

REGULAR MEETING
BOARD OF MAYOR AND ALDERMEN
MAY 14, 2013

REFERENCE VIDEO DATED MAY 14, 2013

The Board of Mayor and Aldermen of the City of Fayetteville, Lincoln County, Tennessee, met in open, public session at the regular meeting place of said Board in the Municipal Building of said City at 5:00 p.m. on May 14, 2013. Mayor John Ed Underwood, Jr. was present and presiding. The following named Aldermen were present:

Danny Bryant, Marty Pepper, Gwen Shelton, Dorothy Small, Michael Whisenant and Tom Young

Also, present was Johnny D. Hill, Jr., City Attorney and Interim City Administrators Tonya Steelman and Ryan Tyhuis.

The prayer was lead by Alderman Bryant and the pledge was lead by Alderman Small.

Approval of Minutes:

1. Motion was made by Michael Whisenant, seconded by Marty Pepper, to approve the minutes of the April 2013 Meeting. Upon roll call, the following voted:

Aye

Tom Young, Dorothy Small, Michael Whisenant, Gwen Shelton and Marty Pepper

Nay

None

Abstain

Danny Bryant

Mayor Underwood declared the Minutes approved.

2. Motion was made by Gwen Shelton, seconded by Danny Bryant, to approve the minutes of the Special Called Meeting on April 29, 2013. Upon roll call, the following voted:

Aye

Tom Young, Dorothy Small, Gwen Shelton, Marty Pepper and Tom Young

Nay

None

Abstain

Michael Whisenant

Mayor Underwood declared the Special Called Minutes approved.

Reports:

Fire Report:

Fire Chief Danny Travis reported that the Fire Department had 61 calls for service with 48 medical calls and 4 accidents with injuries.

Police Report:

Police Chief Doug Carver reported that there were 167 incidents with 54 arrests, 55 crashes and 79 citations for a total of 1,495 events.

Recreation Report:

Ricky Honey, Recreation Director, reported that the first "Music in the Park" event for the 2013 summer will be May 30, 2013, at Stone Bridge Park. Mr. Honey stated the Firecracker Chase will be held June 29, 2013.

Public Works:

Eddie Plunkett, Public Works Director, was not present; therefore no report was given.

Planning and Zoning Report:

Ryan Tyhuis, City Planner, reported that for the month of April there were eleven (11) building permits issued for approximately Nine Million, Two Hundred Sixty Thousand, Sixty-Two Dollars (\$9,260,062.00) in work to be done, with the fees being Eighteen Thousand, Six Hundred Seventy-Five Dollars and Seven Cents (\$18,675.07).

Garbage Carts:

Motion was made by Dorothy Small, seconded by Tom Young, to approve One Hundred Sixty-Five Thousand Dollars (\$165,000.00) from the Capital Improvement Fund to purchase new garbage carts. Upon roll call, the following voted:

Aye

Dorothy Small, Michael Whisenant, Marty Pepper, Danny Bryant and Tom Young

Nay

Gwen Shelton

Mayor Underwood declared the motion approved.

Imagination Library Run:

Motion was made by Gwen Shelton, seconded by Marty Pepper, to approve the Imagination Library Run for September 21, 2013, to start at 7:00 a.m. Upon roll call, the following voted:

Aye

Michael Whisenant, Gwen Shelton, Marty Pepper, Danny Bryant, Tom Young and Dorothy Small

Nay

None

Mayor Underwood declared the motion approved.

Wallace Drive Street Repairs:

Motion was made by Dorothy Small, seconded by Michael Whisenant, to accept a two (2) year performance bond from Hawkins and Price, LLC to guarantee the repairs made to Wallace Drive in lieu of requiring Hawkins and Price, LLC to redo the street repairs to conform with the standards set forth in the original contract. Upon roll call, the following voted:

Aye

Gwen Shelton, Marty Pepper, Danny Bryant, Tom Young, Dorothy Small and Michael Whisenant

Nay

None

Mayor Underwood declared the motion approved.

Resolution R-13-07:

Resolution R-13-07, a resolution entitled, "A Resolution To Apply For Funding For Infrastructure Improvements At Franke FoodService Systems, Inc., Through The Fast Track Infrastructure Development Program", was considered. Said Resolution is as follows:

**CITY OF FAYETTEVILLE
RESOLUTION R-13-07**

**A RESOLUTION TO APPLY FOR FUNDING FOR INFRASTRUCTURE
IMPROVEMENTS FOR FRANKE FOODSERVICE SYSTEMS, INC., THROUGH
THE FAST TRACK INFRASTRUCTURE DEVELOPMENT PROGRAM**

WHEREAS, the Industrial Development Board of Fayetteville-Lincoln County, Tennessee is eligible for funds under the State of Tennessee Fast Track Infrastructure Development Program; and

WHEREAS, there exists a need for infrastructure improvements and site preparation to accommodate Franke FoodService Systems, Inc. ("Franke") expansion; and

WHEREAS, the Industrial Development Board of Fayetteville-Lincoln County wishes to make an application of \$709,050.00 for said project; and

WHEREAS, the City of Fayetteville, Tennessee has agreed to split the local matching contribution of \$92,176.50 on behalf of the Franke's Expansion Project.

NOW, THEREFORE, BE IT RESOLVED, THAT

1. This proposed Franke Expansion will result in over \$11 Million investment.
2. The local matching contribution will be split between the City of Fayetteville and Lincoln County in the amount of \$92,176.50.
3. The City of Fayetteville, Tennessee supports the Industrial Development Board of Fayetteville-Lincoln County's application for a grant of \$709,050.00 from the Tennessee Department of Economic and Community Development.

Passed and so ordered this 14th day of May, 2013.


John Ed Underwood, Jr., Mayor

ATTEST:


Tonya Steelman, Assistant City Clerk



The Fayetteville~Lincoln County Industrial Development Board

125 Main Avenue North (931) 433-0607 phone (931) 433-8577 fax idb@fpunet.com

April 30, 2013

Mayor John Ed Underwood and Board of Aldermen
City of Fayetteville

RE: Franke FoodService Systems
State's FastTrack Infrastructure Development Program Grant Matching Funds Request

Ladies and Gentlemen,

Franke FoodService Systems is an asset to our community and they continue to invest in our community. As most of you are aware, Franke FoodService Systems is expanding their current facility by 78,000 sq. ft., making an \$11.3 Million Capital Investment in our community and adding approximately 66 new jobs to their current workforce.

Franke's project is eligible for the State's FastTrack Infrastructure Development Grant Program. This grant covers 87% of the eligible cost not to exceed \$750,000.00 while the other 13% is required in local matching funds.

Please find attached the State's FastTrack Infrastructure Development Program Grant Application, an Economic Impact Report and a Resolution requesting the city's support of this project.

On behalf of Franke, we appreciate your consideration of our request.

Sincerely,

Elaine Middleton
Executive Director
Fayetteville-Lincoln County
Industrial Development Board

cc: Industrial Development Board



FastTrack Infrastructure Development Program Application

Community Applicant Information

Community: Fayetteville-Lincoln County

Company: Franke

Community Profile

County: Lincoln

City: Fayetteville

Development District: SCTDD

Population: 34,471

Unemployment Rate 5.6 %

Grant Rate: 87 %

JECDB Compliant ☒ Yes ☐ No

Economic Distressed County ☐ Yes ☒ No

Three Star Status 2 Star

Does the community have a Title VI implementation plan in place? ☒ Yes ☐ No

Community FEIN# : 62-1451254

Project Contact Information

Community Chief Executive Officer: Will Thomas

Title: Chairman

Mailing Address: 16 Franke Blvd., Fayetteville, TN 37334

Phone: 931-433-0607

Fax Number:

Signature:

E-mail address: idb@fpunet.com

Application Preparer: Nathan Ward

Title: Director of Economic Development

Mailing Address: 101 Sam Watkins Blvd., MT. Pleasant, TN 38474

Phone: 931-698-1950

Fax Number: 931-379-2640

Signature:

E-mail address: NWard@sctdd.org

Local Contact: Elaine Middleton

Title: Executive Director

Mailing Address 16 Franke Blvd., Fayetteville, TN 37334

Phone: 931-433-0607

Fax Number:

E-mail address: emiddleton@fpunet.com

Project Engineer: Larrell Hughes

Title: Project

Mailing Address 415-A Church Street, Suite 101, Huntsville, AL 35801

Phone: 256-534-4220

Fax Number:

E-mail address: larrell@hughesassoc.com

Administrator: Nathan Ward

Title Director of Economic Development

Mailing Address 101 Sam Watkins Blvd., MT. Pleasant, TN 38474

Phone: 931-698-1950

Fax Number: 931-379-2640

E-mail address: nward@sctdd.org

Company official responsible for infrastructure: John Smith

Title: Vice President of Operations

Mailing Address 1 Franke Blvd., Fayetteville, TN 37334

Phone: 931-438-3652

Fax Number:

E-mail address: john.smith@franke.com



Project Information

Type Of Project: Check one or more of the major categories plus the appropriate subcategory(ies)

- | | | | | | |
|--|--|--|--|------------------------------|---|
| <input type="checkbox"/> Transportation | <input checked="" type="checkbox"/> Site Improvement | <input checked="" type="checkbox"/> Water | <input checked="" type="checkbox"/> Sewer | <input type="checkbox"/> Gas | <input type="checkbox"/> Telecommunications |
| <input type="checkbox"/> Rail | | <input type="checkbox"/> Source | <input type="checkbox"/> System | | |
| <input type="checkbox"/> Road Improvements | | <input type="checkbox"/> Treatment Plant | <input checked="" type="checkbox"/> Line Extension | | |
| <input type="checkbox"/> Water | | <input type="checkbox"/> Storage | | | |
| <input type="checkbox"/> Air | | <input type="checkbox"/> Rehabilitation | | | |
| | | <input checked="" type="checkbox"/> Line Extension | | | |

☐ Other (specify)

PROGRAM NARRATIVE

In the box below, please state the infrastructure or site improvement requested along with a brief description of the project. Be specific as to how each proposed improvement contributes to achieving the company location or expansion, and detail unusual features of the project. Include the number of jobs to be created over a 36 month period, the total number of jobs anticipated and a time frame for hiring. Also include the company investment, broken down into real property and equipment. Additional pages may be attached if needed.

Franke FoodService Systems, Inc. is planning an expansion of their existing facility located at 1 Franke Boulevard in Fayetteville, Tennessee. This expansion will include a 78,000 sf warehouse to be built to the north end of the existing facility. This new addition will be used as a warehouse with staging and shipping moving to the new section. This addition will free up approximately 15,000 sf in the existing facility for expansion of production. The investment for this expansion including equipment and building will be over a \$11 million investment. This expansion will also result in 66 new jobs over a 5 year period.



PROJECT BUDGET*

	Total Cost	FIDP	Local	Other
Construction	577000	484823.50	92176.50	0
Construction Inspection	0	0	0	0
Engineering Design	32000	32000	0	0
Other Engineering Services (Attach Detail)	31350	31350	0	0
Legal Services	5000	5000	0	0
Acquisition	0	0	0	0
Project Contingency	57700	57700	0	0
Administration (Attach Detail)	6000	6000	0	0
Other	0	0	0	0
Total	709050	616873.5	92176.5	0

*Construction estimates must reflect State Prevailing Wages- (<http://www.tn.gov/labor-wfd/prevail.html>)

Estimated duration of construction:

FORCE ACCOUNT

Will any of the project be done using force account*? ☐ Yes ☒ No

IF YES, please provide the information listed below

*This includes service lines and/or hookups.

NOTE: In order to do force account work, the grant recipient must own the equipment, use city forces, and obtain State approval by submitting the following information:

1. Names and engineering qualifications of personnel performing the work and their capabilities for design, supervision, planning, inspection, testing, etc. as applicable.
2. Details of experience with projects of like or similar nature.
3. Information on workload as it may affect capacity to do the work within time frame or work schedule.
4. Justification for doing the work by force account rather than by contract.
5. A complete breakdown showing: (a) the number of work hours and cost per hour for each category of labor, and (b) a list of non salary costs such as materials, supplies, equipment, etc.
6. Certification from the above mentioned personnel's supervisor confirming that they are full time City/County employees and have not been hired just for this project.
7. Certification confirming the equipment to be used is owned by the City/County and that it is not rental equipment.



Required Attachments

I. PRELIMINARY ENGINEERING REPORT

Water and sewer projects* -- The preliminary engineering report must follow the guidelines established in the design criteria for water or sewer projects as provided by the Department of Environment and Conservation (TDEC).

Water projects to improve fire protection* -- The preliminary engineering report should include a letter from the company fire insurance carrier outlining necessary flow and pressure.

All other projects -- The preliminary engineering report should conform to commonly accepted engineering standards, including the breakdown of engineering cost for each portion of the project (i.e., water, sewer, site improvement, telecommunication, soft costs, etc.).

*TDEC must approve the preliminary engineering report for water and/or sewer, before ECD will issue a contract.

Are any of the existing facilities related to the proposed project presently under citation from the Tennessee Department of Environment and Conservation or the U.S. Environmental Protection Agency due to permit violations? ☐ Yes ☒ No
If yes, identify facility and violation and include a copy of the citation.

II. COMPANY INFORMATION

Letter of intent from company -- The letter of intent should detail reasons for the proposed expansion/location, the company's commitment to locate/expand and why they have chosen a particular community. The letter of intent should contain projected timing for the project (construction through start-up), job creation (number and types of jobs to be created plus average wage) and capital investment made within 36 months of project completion.

Information regarding the history of company, a product description and a brief market synopsis (product lines, target markets, competitors, etc) should also be included.

The company must also state that they will abide by Federal equal opportunity requirements, promotes non-discrimination in it's hiring practices and provides benefits to minorities and complies with Title VI.

III. FINANCIAL INFORMATION

Commitment letters for other funding -- Financing needed for the expansion or location must be in place in order for FastTrack funds to be committed. Sources of financing must be identified and confirmation provided. Please attach a copy of the approval and budget for these sources of funding.

Financial Statements*

- Two previous years balance sheet statements
- Two previous years profit and loss statements

*Depending upon the project, additional information may be requested.

IV. OTHER DOCUMENTS

- Please provide the resolution of the municipal or county legislative body for the submission of the FIDP application.
- The applicant must provide a Certification of Compliance with Section 15(b) of Public Chapter 1101 which requires the establishment of a county joint economic and community development board and that all required JECDB meetings have taken place
- Please include documentation of the community/county approved Growth Plan.

Applications are processed upon receipt of a completed application containing required attachments. Additional information may be requested.



Lincoln County, Tennessee Economic/Fiscal Impacts

Franke FoodService Group, LLC

Capital Investment	\$11,357,000
<i>land/building: \$5,957,000</i>	
Direct Employment (Full Time Employees)	66
County Employment Multiplier *	1.3
Indirect Employment **	17
Total Employment	83
Direct Payroll (excludes Benefits)	\$2,244,528
<i>average wage: \$34,008</i>	
Indirect Payroll (excludes Benefits)	\$594,786
Total Payroll (excludes Benefits)	\$2,839,314
Retail Sales	\$647,972
Annual Sales Tax Revenue (local)	\$16,199
<i>state portion: \$45,358</i>	
Annual Residential Property Tax Revenue (local)	\$23,291
Commercial/Industrial Property Tax Revenue (local) ***	\$13,249
<i>facility located within city limits</i>	
Total Annual City/County Tax Revenue ****	\$52,740

Sources

* Economic Modeling Specialists Inc.

** Includes induced impacts

*** Assumes no abatements; tax may decline as assets depreciate; excludes tax on spin-off businesses

**** Annual revenue estimate



Economic Development

Motion was made by Gwen Shelton, seconded by Dorothy Small, to adopt Resolution R-13-07. Upon roll call, the following voted:

Aye

Marty Pepper, Danny Bryant, Tom Young, Dorothy Small, Michael Whisenant and Gwen Shelton

Nay

None

Mayor Underwood declared the Resolution adopted.

Funding For Fast Track Project:

Motion was made by Gwen Shelton, seconded by Marty Pepper, to fund the Fast Track Project for the Franke FoodService Systems, Inc, expansion project for Forty-Six Thousand Ninety Dollars (\$46,090.00) to be paid from the Industrial Park Fund. Upon roll call, the following voted:

Aye

Danny Bryant, Tom Young, Dorothy Small, Michael Whisenant, Gwen Shelton and Marty Pepper

Nay

None

Mayor Underwood declared the motion approved.

Resolution R-13-08:

Resolution R-13-08, a resolution entitled, "Resolution Authorizing Payment In Lieu Of Tax With Franke FoodService Systems, Inc.", was considered. Said Resolution is as follows:

RESOLUTION R-13-08

**RESOLUTION AUTHORIZING PAYMENT IN LIEU OF TAX
WITH FRANKE FOODSERVICE SYSTEMS, INC.**

WHEREAS, pursuant to Tennessee Code Annotated Sec. 7-53-305, The Industrial Development Board of Lincoln County and City of Fayetteville ("IDB") is performing a public function on behalf of the City of Fayetteville with respect to which the IDB is organized and is a public instrumentality of the City of Fayetteville; and accordingly the IDB and all properties at any time owned by it, and the income and revenues from the properties, are exempt from taxation in the State of Tennessee;

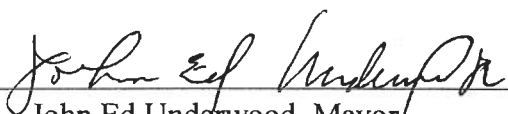
WHEREAS, such payments in lieu of taxes are in furtherance of the corporation's public purposes as defined this section; and

WHEREAS, the IDB is required under this section to submit any such payment in lieu of tax agreement to the City of Fayetteville Legislative Body for its approval; and

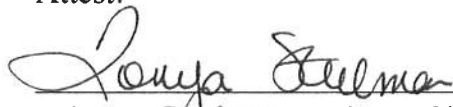
WHEREAS, Franke FoodService Systems, Inc. ("Franke") has agreed to considerable land improvements and capital expenditures in the City of Fayetteville at its facility located at 1 Franke Blvd., provided that it can make payments in lieu of ad valorem taxes.

NOW, THEREFORE, BE IT RESOLVED, THAT by the City of Fayetteville Legislative Body that payments in lieu of taxes substantially in accordance with the outline provisions as set out in Exhibit A hereto be approved subject to the approval and execution by the IDB and Franke of a formal Payments in Lieu of Taxes Agreement and such other necessary agreements all with terms acceptable to Lincoln County and the City of Fayetteville; and any required approval of the same by the Tennessee Comptroller of the Treasury or other state agency.

This the 14th day of May, 2013.


John Ed Underwood, Mayor

Attest:


Tonya Steelman, Assistant City Clerk

End of Year	Pilot Savings%	Real Property Tax	Real Property Tax Savings	Real Property Tax Paid	Personal Property Tax	Personal Property Tax Savings	Personal Property Tax	Personal Property Tax Paid	Total Tax	Total Tax Paid	Total Tax Savings for Company
1	100.00%	\$ 78,902	\$ 78,902	\$ -	\$ 47,206.0	\$ 47,206.0	\$ -	\$ -	\$ 126,108	\$ -	\$ 126,108
2	80.00%	\$ 78,902	\$ 63,122	\$ 15,780	\$ 40,232.0	\$ 32,186.0	\$ 8,046	\$ 119,134	\$ 23,826	\$ 95,308	
3	60.00%	\$ 78,902	\$ 47,341	\$ 31,561	\$ 33,795.0	\$ 20,277.0	\$ 13,518	\$ 112,697	\$ 45,079	\$ 67,618	
4	40.00%	\$ 78,902	\$ 31,561	\$ 47,341	\$ 26,822.0	\$ 16,093	\$ 10,729	\$ 105,724	\$ 63,434	\$ 42,290	
5	20.00%	\$ 78,902	\$ 15,781	\$ 63,121	\$ 20,384.0	\$ 4,077.0	\$ 16,307	\$ 99,286	\$ 79,428	\$ 19,858	
6	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 13,411.0	\$ -	\$ 13,411	\$ 92,313	\$ 92,313	\$ -	
7	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
8	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
9	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
10	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
11	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
12	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
13	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
14	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
15	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
16	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
17	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
18	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
19	0.00%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
20	0%	\$ 78,902	\$ -	\$ 78,902	\$ 10,729.0	\$ -	\$ 10,729	\$ 89,631	\$ 89,631	\$ -	
Total		\$ 1,578,040	\$ 236,707	\$ 1,341,333	\$ 332,056	\$ 114,475	\$ -	\$ 217,581	\$ 1,910,096	\$ 1,558,914	\$ 351,182

Assumption 2) All real property and personal property will be sold to the Industrial Board and leased back to company for a token amount. At the conclusion of the pilot, the Industrial Board will transfer the property back to the project.

Motion was made by Marty Pepper, seconded by Dorothy Small, to adopt Resolution R-13-08. Upon roll call, the following voted:

Aye

Tom Young, Dorothy Small, Michael Whisenant, Gwen Shelton, Marty Pepper and Danny Bryant

Nay

None

Mayor Underwood declared the Resolution adopted.

Phone Bill Audit:

Motion was made by Michael Whisenant, seconded by Marty Pepper, to approve having an audit of telephone service charges conducted. Upon roll call, the following voted:

Aye

Dorothy Small, Michael Whisenant, Gwen Shelton, Marty Pepper, Danny Bryant and Tom Young

Nay

None

Mayor Underwood declared the motion approved.

FEMA Fire Grant Matching Funds:

Motion was made by Gwen Shelton, seconded by Marty Pepper, to approve the matching funds of five percent (5%) in the amount of Two Thousand Fifty-Five Dollars (\$2, 055.00) for a Fire Grant Matching Fund through FEMA. Upon roll call, the following voted:

Aye

Michael Whisenant, Gwen Shelton, Marty Pepper, Danny Bryant, Tom Young and Dorothy Small

Nay

None

Mayor Underwood declared the motion approved.

Resolution R-13-09:

Resolution R-13-09, a resolution entitled, "Consultant Selection Policy For Projects Funded In Whole Or In Part With Funds Provided By The Federal Highway Administration Or The Tennessee Department Of Transportation.", was considered. Said Resolution is as follows:

RESOLUTION NO. R-13-09

**A RESOLUTION ADOPTING A CONSULTANT SELECTION POLICY FOR
PROJECTS FUNDED IN WHOLE OR IN PART WITH FUNDS PROVIDED BY THE
FEDERAL HIGHWAY ADMINISTRATION OR THE TENNESSEE DEPARTMENT OF
TRANSPORTATION**

WHEREAS, the City of Fayetteville, Tennessee desires to utilize Federal and/or Tennessee Department of Transportation Funding for transportation related projects through programs such as the Surface Transportation Program (STP); and,

WHEREAS, the City of Fayetteville desires to be a good steward of public funds and desires to comply with State and Federal processes and requirements for utilization of said funding; and,


NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of Fayetteville, Tennessee, that:

Section I. It shall be the policy of the City of Fayetteville, Tennessee to comply with the Consultant Selection Policy for Projects Funded in Whole or in Part with Funds provided by the Federal Highway Administration or the Tennessee Department of Transportation as adopted herein.

Section II. The Consultant Selection Policy for Projects Funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation is attached and labeled as Exhibit A and shall be incorporated herein.

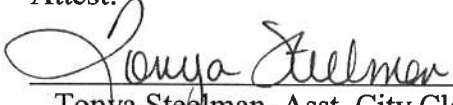
BE IT FURTHER RESOLVED that this resolution shall take effect from and after its passage, the public welfare requiring it.

Adopted and approved this 14th day of May, 2013.



Mayor, John Ed Underwood, Jr.

Attest:



Tonya Steelman, Asst. City Clerk



EXHIBIT A
CITY OF FAYETTEVILLE, TENNESSEE

Consultant Selection Policy for Projects Funded in Whole or in Part with Funds Provided by the Federal Highway Administration or the Tennessee Department of Transportation

AUTHORITY: 23 CFR 172.9. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

PURPOSE: To prescribe the policy of the CITY OF FAYETTEVILLE, TENNESSEE, HEREINAFTER REFERRED TO AS the AGENCY), applicable to the retention of consultant services for architectural, engineering, and technical services for projects funded in part or in whole with funds provided by the Federal Highway Administration.

APPLICATION:

- A. **Engineering and Design Related Services.** This policy is to include all engineering and design related services described in Title 40 U.S.C. Chapter 11, Title 23 U.S.C. Section 112 (b)(2), 23 C.F.R. Part 172 and 49 C.F.R. Section 18.36(t) for projects funded in whole or in part with funds from the Federal Highway Administration through the Tennessee Department of Transportation (TDOT) or state funds through the same entity.

Broadly defined, these services include program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping or architectural related services with respect to construction projects. They may include emergency contracts.

Examples of services included within the scope of this policy are comprehensive transportation planning, project planning, environmental studies, context sensitive solution/design services, cultural resources studies, geotechnical studies, historic studies, archeological studies, socio-economic and environmental justice analyses, inspection services, intelligent transportation system design and development, traffic control systems design and development, materials inspection and testing, value engineering, and utility analysis/design services.

- B. **Technical Services** Technical services such as inspection of structural steel fabrication, laboratory testing, inspection of welds on existing bridges, overhead sign inspection, underwater inspection, utility installation inspection, geotechnical sub-surface exploration/drilling and lab testing, etc., are also included in this policy.



DEFINITIONS:

- A. ***Project Specific Contract*** – A project specific contract provides for all the work associated with a specific project that is desired to be contracted with the consultant firm and requires a detailed scope of services. These contracts may provide for all work to be placed under contract at the same time depending on availability of funds. A project specific contract is the traditional type of consultant contract between the AGENCY and a consultant for the performance of a fixed scope of work related to a specific project or projects.
- B. ***Multiphase Contract*** - Multiphase contracts are similar to project specific contracts except that the work is divided into phases such as survey, environmental or design. The consultant contract is based on a general scope of work with a maximum contract ceiling. Individual phases are negotiated and the work authorized while future phases may wait until later in the contract period before completing negotiation and authorization. Multiphase contracts are helpful for complex projects where the scope of a future phase is not well defined. Multiphase contracts may be terminated at the end of a phase. A multiphase contract incorporates the work order concept for a specific project.
- C. ***Competitive Negotiation*** - Competitive negotiation is the preferred method of procurement for engineering related services. These contracts use qualifications-based selection procedures in the manner of a contract for architectural and engineering services under the "Brooks Act" provisions contained in Title 40 U.S.C. Chapter 11 (formerly 40 U.S.C. §541-544). The proposal solicitation process is by public advertisement and provides qualified in-state and out-of-state consultants a fair opportunity to be considered for award of the contract. Price is not used as a factor in the evaluation and selection phases.
- D. ***Noncompetitive Negotiation*** – Noncompetitive negotiation is used to procure engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procedures. Circumstances which may justify a noncompetitive negotiation include when the service is available only from a single source or there is an emergency which will not permit the time necessary to conduct competitive negotiations.
- E. ***Small Purchase Procedures*** - Small purchase procedures are relatively simple and informal procurement methods where an adequate number of qualified sources are reviewed and the total contract costs do not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11) (currently \$100,000.00). Competitive negotiation in the manner of a "Brooks Act" qualifications-based selection procedure is not required.



- F. **Technical Service Procurement Procedure** – A technical service procurement procedure is used for the procurement of services as described in this policy at “APPLICATION”, Item B, Technical Services. Price quotations are obtained from qualified firms for the specified work either by public advertisement or by requests. Awards are made to the responsible firm whose proposal is most advantageous to the AGENCY with price and other relevant factors considered.

POLICY:

I. CONSULTANT EVALUATION COMMITTEE

- A. **Establishment of a Consultant Evaluation Committee:** The Agency's legally designated selection authority shall designate the members of the Consultant Evaluation Committee (“CEC”), which shall at a minimum be composed of professional employees of the Agency capable of providing a review of the technical qualifications of the consultant to perform the job(s) in question. The legally designated selection authority must approve any change in membership of the CEC prior to advertisement and approve any substitutions. The CEC membership may vary depending on the type of service being procured.
- B. **Role:** The CEC shall have the responsibility of submitting to the legally designated selection authority a recommended list of qualified firms.
- C. **Record of Proceedings:** The CEC shall designate either a member or staff person to create and maintain a record of proceedings before the CEC which shall include information submitted to the CEC for consideration, summary minutes of meetings, findings and/or recommendations to the legally designated selection authority.

II. PREQUALIFICATION

- A. **Tennessee Department of Transportation’s Prequalified Consultant List:** Firms must be currently on TDOT’s list of prequalified consultants.
- B. **Expiration or termination.** Expiration or termination of a consultant’s prequalification status may be cause for AGENCY to terminate any contract with a consultant.



III. COMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

- A. **Confidentiality:** To the extent allowed by applicable State law, all documents relating to the evaluation and selection of consultants, and negotiations with selected consultants, shall remain confidential until selection is complete and a contract is awarded.
- B. **Consultant Advertisement:** The Agency shall advertise for proposals from prequalified firms by advertising through appropriate media and its internet website. Advertisement shall provide, at a minimum, the following:
1. General scope of the work.
 2. Evaluation criteria.
 3. Method of payment.
 4. Contact information.
 5. Deadline for submittals.
 6. A statement that all firms must be pre-qualified or have a completed prequalification form filed with the Tennessee Department of Transportation by the deadline.
 7. Disadvantaged Business Enterprise (DBE) encouragements.

The advertisement may include multiple phases of a project. For example, the CEI consultant may not be the same as the PE/Design/ROW consultant(s), but this consultant may be selected at the same time as the consultant(s) for the other phase(s). The advertisement shall separate the scope into phases and the consultant must indicate to which portion they are responding. If a consultant responds to the construction phase along with other phases, they may not be selected for the entire project. This will be clearly indicated in the advertisement.

- C. **Consultant Evaluation Criteria:** The evaluation criteria for proposals shall, at a minimum, include the following:
1. Ability and relevant expertise of the firm's personnel to be used in performing the service.
 2. Past experience in the required disciplines with TDOT and/or other clients.
 3. Qualification and availability of staff.
 4. Demonstrated ability to meet schedules without compromising sound engineering practice.
 5. Evaluations on prior federally-funded projects, if available.
 6. Size of project and limited or unlimited prequalification status.
 7. Amount of work under contract with the Agency.
 8. Whether the consultant can perform the work efficiently without compromising sound engineering practice.
 9. Other factors, including interviews and demonstrations, as approved by



the Agency.

D. *Sub-consultants for Engineering Services*

1. A consultant who has been asked to submit a proposal shall specifically identify any sub-consultant(s) required to complete the project team. All sub-consultants identified on the submittal shall be pre-qualified by TDOT to perform the required tasks or have an application pending prior to submittal of the proposal. Failure to meet these requirements would void the submittal.
2. Once a contract has been awarded, the consultant may negotiate directly with sub-consultants. A change in sub-consultants must be approved by the Agency. A written request must be submitted to the Agency to initiate the change. This request must include an explanation of the need to change sub-consultants and the impact on the project schedule and financial elements of the contract. The substitute sub-consultant must be pre-qualified by TDOT to perform the required tasks. After consideration of all factors of the request, the Agency will respond to the request in writing.

E. *Contract Selection*

1. The proposal shall contain a section wherein a firm may identify certified Disadvantaged Business Enterprises (DBEs) that the firm commits to use during the project. Although it is not a mandatory requirement that consultants submitting proposals commit to DBE participation, a good faith effort toward diversity is encouraged in the team make-up. The Agency may set DBE goals on projects involving federal funds, in which case the selected consultant must either meet the goal or show good faith efforts to meet the goal, consistent with the DBE program regulations at 49 C.F.R. 26.53.
2. Evaluation of Proposals by CEC
 - a) The Agency shall evaluate the proposals of firms using the evaluation criteria.
 - b) Separate formal interviews, if approved as an evaluation criteria, should be structured and conducted with a specified time limit. Competing consultants may be asked to bring additional information or examples of their work to the interviews if such information will contribute to the evaluation process. Specific questions may be asked of each consultant to clarify qualifications, written proposals, or oral presentations.
 - c) The CEC shall recommend to the legally designated selection



authority a list of no fewer than three of the firms deemed most qualified to provide the services required.

3. **Contract Selection:** The legally designated selection authority shall rank the firms in order of preference based upon the evaluation criteria. The AGENCY will negotiate with the firm(s) in rank order. All considered firms who were unsuccessful in the selection process shall be so notified.

F. *Negotiation of Contract*

The following shall apply to all negotiations of scope and cost for contracts, work orders, and supplemental agreements.

1. **Determination of Contract Amount:** Following a decision to use consultant services, AGENCY staff shall prepare an estimate of man-days or project cost required based on:
 - a) Relative difficulty of the proposed assignment or project, size of project, details required, and the period of performance, and,
 - b) A comparison with the experience record for similar work performed both by AGENCY personnel and previously negotiated consultant contracts.

This estimate shall be done independently, prior to negotiation, and shall remain confidential to the extent allowed by applicable law.

2. **Scope of Work Meeting with Selected Firm:** The Agency will negotiate with the selected firm. The Agency may arrange a conference with the prospective consultant at which the parties must come to a mutual understanding of the scope of work and all technical and administrative requirements of the proposed undertaking. In lieu of a conference, this may be done by phone or correspondence. The prospective consulting firm may be represented as it wishes; however, a project manager and accounting representative are recommended.
3. **Cost Proposal:** The prospective consulting firm will be invited to submit a cost proposal for the project. This cost proposal is to be broken down by the various items of work as requested and supported by estimated labor requirements. Instructions shall be given regarding the method of compensation and the documentation needed to justify the proposed compensation.

In evaluating the consultant's cost proposal(s), the Agency shall judge the reasonableness of the proposed compensation and anticipated labor



and equipment requirements by the following and other appropriate considerations.

- a) The proposed compensation should be comparable to that of other projects of similar nature and complexity, including as applicable salaries and man-hours to accomplish the work, and allocation of labor within the man-hour estimates.
 - b) The Agency, as deemed appropriate, will assess the fairness of the proposed fee.
 - c) The proposed compensation shall be studied for reasonableness and to assure sufficient compensation to cover the professional quality of the work items desired.
4. **Contract Negotiations:** If the consultant's first cost proposal is rejected by THE AGENCY, the negotiating parties shall hold a second conference to discuss those points of the cost proposal which are considered unsatisfactory. The consultant shall submit a second cost proposal based upon this second conference. If THE AGENCY rejects the consultant's second cost proposal, negotiations shall cease and commence with the second most qualified firm. If like negotiations are unsuccessful with the second most qualified firm, THE AGENCY will undertake negotiations with the third most qualified firm and others on the selected list in sequential order. With the concurrence of the legally designated selection authority, the AGENCY may, at any time, in lieu of continuing negotiations, elect to redefine the scope of the project and invite another group of consultants to submit proposals pursuant to "POLICY", Section III, Competitive Negotiation Procurement Procedure.

G. *Contract Development and Execution:*

1. In the event the parties reach agreement, the Legally Designated Selection Authority shall approve the preparation of a contract.
2. The contract will include a clause requiring the consultant to perform such additional work as may be necessary to correct errors in the work required under the contract without undue delays and without additional cost to the AGENCY.
3. If the consultant contract includes a DBE goal, the consultant shall report at least quarterly all amounts paid to any DBE sub-consultants.
4. **Method of Payment:** The preferred method of contract is Cost Plus Fixed Fee (CPFF). Cost accounting records must be maintained. In accordance with 23CFR 172.5(c), the cost plus a percentage of cost and



percentage of construction cost methods of compensation shall not be used.

5. The Agency shall maintain a record of the negotiations and all required approvals.
6. Prior to approval of the contract, the AGENCY must have on file a contract specific Certificate of Insurance for the consultant. It shall confirm that the firm has professional liability insurance for errors and omissions in the amount of \$1,000,000, as a minimum, and the policy shall be maintained for the life of the contract.

H. *Monitoring of Active Projects:*

1. After the contract has been approved, a work order issued, and productive work on the consultant's assignment has begun, representatives of the AGENCY shall periodically review and document the consultant's progress. Said monitoring reviews shall be directed toward assurance that the consultant's assignment is being performed as specified in the agreement, that an adequate staff has been assigned to the work that project development is commensurate with project billings, and that work does not deviate from the contracted assignment.
2. An employee of THE AGENCY shall be responsible for each contract or project. Annually and/or at project close, the assigned employee will prepare a performance evaluation report covering such items as timely completion of work, conformance with contract cost, quality of work, and whether the consultant performed the work efficiently. A copy of this report will be furnished to the firm for its review and comments upon request.

I. *Supplemental Agreements:*

1. No contract may be supplemented to add work outside the scope of the project or the general scope of services the consultant was initially evaluated to perform. For example, a roadway design contract may be supplemented to add work related to additional phases of project design (e.g. preliminary engineering with related technical services such as survey or geotechnical work, preparation of right-of-way plans, or preparation of final construction plans); however, a project specific or multiphase contract for roadway design shall not be supplemented to add a new project or to add a different type of service, such as construction engineering and inspection.



J. Contract Accounting Policies:

1. Overhead Charge

Federally funded projects: The overhead charge, effective for contracts advertised on or after December 1, 2005, shall be the actual rate as determined in compliance with Federal Acquisition Regulation Standards and approved by a cognizant agency as defined by 23 CFR 172. The cognizant agency is the home state transportation department, a federal agency, or TDOT in the absence of any of the other. A Certified Public Accountant (CPA) may perform the audit, but the audit work papers may be reviewed by the governmental agency. The overhead rate for firms with multiple offices shall be a combined rate for all offices. The rate for the overhead charge will be valid for a one year accounting period. If the overhead rate expires during the contract period an extension may be considered on a case-by-case basis in accordance with 23 CFR 172.7(b).

2. Net Fee Calculation:

The fee for profit is negotiable. The maximum allowable net fee is 13% and should be negotiated depending on the type work, complexity, time restraints, etc., of the project. Net fee is calculated using the following formula: $\text{Net Fee} = 2.35 \times \text{Direct Salary} \times \text{Allowed Net Fee Rate}$.

For cost plus fixed net fee contracts, net fee shall be invoiced as follows: Net fee is invoiced based on the total approved net fee multiplied by the estimated percentage of project completion during the invoicing period as stated in the progress report, less any previous partial payments.

3. Contract and Project Closing:

The Agency is responsible for keeping up with contract costs and knowing when a contract is complete. It is also responsible for closing the contract in a timely manner. By letter to the consultant, the Agency shall affirm that the contract or work order has been satisfactorily completed. In the event that additional services are required within the original scope of the project, the contract or work order may be re-opened. All terms and conditions of the contract shall remain the same.

4. Audit Requirements

- a) Pre-award audits consist of a review of a proposed indirect cost (overhead) rate based upon historical data, review of the consultant's job cost accounting system, and review of project man-day or unit price proposals. Awarded contracts are subject to interim and final



audits. The audits consist of determining the accuracy of invoice charges by reviewing time sheets, payroll registers, travel documents, etc. Charges that cannot be supported will be billed back to the consultant. Annual reviews of the indirect cost rate for non-fixed indirect cost rate contracts will be required and adjustments to the invoiced billing rate may be necessary based on audit results.

5. Computer Aided Drafting and Design (CADD) Expenditures:

All CADD equipment and software expenditures are to be treated as part of overhead. CADD expense will not be allowed as a direct expenditure based on an allocation rate.

6. Facilities Capital Cost of Money (FCCM) Rate:

FCCM referenced in 48 CFR 31.20510 shall be allowed as part of overhead and applied to direct labor.

7. Direct Cost.

- a) Direct Costs include job related expenses which are required directly in the performance of project services such as travel, subsistence, long distance telephone, reproduction, printing, etc. These should be itemized as to quantities and unit costs in arriving at the total cost for the expense.
- b) The proposed direct cost shall not exceed the Tennessee Department of Transportation's maximum allowable rate when a rate for such cost is specified. All direct costs must show supporting documentation for auditing purposes. Documentation for proposed rates should show how they were developed including historical in-house cost data or names and phone numbers of vendors that supplied price quotes along with receipts, invoices, etc., if available.
- c) Electronic equipment, such as personal computers, cameras, and cellular phones, shall be included in the consultant's overhead.
- d) The cost of the use of the consultant's vehicle(s) to the AGENCY'S project shall be paid for according to Attachment A, Schedule of Vehicle Reimbursements.

8. Collection of Funds Due as Result of Contract Audit:

Once an audit is completed and the consultant is found to owe the AGENCY, the Auditor will notify in writing the consultant,. The Agency will notify the consultant in writing about the indebtedness and request



payment within 30 days from the date of the letter. If after 30 days payment is not received, the consultant will then be notified that any funds held in retainage or funds owed to the consultant under other agreements will be used to satisfy the indebtedness. If funds or payables to the consultant in the AGENCY'S possession are in excess of the indebtedness, anything owed the consultant will be remitted under normal payment procedures. If the funds in the AGENCY'S possession are not sufficient to satisfy the indebtedness, the Agency will take appropriate action.

K. *Geotechnical Contracts:*

Contracts for geotechnical services are considered separately because they may involve a mixture of two types of services, i.e., geotechnical studies (engineering services) and subsurface exploration/drilling or laboratory testing (technical services). Additionally, some firms offer one or the other of these services, others offer both, and others offer some combination as well as other services, e.g., design. Firms offering both services must, for accounting purposes, separate the two operations. Cost of equipment, supplies, etc., used in technical services may not be applied towards overhead computations for engineering services.

1. Sub-surface Exploration/Drilling: These services shall be procured as required by applicable law and in accordance with the procedures noted in "POLICY", Section VI, Technical Service Procurement Procedure.
2. Geotechnical Studies Only: These services shall be procured as noted in "POLICY", Section III, Competitive Negotiation Procurement Procedure.
3. Geotechnical Studies and/or Laboratory Testing Combined: The services of these firms shall be procured as noted in "POLICY", Section IV, Competitive Negotiation Procurement Procedure. The technical services costs shall be negotiated by the Agency based on usual industry standards.
4. Geotechnical Studies and/or Sub-surface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm: These services shall be procured as part of the larger contract, e.g., roadway design. Payment for sub-surface exploration/drilling shall be invoiced as a direct cost. Overhead cost restrictions as previously stated in Section III, Item J, Contract Accounting Policies, also apply to hourly labor charges. Geotechnical studies shall be invoiced as other engineering services.

L. *Sub-consultants for Engineering Services:*

1. Geotechnical Studies and/or Sub-surface Exploration/Drilling and/or Laboratory Testing within another Engineering Services Firm:



These services shall be procured as part of the larger contract, e.g., roadway design. Payment for sub-surface exploration/drilling shall be invoiced as a direct cost. Overhead cost restrictions as previously stated in Section III, Item J, Contract Accounting Policies, also apply to hourly labor charges. Geotechnical studies shall be invoiced as other engineering services.

2. Geotechnical Studies Firms as Sub-Consultants

- a) Geotechnical Studies Only: The services of these firms may be procured by negotiation with the prime consultant as described previously herein.
- b) Geotechnical Studies and Sub-surface Exploration/Drilling and/or Laboratory Testing Firms as Sub-Consultants: The services of these firms shall be procured by negotiation with the prime consultant.

M. *Sub-consultants Not Covered Under Engineering Services:*

In the event a sub-consultant is required whose hiring process, as a prime, would be governed by "POLICY", Section IV, Noncompetitive Negotiation Procurement Procedure, or other applicable state policy, that sub-consultant shall be retained by the same method used if he were a prime.

- 1. Example: Design consultants are occasionally asked to provide laboratory testing services under their design contract. These services procurement methods are described under "POLICY", Section VI, Technical Service Procurement Procedure. The design consultant shall use, and document, the procedures described under "POLICY", Section VI, Technical Service Procurement Procedure, when hiring the laboratory testing consultant.
- 2. The Agency should monitor the hiring and documentation of sub-consultants by the prime. Documentation should detail the method used and should be satisfactory for a final project audit.

IV. NONCOMPETITIVE NEGOTIATION PROCUREMENT PROCEDURE

The following procedures may be used by the AGENCY, subject to TDOT's prior approval, in those circumstances where there exists only one viable source for the desired services, when competition among available sources is inadequate, or in emergencies when adherence to normal procedures will entail undue delays for projects requiring urgent completion.

Upon determination of a need for this type of procurement, the AGENCY shall request



an estimate from the qualified firm for the accomplishment of the desired assignment. The request for an estimate shall define the full scope of the desired services, together with minimum performance specifications and standards, the date materials and services are to be provided by the consultant to the AGENCY, and the required assignment completion schedule. Response to the request for an estimate shall be evaluated, giving due consideration to such matters as a firm's professional integrity, compliance with public policies, records or past performances, financial and technical resources, and requested compensation for the assignment.

VI. SMALL PURCHASE PROCUREMENT PROCEDURE

When the contract cost of the services does not exceed the simplified acquisition threshold fixed in 41 U.S.C. 403(11), which is currently \$100,000, small purchase procedures may be used. Contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures. Price negotiations will be obtained from an adequate number of qualified sources with a minimum of two. It is the responsibility of the Local Government to determine the level of advertisement in order to ensure a qualified pool of candidate consultants is available to choose from. Awards will be made to the responsible firm whose proposal is most advantageous to the program with price and other relevant factors considered. Contact the LPDO for approval to proceed with this process.

Motion was made by Marty Pepper, seconded by Dorothy Small, to adopt Resolution R-13-09. Upon roll call, the following voted:

Aye

Gwen Shelton, Marty Pepper and Danny Bryant, Tom Young, Dorothy Small and Michael Whisenant

Nay

None

Mayor Underwood declared the Resolution adopted.

Call for Public Hearing on Rezoning on Mimosa Road:

Motion was made by Dorothy Small, seconded by Gwen Shelton, to call for a public hearing on the rezoning on Mimosa Road. Upon roll call, the following voted:

Aye

Marty Pepper, Danny Bryant, Tom Young, Dorothy Small, Michael Whisenant and Gwen Shelton

Nay

None

Mayor Underwood declared the motion approved.

Call for Public Hearing on Fiscal Year 2014 Budget:

Motion was made by Michael Whisenant, seconded by Marty Pepper, to call for a public hearing on the Fiscal Year 2014 Budget. Upon roll call, the following voted:

Aye

Danny Bryant, Tom Young, Dorothy Small, Michael Whisenant, Gwen Shelton and Marty Pepper

Nay

None

Mayor Underwood declared the motion approved.

Call for Public Hearing on Tax Rate:

Motion was made by Danny Bryant, seconded by Tom Young, to call for a public hearing to set the City's Tax Rate. Upon roll call, the following voted:

Aye

Danny Bryant, Tom Young, Dorothy Small, Michael Whisenant, Gwen Shelton and Marty Pepper

Nay

None

Mayor Underwood declared the motion approved.

Notification of City School Board Bond Issue:

Mayor Underwood explained the City School Board refinanced a bond that had been passed by the Board of Mayor and Alderman previously. Mayor Underwood presented information at a public meeting to the Board members, which was required by the bond issue.

Motion was made, seconded, and unanimously adopted to adjourn.

Mayor

Assistant City Clerk