

**City of Fayetteville Staff Review Form**

**2021-1030**

**Legistar File ID**

**1/4/2022**

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

Matt Casey

12/16/2021

ENGINEERING (621)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval of an agreement with Black Hills Energy Arkansas, Inc. in the amount of \$93,765.40 for utility relocations associated with the Midtown Corridor Project along Porter Road and Deane Street at the Police Headquarters site and approval of a budget adjustment.

**Budget Impact:**

4602.860.7218-5809.00	4602 - Street Projects 2019 Bonds																														
Account Number	Fund																														
46020.7218.1000	Streets Projects - Midtown Corridor																														
Project Number	Project Title																														
<table border="0" style="width: 100%;"> <tr> <td style="width: 30%;"><b>Budgeted Item?</b></td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Current Budget</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">632,172.00</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Funds Obligated</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">592,128.46</td> </tr> <tr> <td></td> <td></td> <td style="border-bottom: 1px solid black;">Current Balance</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>40,043.54</b></td> </tr> </table>	<b>Budgeted Item?</b>	Yes	Current Budget	\$	632,172.00			Funds Obligated	\$	592,128.46			Current Balance	<b>\$</b>	<b>40,043.54</b>	<table border="0" style="width: 100%;"> <tr> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: center;">Yes</td> <td style="width: 30%; border-bottom: 1px solid black;">Item Cost</td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">93,765.40</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Budget Adjustment Attached?</td> <td style="text-align: center;">Yes</td> <td style="border-bottom: 1px solid black;">Budget Adjustment</td> <td style="text-align: right;">\$</td> <td style="text-align: right;">93,766.00</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td></td> <td style="border-bottom: 1px solid black;">Remaining Budget</td> <td style="text-align: right;"><b>\$</b></td> <td style="text-align: right;"><b>40,044.14</b></td> </tr> </table>	Item Cost	Yes	Item Cost	\$	93,765.40	Budget Adjustment Attached?	Yes	Budget Adjustment	\$	93,766.00	Remaining Budget		Remaining Budget	<b>\$</b>	<b>40,044.14</b>
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V20210527

**Purchase Order Number:** \_\_\_\_\_

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

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

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

**Comments:**



**MEETING OF JANUARY 4, 2022**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff  
Chris Brown, Public Works Director

**FROM:** Matt Casey, Engineering Design Manager

**DATE:** December 14, 2021

**SUBJECT:** Black Hills Energy Agreement for Utility Relocations for the Midtown Corridor project at Porter and Deane

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**RECOMMENDATION:**

Staff recommends approval of an agreement with Black Hills Energy Arkansas, Inc. in the amount of \$93,765.40 for utility relocations associated with the Midtown Corridor Project along Porter Road and Deane Street at the Police Headquarters site.

**BACKGROUND:**

The Midtown Corridor is a project in the 2019 Bond Program and includes several different components. Along Porter Road and Deane Street from the interstate to Garland Avenue the project includes street improvements with a new roundabout at the intersection of Porter Road and Deane Street, drainage improvements and separated pedestrian and bicycle facilities. The street, drainage pedestrian, and bicycle improvements will continue along Sycamore Street from Garland Avenue to the Razorback Greenway. From the Greenway to Woodland Jr. High, the project will include multi-use trail construction along the Poplar Street alignment. Finally, a connection to the south from Poplar Street to Gregory Park will be designed as part of this contract. The City Council approved a design contract with Olsson Associates, Inc. in November of 2019.

**DISCUSSION:**

The portion of the project along the frontage of the Police Headquarters and new Fire Station (Porter and Deane) will be constructed as the first phase of this project. During the development of the construction plans, Black Hills Energy identified portions of their natural gas system outside of the city right of way that will need to be relocated in order to construct this project. Black Hills Energy has provided a proposal of \$93,765.40 for this relocation.

**BUDGET/STAFF IMPACT:**

These utility relocations are funded by the 2019 Transportation Bond Program. This portion of the Midtown Corridor Project is currently estimated at \$4,300,000.

**Attachments:**

Black Hills Agreement  
Black Hills Cost Estimate



**UTILITY WORK AGREEMENT  
(DEVELOPER)**

**Developer:** City of Fayetteville  
**Developer's Address:** 113 West Mountain St. Fayetteville, AR 72701  
**Job Location:** Intersection of Porter Rd and Deane St , Fayetteville, AR

This Utility Work Agreement ("Agreement") is made and entered into this **8<sup>th</sup>** day of **December 2021**, by and between **City of Fayetteville** (hereinafter referred to as "Developer"), and **Black Hills Energy Arkansas, Inc. d/b/a/ Black Hills Energy** (hereinafter referred to as "Black Hills").

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

**WHEREAS**, in connection with Developer's proposed improvements, Developer wishes Black Hills to do the following:

**The project to begin at GPS 36.086361, -94.190483. Where Black Hills will tie onto the existing 4" steel pipeline. From that tie-in point, Black Hills will extend 4" steel pipe West for approx. 1500', staying within the designated utility easement. The newly installed 4" steel will tie back into existing 4" steel at GPS 36.088498, -94.192726. The existing 4" steel pipeline will be abandoned in place.**

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

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

**WHEREAS**, Developer 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, DEVELOPER AND BLACK HILLS AGREE AS FOLLOWS:**

1. Where applicable hereunder by reason of new utility occupancy or crossing of Developer's property, Developer hereby grants to Black Hills an easement or license to install and operate utility facilities on or across Developer's property as shown on the approved plans or sketch maps attached hereto and made a part hereof. Prior to Black Hills beginning the Work, Developer will, at no cost to Black Hills, furnish Black Hills with all necessary easements, rights of way and permits. Those easements, rights of way and permits shall release Black Hills 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, Black Hills hereby grants to Developer the right to use for Developer's purposes the lands within the limits of the improvement project limits on or across which Black Hills holds a valid property interest antedating Developer's rights which were subsequently acquired in the same lands, and which property rights Black Hills shall retain so long as Black Hills, its successors or assigns continues such use and occupancy and does not abandon, and thereby release, such property interest to Developer through removal of facilities in performing the Work or by subsequent removal of facilities for Black Hills' convenience; and Developer hereby agrees that Black Hills, 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 Black Hills 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 Developer or Black Hills 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 Developer or of Black Hills, 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. The estimated cost of the Work is \$93,765.40. After it has completed the Work, Black Hills will bill Developer for the actual cost of the Work. Developer shall pay such invoice within 30 days of Developer's receipt of the invoice. .

5. Black Hills will perform the Work, as described on the first page of this Agreement. Black Hills 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 Black Hills' control, and further conditioned upon the receipt of all required approvals and consents in form and substance acceptable to Black Hills. Black Hills shall not be obligated to commence the Work unless and until, at no cost to Black Hills, all necessary easements and rights of way have been executed, acknowledged and delivered to Black Hills in a form acceptable to Black Hills.

6. Title to and ownership of facilities which are the subject of the Work shall forever be and remain exclusively and unconditionally vested in Black Hills. Developer understands, acknowledges and agrees that Developer 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. Developer and Black Hills 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 Black Hills. 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 either party is required to initiate litigation to enforce the terms and conditions of this Agreement, then the initiating party shall have the right to recover its costs and expenses of such litigation, including reasonable attorney fees, from the other party.



11. Developer 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.

BLACK HILLS ENERGY ARKANSAS INC.

CITY OF FAYETTEVILLE

By: *Z. Hodges*

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

Its: *SR Manager Gas Operations*

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

Federal Tax I.D. No.: \_\_\_\_\_