right of way occupancy permission, access for servicing when applicable, and joint use of rights of way shall continue in full force and effect from the date of this Agreement, and shall be perpetually binding upon each party, and its representatives, successors and assigns.

8. Municipality and SourceGas acknowledge that there are no agreements or understandings, either written or oral, between the parties related to the Work, other



than as set forth in this Agreement, and that this Agreement (including any attachments hereto) contains the entire agreement between the parties regarding the Work.

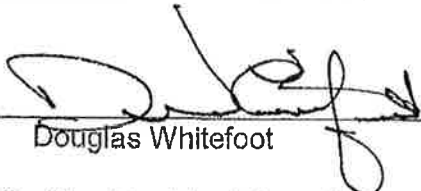
9. This Agreement shall be governed in accordance with the laws of the State of Arkansas, the rules and regulations of the Arkansas Public Service Commission, and the Tariff of SourceGas. In the event of a conflict between this Agreement and any such laws, rules, regulations or Tariff, such laws, rules, regulations or Tariff shall control.

10. In the event SourceGas is required to initiate litigation to enforce the terms and conditions of this Agreement, then SourceGas shall have the right to recover from Municipality SourceGas' costs and expenses of such litigation, including reasonable attorney fees.

11. Municipality acknowledges that it has been afforded an opportunity to have its attorney review and explain the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives on the date stated above.

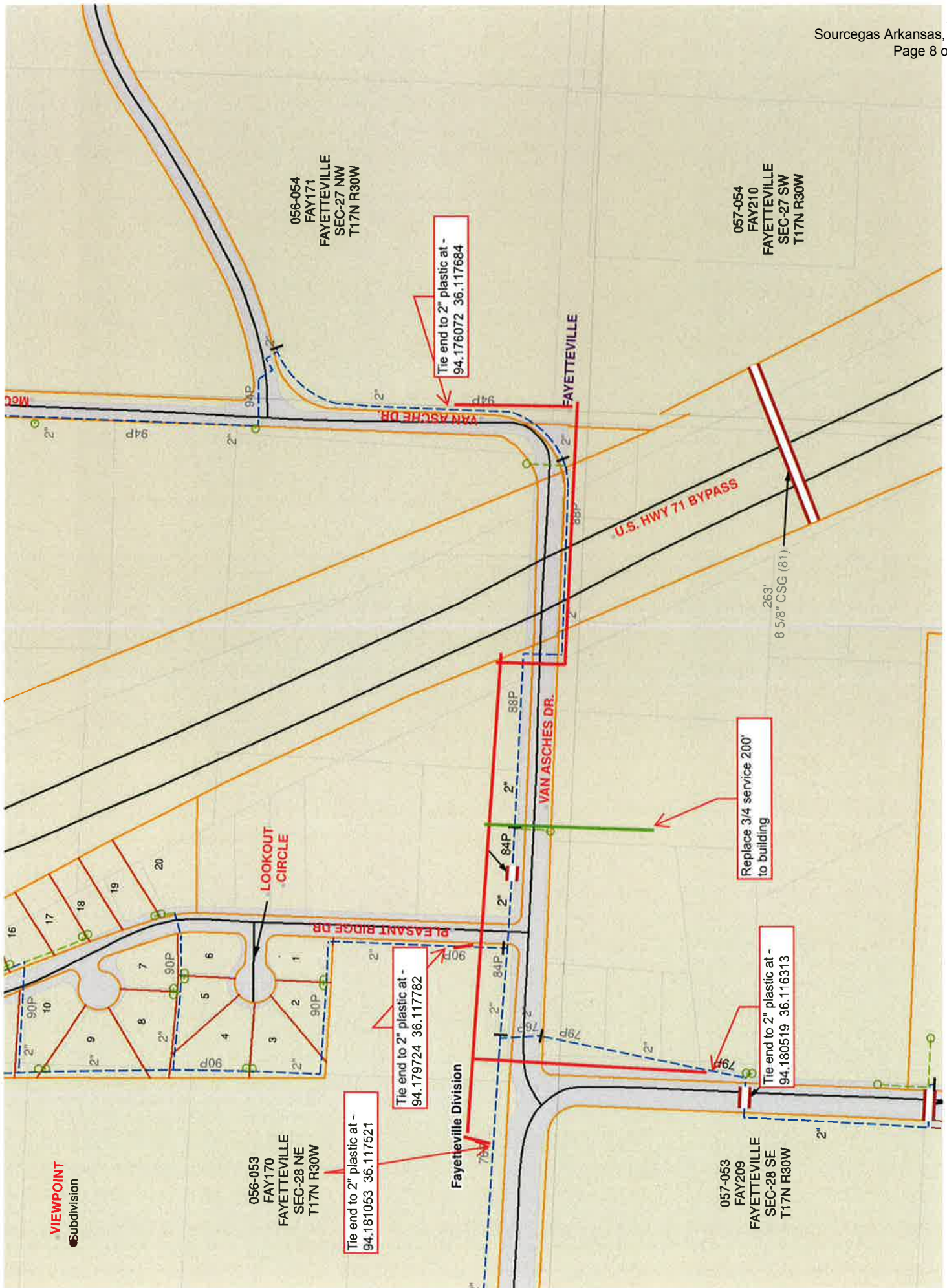
SOURCEGAS ARKANSAS INC.

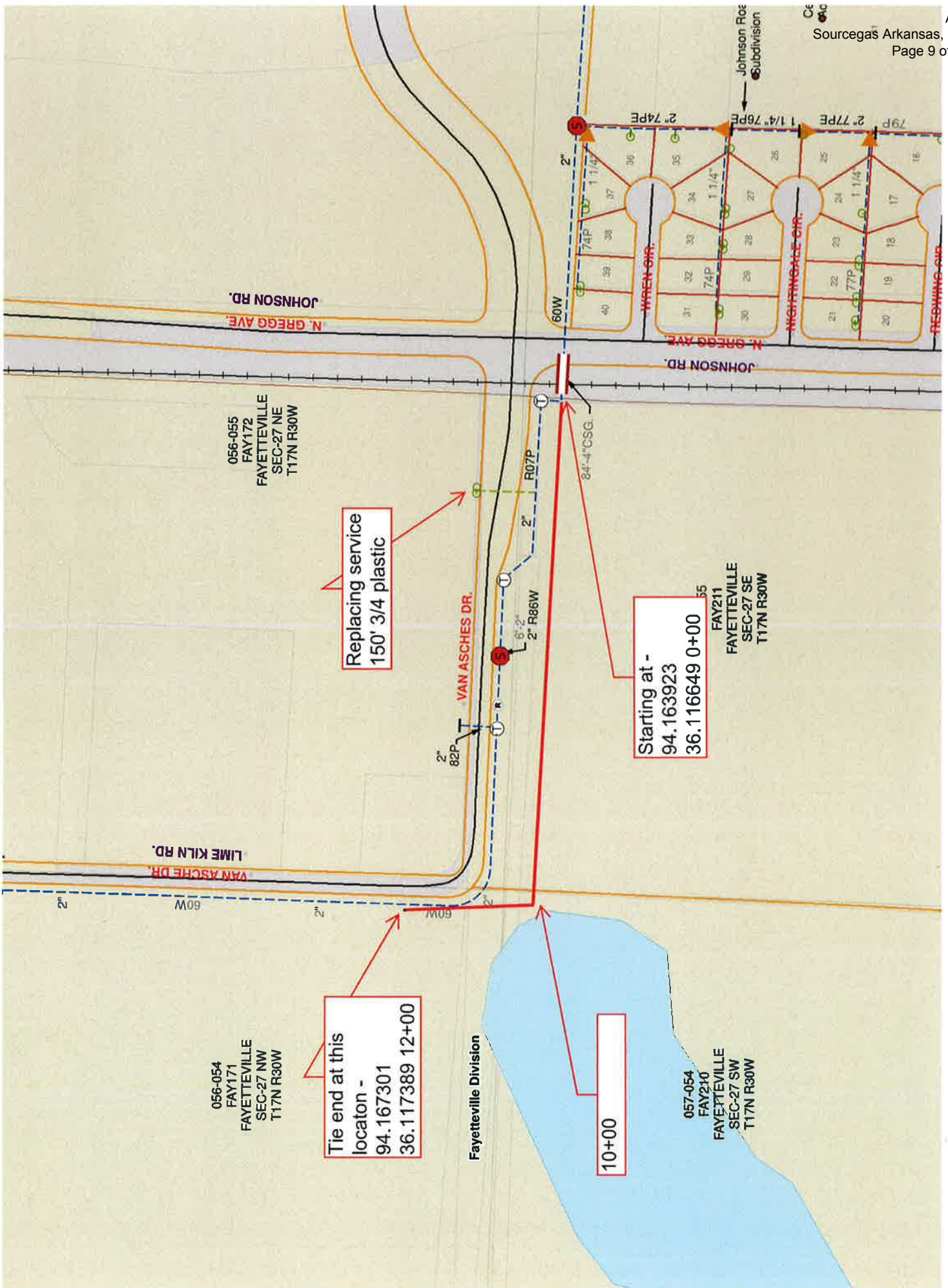
JA
By: 
Douglas Whitefoot

Its: Sr. Vice President Operations

By: _____

Its: _____





Replacing service
150' 3/4 plastic

Starting at -
94.163923
36.116649 0+00

Tie end at this
location -
94.167301
36.117389 12+00

10+00

056-054
FAY171
FAYETTEVILLE
SEC-27 NW
T17N R30W

056-055
FAY172
FAYETTEVILLE
SEC-27 NE
T17N R30W

057-054
FAY210
FAYETTEVILLE
SEC-27 SW
T17N R30W

FAY211
FAYETTEVILLE
SEC-27 SE
T17N R30W

Fayetteville Division

Johnson Roe
Subdivision

RESOLUTION NO. _____

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WHEREAS, Ordinance No. 5542, which was passed and approved on November 20, 2012, waives the requirement of formal bidding on “all such projects necessitated by any road reconstruction or widening projects with SourceGas Arkansas, Inc. within Fayetteville until December 31, 2016”.

NOW, THEREFORE, 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 cost-share utility work agreement with SourceGas Arkansas, Inc., a copy of which is attached as Exhibit “A”, in the amount of \$72,277.19 for the relocation of gas mains and facilities necessary for the Van Asche Drive Project, and further approves a project contingency of \$14,455.00.

PASSED and APPROVED this 18th day of March, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



**UTILITY WORK AGREEMENT
(MUNICIPALITY)**

Municipality: City of Fayetteville
Municipality's Address: 113 West Mountain, Fayetteville, AR 72701
Job Location: Van Asche

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WHEREAS, Municipality proposes to make certain improvements at the location designated above, and as a result of such improvements, SourceGas must adjust, enhance, locate, observe, and/or relocate certain of its existing facilities, or construct additional facilities; and

WHEREAS, in connection with Municipality's proposed improvements, Municipality wishes SourceGas to do the following:

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2. Where applicable hereunder by reason of new construction on existing utility rights of way, SourceGas hereby grants to Municipality the right to use for Municipality's purposes the lands within the limits of the improvement project limits on or across which SourceGas holds a valid property interest antedating Municipality's rights which were subsequently acquired in the same lands, and which property rights SourceGas shall retain so long as SourceGas, its successors or assigns continues such use and occupancy and does not abandon, and thereby release, such property interest to Municipality through removal of facilities in performing the Work or by subsequent removal of facilities for SourceGas' convenience; and Municipality hereby agrees that SourceGas, by granting said right and by said continued joint use and occupancy, does not waive any future claim for reimbursement for any costs as may be eligible for reimbursement by reason of such prior property interest, nor does SourceGas waive any other legal or property right held under the laws or Constitution of the State of Arkansas or the United States.

3. In the event that future construction, reconstruction, expansion, relocation, rehabilitation, betterment, maintenance, or other work on the facilities owned and operated by either Municipality or SourceGas in the area jointly occupied or used under either or both Paragraphs 1 or 2 of this Agreement will disturb, detrimentally affect, interfere, or be inconvenient to the facilities or responsibilities of either party, the parties hereto shall reach agreement in writing as to locations, extent, and methods of such work before the work is undertaken. In a case of emergency, and where immediate action is necessary for the protection of the public and to minimize damage to or loss of investment in the property of Municipality or of SourceGas, either party hereto may, at its own responsibility and risk, make any necessary emergency repairs, and shall notify the other party hereto of such action as soon as practicable.

4. Municipality will pay SourceGas 79.3% of the actual cost of the Work. The estimated cost of the Work is \$91,144.00. Thus, the estimated cost to Municipality for the Work is \$72,277.19. After it has completed the Work, SourceGas will bill Municipality for 79.3% of the actual cost of the Work. Municipality shall pay such invoice within 30 days of Municipality's receipt of the invoice. If Municipality fails to pay any such invoice within 30 days of receipt, the amount due under the invoice shall accrue interest at the rate of 10 per cent per annum until paid.

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6. Title to and ownership of facilities which are the subject of the Work shall forever be and remain exclusively and unconditionally vested in SourceGas. Municipality understands, acknowledges and agrees that Municipality shall have no title to, interest in, or ownership of those facilities.

7. It is mutually agreed by the parties hereto that the provisions of this Agreement pertaining to property rights, right of way occupancy permission, access for servicing when applicable, and joint use of rights of way shall continue in full force and effect from the date of this Agreement, and shall be perpetually binding upon each party, and its representatives, successors and assigns.

8. Municipality and SourceGas acknowledge that there are no agreements or understandings, either written or oral, between the parties related to the Work, other than as set forth in this Agreement, and that this Agreement (including any attachments hereto) contains the entire agreement between the parties regarding the Work.

9. This Agreement shall be governed in accordance with the laws of the State of Arkansas, the rules and regulations of the Arkansas Public Service Commission, and the Tariff of SourceGas. In the event of a conflict between this Agreement and any such laws, rules, regulations or Tariff, such laws, rules, regulations or Tariff shall control.

10. In the event SourceGas is required to initiate litigation to enforce the terms and conditions of this Agreement, then SourceGas shall have the right to recover from Municipality SourceGas' costs and expenses of such litigation, including reasonable attorney fees.

11. Municipality acknowledges that it has been afforded an opportunity to have its attorney review and explain the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized representatives on the date stated above.

SOURCEGAS ARKANSAS INC.

By:  _____
Douglas Whitefoot

Its: Sr. Vice President Operations

By: _____

Its: _____

ORDINANCE NO. 5542

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING FOR APPROVING A COST-SHARE AGREEMENT WITH SOURCEGAS ARKANSAS, INC. IN THE AMOUNT OF \$94,577.00 FOR THE RELOCATION OF GAS MAINS AND FACILITIES NECESSARY FOR THE FULBRIGHT EXPRESSWAY/HIGHWAY 71-B FLYOVER PROJECT AND FOR ALL FUTURE PAYMENTS TO OR CONTRACTS WITH SOURCEGAS ARKANSAS, INC. FOR THE RELOCATION COSTS FOR NATURAL GAS UTILITY MAINS AND APPURTENANCES NECESSITATED BY ROAD RECONSTRUCTION OR WIDENING PROJECTS WITHIN SOURCEGAS ARKANSAS, INC.'S AREA OF SERVICE, APPROVING A PROJECT CONTINGENCY OF \$18,915.00 FOR THE FLYOVER PROJECT, AND APPROVING A BUDGET ADJUSTMENT

WHEREAS, the City in coordination with the Arkansas State Highway and Transportation Department are constructing a Fulbright Expressway/Highway 71-B Flyover, and as part of the project it is necessary for certain gas mains and facilities belonging to SourceGas Arkansas, Inc. (SourceGas) to be relocated; and

WHEREAS, it is most cost effective for the City to enter into an agreement with SourceGas for the provision of said work on a fifty percent (50%) cost-share basis; and

WHEREAS, SourceGas has exclusive jurisdiction to construct and maintain such natural gas facilities within their service area as designated by the Arkansas Public Service Commission and such cost-share agreements should be entered without the requirement formal competitive bidding;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby determines the above-stated facts constitute an exceptional situation in which competitive bidding is deemed not feasible or practical and therefore waives the requirements of formal competitive bidding and approves a cost-share utility work agreement with SourceGas Arkansas, Inc. in the amount of \$94,577.00 for the relocation of gas mains and facilities necessary for the Fulbright Expressway/Highway 71-B Flyover Project, further approves a project contingency of \$18,915.00, and approves waiver of formal competitive bidding on all such projects necessitated

Page 2
Ordinance No. 5542

by any road reconstruction or widening projects with SourceGas Arkansas, Inc. within Fayetteville until December 31, 2016.

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

PASSED and **APPROVED** this 20th day of November, 2012.

APPROVED:

ATTEST:

By: 
LIONELD JORDAN, Mayor

By: 
SONDRA E. SMITH, City Clerk/Treasurer



