

City of Fayetteville Item Review Form

2014-0286

Legistar File Number

July 15, 2014

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

Jeremy Pate

Submitted By

Development Services

Department

Action Required:

A resolution approving of an agreement with SourceGas for gas relocations related to the Spring Street Municipal Parking Deck and approval of a 20% contingency.

Does this item have a cost?  Yes

\$39,805.00

Cost of this request

\$6,639,754.60

Category or Project Budget

Spring St Municipal Parking Deck

Program or Project Name

4560.9560.5804.00

Account Number

\$1,225,228.95

Funds Used to Date

Building Costs

Program or Project Category

11028.1203

Project Number

\$5,374,720.65

Remaining Balance

Parking Deck Project Expenses

Fund Name

Budgeted Item?  Yes

Budget Adjustment Attached?  No

V20130812

Previous Ordinance or Resolution # \_\_\_\_\_

ENTERED  
6/20/14  
*[Signature]*

Original Contract Number: \_\_\_\_\_

Comments:

ENTERED  
7/1/14  
*[Signature]*

*Ch. for Jeremy Pate*

*BP - 6/30/14 (see memo)*

*Paul A. Babin 7-1-2014*

*Longman 7-1-14*  
*[Signature]*

## CITY COUNCIL AGENDA MEMO

### MEETING OF JULY 15, 2014

**TO:** Mayor and City Council

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

**FROM:** Chris Brown, City Engineer *CB*

**DATE:** June 26, 2014

**SUBJECT:** **Spring Street Parking Deck-Agreement with SourceGas for Utility Line Relocation on Spring and School due to Parking Deck Construction**

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### RECOMMENDATION:

Staff recommends approval of a resolution to approve an agreement with SourceGas for relocation of facilities they own along Spring Street and School Avenue that conflict with the proposed parking deck, liner building, and associated street and drainage infrastructure. The amount of the agreement is \$39,804.79. The agreement obligates the City to pay the actual cost of relocations; therefore, a contingency amount of 20% (\$8,000) is also recommended.

### BACKGROUND:

The City of Fayetteville is constructing a parking deck in the downtown area/entertainment district on the northwest corner of School Avenue and Spring Street, adjacent to and southeast of the Walton Arts Center (WAC) facility. The objective is to relieve current parking shortfalls and to create supply in an area anticipated to see increased parking demand.

The parking deck and associated sidewalk, drainage, and street trees are in conflict with multiple utilities on the site. City staff is working with each Design on the deck is nearing completion, and the site preparation, demolition, and excavation package is out for bid. The gas line adjacent to the deck will be in conflict with the excavation in some areas and will be under the street trees for the entire frontage.

### DISCUSSION:

SourceGas has presented a contract for relocation of their gas lines along Spring Street and School Avenue in the estimated amount of \$39,804.79. As noted in the contract, the City is responsible for the full cost of the work, so the actual amount paid may be more or less than the estimate. Staff requests approval of a 20% contingency to cover any costs that may be in excess of the estimate.

### BUDGET/STAFF IMPACT:

Funding for this work is coming from parking revenue bond proceeds and parking funds budgeted for the project.

**Attachments:**

Proposed SourceGas Contract  
Purchase Order Request



OFFICE OF THE  
CITY ATTORNEY


## DEPARTMENTAL CORRESPONDENCE



A. 13  
Inc. 0  
Page 2  
Kit Williams  
City Attorney  
Blake Pennington  
Assistant City Attorney  
Patti Mulford  
Paralegal

TO: Mayor Jordan  
City Council

CC: Kit Williams, City Attorney

FROM: Blake Pennington, Assistant City Attorney 

DATE: June 30, 2014

RE: Utility Work Agreement with SourceGas for Relocation of Gas Lines on Spring Street Parking Deck Site

Some portions of the proposed utility work agreement with SourceGas are contrary to City Policy IC-02 which details language that should and should not be included in City contracts. If SourceGas is unwilling to modify the contract, as I suspect they probably are, it is a policy decision by the administration and City Council whether to approve the agreement.

In Section 1, the agreement requires the City to release SourceGas from any liability for damage to city streets or lands arising out of performance of the work authorized by the agreement. IC-2.8(1), regarding unacceptable contract language and provisions notes that the City should not agree to hold harmless clauses typically because that could pierce the city's sovereign immunity. However, in this case, because it is City owned property, the City would be taking on full responsibility of fixing any damage SourceGas causes to public property.

In Section 4, the agreement provides for interest at the rate of 10 percent per annum for any invoices not paid within thirty days of receipt. IC-2.8(3) states that the City does not agree to any interest or penalty for untimely payments.

Finally, Chris Brown noted that SourceGas refused to sign the proposed agreement prior to approval by the Council and Mayor, which is contrary to IC-2.3. However, all of these are policy decisions to be made by the Council and Mayor and can be approved even with the language noted above that violates the policy, particularly since time is of the essence with this project.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO APPROVE A UTILITY WORK AGREEMENT WITH SOURCEGAS ARKANSAS, INC. IN THE AMOUNT OF \$39,804.79 FOR THE RELOCATION OF GAS MAINS AND FACILITIES NECESSARY FOR THE SPRING STREET PARKING DECK PROJECT, AND TO APPROVE A PROJECT CONTINGENCY OF \$8,000.00**

**WHEREAS**, the Spring Street Parking Deck Project will require certain gas mains and facilities belonging to SourceGas Arkansas, Inc. (“SourceGas”) to be relocated; 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 utility work agreement with SourceGas Arkansas, Inc., a copy of which is attached as Exhibit “A”, in the amount of \$39,805.00 for the relocation of gas mains and facilities necessary for the Spring Street Parking Deck Project, and further approves a project contingency of \$8,000.00.

**PASSED and APPROVED** this 15<sup>th</sup> day of July, 2014.

**APPROVED:**

**ATTEST:**

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer



**UTILITY WORK AGREEMENT  
(MUNICIPALITY)**

**Municipality:** City of Fayetteville, AR  
**Municipality's Address:** 113 W. Mountain St., Fayetteville, AR. 72701  
**Job Location:** 229 N. School Ave., Fayetteville, AR 72701

This Utility Work Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_, \_\_\_\_, by and between 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

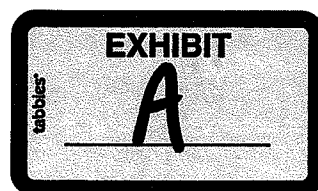
**WHEREAS**, in connection with Municipality's proposed improvements, Municipality wishes SourceGas to do the following:

Relocate 500' of existing 3" Polyethylene (P.E.) plastic pipe due to the City of Fayetteville's construction of the "Entertainment District Parking Deck" on the southeast portion of PARCEL ID 765-01733-000 of the City of Fayetteville, Board of Trustees, U of A (Walton Arts Center) property. The project will start at GPS -94.164269, 36.065626 on the west side of School Ave. and travel southward to the intersection with Spring St. at GPS -94.164297, 36.064802. From this point it will travel westward along the north side of Spring St., ending at GPS -94.164864, 36.064804 and will tie in to existing 6-inch P.E. gas line.

(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. Prior to SourceGas beginning the Work, Municipality will, at no cost to SourceGas, furnish SourceGas with all necessary easements, rights of way and permits. Those 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.

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 100% of the actual cost of the Work. The estimated cost of the Work is **\$39,804.79**. After it has completed the Work, SourceGas will bill Municipality for 100% 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.

CITY OF FAYETTEVILLE

By: \_\_\_\_\_  
Douglas Whitefoot

By: \_\_\_\_\_

Its: Sr. Vice President Operations

Its: \_\_\_\_\_

# City Of Fayetteville - Purchase Order (PO) Request

(Not a Purchase Order)

*All purchases under \$2500 shall be used on a P-Card unless medical or 1099 service related. (Call x256 with questions)*

*All PO Request shall be scanned to the Purchasing e-mail: Purchasing@ci.fayetteville.ar.us*

Requisition No.:	Date: <b>6/26/2014</b>	A. 13
P.O Number:	Expected Delivery Date:	Sourcegas Arkansas, Inc. Page 10 of 10

Vendor #: <b>840</b>	Vendor Name: <b>SourceGas</b>
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Mail Yes: <input checked="" type="checkbox"/> XX No: _____	Quotes Attached Yes: _____ No: <u>XX</u>
Taxable Yes: _____ No: <u>XX</u>	

Address: <b>PO Box 13288</b>	Fob Point:
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City: <b>Fayetteville</b>	State: <b>AR</b>	Zip Code: <b>72703</b>	Ship to code:
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Division Head Approval:
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Requester: <b>Chris Brown</b>	Requester's Employee #: <b>2695</b>	Extension: <b>575-8207</b>
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Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Numbers	Project/Subproject #	Inventory #	Fixed Asset #
1	Building Costs	1		39,805.00	\$39,805.00	4560.9560.5804.00	11028.1201		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

Special Instructions:  
\_\_\_\_\_

Subtotal:	<b>\$39,805.00</b>
Tax:	_____
Total:	<b>\$39,805.00</b>

Approvals:

Mayor: _____	Department Director: _____	Purchasing Manager: _____
Finance & Internal Services Director: _____	Budget Manager: _____	IT Manager: _____
Dispatch Manager: _____	Utilities Manager: _____	Other: _____



Sourcegas - New resolution handed out at agenda session.



DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE CITY ATTORNEY

Kit Williams City Attorney

Blake Pennington Assistant City Attorney

Patti Mulford Paralegal

TO: Mayor Jordan City Council

CC: Don Marr, Chief of Staff Paul Becker, Finance Director Jeremy Pate, Development Services Director Chris Brown, City Engineer

FROM: Kit Williams, City Attorney [Signature]

DATE: July 8, 2014

RE: Replaced Resolution to move gas mains for Spring Street Parking Deck

Further negotiations need to be conducted with SoureGas, Inc. over the proper amount of compensation it deserves for the relocation of its gas lines. The City believes that the \$39,805.00 sought by Source Gas is too high because a substantial portion of its mains are in the right of way and so should be moved at the company's expense rather than the City's expense.

We have amended the Resolution to grant Mayor Jordan and his staff sufficient authority to continue the negotiations with SourceGas by placing a "not to exceed" amount rather than just agreeing to this amount.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION TO GRANT MAYOR JORDAN THE AUTHORITY TO NEGOTIATE AND TO APPROVE A UTILITY WORK AGREEMENT WITH SOURCEGAS ARKANSAS, INC. IN THE AMOUNT NOT TO EXCEED \$39,804.79 FOR THE RELOCATION OF GAS MAINS AND FACILITIES NECESSARY FOR THE SPRING STREET PARKING DECK PROJECT AND TO APPROVE A PROJECT CONTINGENCY OF \$8,000.00

**WHEREAS**, the Spring Street Parking Deck Project will require certain gas mains and facilities belonging to SourceGas Arkansas, Inc. (“SourceGas”) to be relocated; 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 the granting of authority to Mayor Jordan to negotiate and sign a final utility work agreement with SourceGas Arkansas, Inc., in an amount not to exceed \$39,805.00 for the relocation of gas mains and facilities necessary for the Spring Street Parking Deck Project, and further approves a project contingency of \$8,000.00.

**PASSED and APPROVED** this 15<sup>th</sup> day of July, 2014.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**